OFFICIAL RECORDS OF THE GENERAL ASSEMBLY

TWENTY-NINTH SESSION

SIXTH COMMITTEE

LEGAL QUESTIONS

SUMMARY RECORDS OF MEETINGS

18 SEPTEMBER – 9 DECEMBER 1974

UNITED NATIONS

A/C.6/SR.1460-1521

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New York, 1975

INTRODUCTORY NOTE

The *Official Records of the General Assembly* for a given session consist of records of meetings, annexes to those records, supplements, the *List of Delegations* and the *Check List of Documents.* Information on other documents is given in the *Check List* and in the relevant annex fascicles.

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Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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At its 2237th and 2291st plenary meetings, on 21 September and 19 November 1974, the General Assembly decided to allocate the following items on the agenda of the twenty-ninth session to the Sixth Committee for consideration and report:

1. Report of the Special Committee on the Question of Defining Aggression [86].
2. Report of the International Law Commission on the work of its twenty-sixth session [87].
3. Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 [88].
4. Report of the United Nations Commission on International Trade Law on the work of its seventh session [89].
5. United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General [90].
6. Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: report of the *Ad Hoc* Committee on International Terrorism [91].
7. Respect for human rights in armed conflicts: report of the Secretary-General [92].
8. Review of the role of the International Court of Justice [93].
9. Report of the Committee on Relations with the Host Country [94].
10. Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General [95].
11. Declaration on Universal Participation in the Vienna Convention on the Law of Treaties [96].
12. Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions [97].
13. Report of the Economic and Social Council [chapter V (section D, paragraph 493)] [12].
14. Diplomatic asylum [105].
15. Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention [112].

1 For the order of consideration of the items decided by the Committee, see the 1462nd meeting.

Furthermore, the President of the General Assembly, by letter dated 8 October 1974 (A/C.6/431), transmitted to the Chairman of the Sixth Committee a letter dated 7 October 1974 from the Chairman of the Second Committee expressing his desire that the Sixth Committee communicate its observations, from the point of view of drafting, on the text of the draft agreement between the United Nations and the World Intellectual Property Organization, considered by the Second Committee under agenda item 12 [Report of the Economic and Social Council (chapter V, section A.6)] [12].

GENERAL ASSEMBLY

TWENTY-NINTH SESSION

SIXTH COMMITTEE

Summary records of the 1460th to 1521st meetings, held at Headquarters, New York, from 18 September to 9 December 1974

1460th meeting

Wednesday, 18 September 1974, at 4.40 p.m.

Temporary Chairman: Mr. Abdelaziz BOUTEFLIKA (Algeria).

A/C.6/SR.1460

Election of the Chairman

1. Mr. GARCIA ROBLES (Mexico) nominated Mr. Milan Šahović (Yugoslavia) as Chairman.

2. In the absence of further nominations and in accordance with rule 103 of the rules of procedure, the TEMPORARY CHAIRMAN declared Mr. Šahović (Yugoslavia) elected Chairman by acclamation.

Mr. Šahović (Yugoslavia) was elected Chairman by acclamation.

The meeting rose at 4.45 p.m.

GENERAL ASSEMBLY

TWENTY-NINTH SESSION

1461st meeting

Monday, 23 September 1974, at 4 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1461

Tribute to the memory of Mr. Milan Bartoš and Mr. Talat Miras

On the proposal of the Chairman, the Committee observed a minute of silence in tribute to the memory of two former members, Mr. Milan Bartoš (Yugoslavia) and Mr. Talat Miras (Turkey).

1. GÜNEY (Turkey) thanked the Committee for the tribute which it had paid to the memory of Mr. Talat Miras; his delegation would convey the Committee's condolences to the Turkish Government and the family of Mr. Miras.

2. Mr. STARČEVIĆ (Yugoslavia) thanked the Committee on behalf of his Government, his delegation and the family of Mr. Bartoš.

Statement by the Chairman

3. The CHAIRMAN welcomed the members of the Committee and thanked them for the confidence they had

placed in him by electing him Chairman. He would do his best to ensure the full success of the Committee's work. At the current stage of development of international relations, which had reached a high level of complexity and were fraught with uncertainties and problems, the importance of the role which the Sixth Committee was called upon to play could not be over-emphasized. It was clear from the programme of work entrusted to it by the General Assembly that at the current session the Committee would be called upon to contribute very concretely to strengthening the role of the Charter and of international law in the world.

4. He extended greetings to the representatives of States which had recently become Members of the United Nations as well as to the President of the International Court of Justice and the members of the delegation accompanying him. He wished every success to Mr. Suy in his new role as Legal Counsel and recalled the efficient and always friendly service rendered by Mr. Stavropoulos.

5. There were two financial and administrative questions which the Chairmen of the Main Committees had been requested to draw to the attention of delegations.

6. The first concerned documentation. It would be recalled that the Main Committees, which were normally provided with summary records, were authorized, under paragraph 10 *(e)* of General Assembly resolution 2538 (XXIV), to decide on the reproduction *in extenso* of a statement made during a meeting, provided that a specific decision to that effect was taken by the body concerned after it had been informed of the financial implications of such a decision. He had been informed that the current cost of translating and reproducing a statement was approximately $225 per page of the original text where the latter was available from the speaker. Otherwise, the cost of transcribing the statement from the sound recording should be added to that figure.

7. The second question concerned interpretation. To ensure the highest possible quality of interpretation, it would be desirable for members of the Committee to endeavour to speak slowly, to supply the texts of their statements in advance and, when they referred to a United Nations document, to indicate the paragraph number rather than the page.

8. The normal duration of meetings was from 10.30 a.m. to 1 p.m. for morning meetings and from 3 p.m. to 6 p.m. for afternoon meetings. Delegations were requested to be punctual so that the Committee could use the time available to full advantage. He, for his part, intended to adjourn meetings at the specified time. He felt that, by restricting the length of meetings to 2 hours 30 minutes or 3 hours, he would be acting in the interests of both the members of the Committee and the staff members responsible for conference services. With regard to the interpreters in particular, any substantial prolongation of a meeting beyond the normal time would require a change of teams, which could not be done unless it was requested in good time, i.e. at least one hour beforehand. The services of a relief team could not be guaranteed if the meeting was prolonged without prior warning, a practice which should be avoided.

9. Mr. SUY (Legal Counsel) thanked the Chairman for his kind words of welcome and assured the Committee that he and his staff were entirely at its disposal to assist in its work.

Organization of work

10. The CHAIRMAN said he had been informed that consultations on the election of the Vice-Chairmen and the Rapporteur, as well as on the organization of work, were still in progress and had not yet resulted in the formulation of specific proposals. He therefore suggested that the Committee should allow time for the conclusion of those consultations and postpone consideration of the questions until the following afternoon. If there was no objection, he would take it that his suggestion met with the approval of the Committee.

It was so decided.

The meeting rose at 4.25 p.m.

1462nd meeting

Tuesday, 24 September 1974, at 3.30 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1462

Election of the Vice-Chairmen

1. Mr. STARČEVIĆ (Yugoslavia) nominated Mr. Bengt Broms (Finland).

2. Mr. ESSY (Ivory Coast) nominated Mr. Abdelkrim Gana (Tunisia).

Mr. Broms (Finland) and Mr. Gana (Tunisia) were elected Vice-Chairmen by acclamation.

3. Mr. BROMS (Finland) thanked the members for having elected him Vice-Chairman of the Committee. He welcomed Bangladesh, Grenada and Guinea-Bissau, the newly admitted Members of the Organization.

4. Mr. GANA (Tunisia) thanked the members for having elected him Vice-Chairman of the Committee.

Election of the Rapporteur

5. Mr. ZULETA (Colombia) nominated Mr. Joseph A. Sanders (Guyana).

Mr. Sanders (Guyana) was elected Rapporteur.

6. Mr. SANDERS (Rapporteur) thanked the members of the Committee for having entrusted him with the office of Rapporteur.

7. Mr. GONZALEZ GALVEZ (Mexico), speaking as the Chairman of the Committee at its preceding session, congratulated the officers on their election. He spoke of the dynamism displayed by Yugoslavia, Finland, Tunisia and Guyana within the international community. The composition of the officers of the Sixth Committee was a guarantee of effective work by the Committee during the twenty-ninth session.

Organization of work (A/C.6/427, A/C.6/L.978)

8. The CHAIRMAN noted that the Committee had to decide the order in which it would take up the items which had been allocated to it by the General Assembly (see A/C.6/427) and the number of meetings which it would devote to each item. In the light of the consultations on the subject, he was proposing that the Committee should adopt the following work programme:

	Items	*Number of meetings*
1	Participation in the United Nations Conference on the Representation of States in their Relations with International Organizations, to be held in 1975 (item 88)	1
2	Declaration on Universal Participation in the Vienna Convention on the Law of Treaties (item 96)	1
3	Question of issuing special invitations to States which are not members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions (item 97)	1
4	Review of the role of the International Court of Justice (item 93)	5
	Report of the Special Committee on the Question of Defining Aggression (item 86)	10
	Report of the International Law Commission on the work of its twenty-sixth session (item 87)	12
	Report of the United Nations Commission on International Trade Law on the work of its seventh session (item 89) and United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General (item 90)	7
	Diplomatic asylum (item 105)	6
9	Report of the Committee on Relations with the Host Country (item 94)	3
10	Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General (item 95)	6
11	Respect for human rights in armed conflicts: report of the Secretary-General (item 92) and report of the Economic and Social Council [chapter V, (section D, paragraph 493)] (item 12)	7
12	Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: report of the *Ad Hoc* Committee on International Terrorism (item 91)	5

9. That proposal was the result of agreement among the participants in the consultations. It provided a reasonable basis for the work and took into account, to the extent possible, the views of the delegations which had shown most interest in the matter.

10. Mr. YASSEEN (Iraq) suggested that in order to speed up its work the Committee should adopt the Chairman's proposal, which was the result of lengthy discussions among delegations.

11. Mr. GUERRERO (Philippines) said that his delegation had not participated in the consultations but had two suggestions to submit. First, item 93 of the agenda seemed to be closely related to item 95, and it seemed wise that the Committee should consider the two items together. Secondly, the Committee might usefully consider item 95, which was of some urgency in view of the ever-widening gap between developed and developing countries, before taking up item 105, which, in any event, raised a number of political problems. His delegation proposed that the Committee should revise accordingly the programme proposed by the Chairman.

12. Mr. NJENGA (Kenya) pointed out that the order in which agenda items were considered was no indication of their relative importance. While he agreed that item 95 was of special importance, he asked the representative of the Philippines not to press for a change in the order of consideration of items, which was the result of a compromise.

13. Mr. ROSENNE (Israel) said that he was prepared to accept the programme proposed by the Chairman, although he would have found it preferable to begin by considering item 87 on the report of the International Law Commission, according to established tradition. He understood, however, the special reasons which required consideration of that item to be postponed until a later stage of the current session. He hoped that the Committee would adhere to the number of meetings assigned to each item and thus be able to deal with all the items on its agenda without omitting any, as it had done the year before.

14. Mr. SA'DI (Jordan) urged that when only one meeting was to be devoted to the consideration of some items, the

Committee should meet at the scheduled time and representatives should hold consultations beforehand and carefully prepare their statements in order to avoid wasting time.

15. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that he had participated in the consultations which had produced the Chairman's proposals and that the suggested order was of purely chronological significance. His delegation, for example, attached particular importance to item 91, which would be dealt with last.

16. Mr. DE SOTO (Peru) said that he, too, had participated in the consultations and was prepared to accept the Chairman's proposals, despite some reservations on account of the fact that certain important items, such as item 86, were to be discussed very early. His delegation believed, however, that the suggestions of delegations whose views had not been heard during the preliminary consultations should be borne in mind. It found the proposal of the representative of the Philippines to consider items 93 and 95 together particularly useful and was prepared to support that proposal if the sponsor pressed it.

17. Mr. MIGLIUOLO (Italy) said that he had not taken part in the consultations but would abide by the views of the majority. In the view of his delegation, the organization of work should produce a logical sequence of subjects and meet the need to allocate to each item the required number of meetings. That was why the proposal to allocate to three agenda items only one meeting each seemed unduly optimistic. He had noted that one item which some delegations of the General Committee's meetings had suggested deleting from the agenda had been transferred to the end of the programme of work. His delegation hoped that the Chairman would see to it that the same item be duly considered, by assigning 12 meetings for consideration of item 95, instead of the six meetings proposed. In order to do that, three of the meetings which had been saved by allocating only one meeting each for the consideration of three items might be utilized. Another three meetings might be made available by reducing the number of meetings allocated to the consideration of agenda item 86, on the question of defining aggression, on which the Special Committee had already worked for so many years. Another possibility to tackle the problem would be to accept the proposal of the representative of the Philippines, which the Italian delegation considered most valuable and could therefore support.

18. Mr. PRIETO (Chile) said that he had not taken part in the consultations. He supported the proposal of the representative of the Philippines and Italy's proposal that the number of meetings allocated to consideration of item 95 should be increased.

19. Mr. KOLESNIK (Union of Soviet Socialist Republics) fully endorsed the proposals of the Chairman, which, while they were not perfect, took into account all the views expressed during the informal consultations. The Committee could proceed immediately to substantive work.

20. It should not be forgotten, however, that the progress of the Committee's work depended on a number of factors. First, the item had to be ready for discussion: in particular, the requisite documents had to be available in all the working languages, which was not the case, at the moment, with item 95. The atmosphere of the discussion also had to be taken into account; efficiency could not be secured without an endeavour from the outset to make a general attitude of trust and understanding prevail.

21. His delegation entirely shared the view of the representative of Uruguay that the order of consideration of the items did not reflect their relative importance. With regard to the suggestion of the representative of the Philippines, who had said that agenda items 93 and 95 were very closely related, his delegation would not oppose consideration of item 95 immediately before item 93. With regard to the proposal of the Italian representative that the number of meetings devoted to the consideration of item 86 should be reduced, his delegation did not think that the small number of meetings allocated to that important question should be reduced.

22. Mr. ZULETA (Colombia) said that although he had not taken part in the consultations, he found the Chairman's proposals acceptable. Like the representative of Kenya, he considered that the proposed programme should be adopted and substantive work started without further delay.

23. Mr. ALEMAN (Ecuador) said that he was not completely satisfied with the outcome of the consultations but would not oppose the Chairman's proposals, which were the result of compromise. The proposal of the representative of the Philippines, however, was most constructive. He stressed the very great importance which he attached to consideration of item 86 and referred to the reservations which his delegation had expressed at the time when the Special Committee on the Question of Defining Aggression had adopted that definition (see A/9619 and Corr.1, annex).

24. Mr. COLES (Australia) endorsed the views of the representatives of Colombia and Kenya; he hoped that the Committee would adopt the proposed programme without change.

25. Mr. YOKOTA (Japan) supported the proposals of the representatives of Italy and the Philippines; he thought that item 95 should be given the priority it deserved over items 94 and 105. His delegation would, however, abide by the view of the majority, but it hoped that the Committee would keep to the time-table once it was adopted.

26. Mr. YASSEEN (Iraq) said that items 93 and 95 were not closely linked, given the different circumstances in which they had been placed on the agenda. It was on the basis of a change in the procedures of the International Court of Justice and, above all, in the attitude of States to that organ, and not on the basis of a change in the provisions of its Statute that a stronger role for the Court had been contemplated. The problem of the role of the Court could be settled by the inclusion of appropriate clauses in international agreements, without any need to consider changing its Statute.

27. Mr. RYBAKOV (Secretary of the Committee) announced that the Secretary-General's report on agenda item 95 would not be distributed until 15 October. To date, the observations of only six Governments had been

received by the Secretariat. If other States submitted observations on the subject, they would be issued as addenda to the Secretary-General's report.

28. Mr. HAGARD (Sweden) deplored the fact that item 92 had been put towards the end of the proposed programme of work. He was convinced that the Committee would be doing valuable work if it considered that question at length. It was true that there was one advantage in the proposed order of consideration of items: when the Committee came to item 92, it would have before it the conclusions of the conference which was currently being held at Lucerne under the auspices of the International Committee of the Red Cross. There was reason to fear, however, that the number of meetings devoted to the item would be reduced owing to lack of time, and he hoped that it could be taken up earlier.

29. Mr. LOPEZ BASSOLS (Mexico) said that his delegation had taken part in the consultations and it accepted the proposed order of consideration of items as a compromise. He hoped that the order would be accepted without futile discussions.

30. Mrs. HO Li-liang (China) said that her delegation was still dissatisfied with the proposed time-table, chiefly on account of item 95 about which the representatives of the Philippines and Peru had made an excellent proposal. Although her delegation accepted the proposed time-table, it did so only out of a desire not to make the Chairman's task more difficult.

31. It should be recalled that at a meeting of the General Committee, one super-Power had proposed that that item should be deleted from the agenda. The Charter was over 30 years old, and the world had changed considerably in that time. Her delegation held that the Charter should be modified on the basis of the principle of the equality of all States. The work of the Sixth Committee on agenda item 95 would be a first step in that direction. The Committee should be in a position to discuss the question thoroughly at the current session, and an effort should be made to expedite the distribution of the documents relating to it.

32. Mr. SA'DI (Jordan) said that he was prepared to accept the proposed order of consideration of items. His delegation also had some reservations, but would refrain from expressing them because the programme was the result of a compromise which it was unwilling to undermine.

33. Mr. ROSENSTOCK (United States of America) endorsed the remarks of the representative of Jordan. A number of delegations had expressed reservations, but none had formally opposed the order of consideration of items submitted by the Chairman. The discussion had made it clear that it was definitely the programme which commanded the widest measure of support. His delegation hoped that it would be adopted immediately and that the Committee could then put it into effect in accordance with the proposed time-table.

34. Mr. MIGLIUOLO (Italy) supported the proposed programme of work, but suggested that the number of meetings allocated to the consideration of item 95 should be changed. The proposed programme made provision for three fewer meetings than the original programme. There was no reason why those meetings should not be used for consideration of suggestions regarding the review of the Charter. In addition, a few of the meetings which allowed for the consideration of item 86 might be allocated to item 95 inasmuch as it could be hoped that the consideration of the report referred to in item 86, which was the result of lengthy negotiations, would not lead to a controversial debate. Such a course would be simple and practical, and would not in any way affect the relative importance of the items concerned.

35. The CHAIRMAN observed that in the rearrangement of the programme outlined in document A/C.6/L.978, the number of meetings allocated to certain agenda items had already been modified. By reducing the time allocated to certain items, it had been possible to make available five meetings, two of which had been allocated to item 93–the number of meetings on which had been increased from three to five–and one to item 105, for which the Committee would have six meetings available instead of five. Two meetings had therefore not yet been reallocated. The Committee could hold a total of 77 meetings, of which 10 had been set aside as a reserve, in addition to the two which had not yet been allocated. Everyone was aware that it was impossible to lay down rigidly in advance the number of meetings to be devoted to each agenda item. It was essential to have some room for manoeuvre in the light of how the discussions developed. He was therefore in favour of leaving the reserve of meetings intact, including the two meetings which had become available through the rearrangement of the programme.

36. Mr. GUERRERO (Philippines) supported the proposal of the Italian representative. It was clear from the discussion that many delegations had a keen interest in item 95. His delegation was therefore in favour of increasing the number of meetings devoted to that item, but was prepared to leave the decision to the discretion of the officers.

37. The CHAIRMAN asked the members of the Committee whether they agreed to increase from six to eight the number of meetings allocated to agenda item 95 by allocating to the consideration of that item the two meetings made available as a result of rearranging the programme of work. If he heard no objection, he would take it that the Committee accepted that proposal.

It was so decided.

38. The CHAIRMAN said that if he heard no objection, he would take it that, subject to that change, the programme of work which he had read out was adopted.

It was so decided.

39. The CHAIRMAN said that the Committee still had to set the date for concluding its work. If he heard no objection, he would take it that the Committee accepted the date of 6 December, as proposed in paragraph 2 of document A/C.6/L.978.

It was so decided.

The meeting rose at 5.30 p.m.

1463rd meeting

Thursday, 26 September 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1463

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975

1. The CHAIRMAN recalled that, in resolution 3072 (XXVIII), the General Assembly had decided that the United Nations Conference on the Representation of States in Their Relations with International Organizations would be held early in 1975 at Vienna. It had also decided in the same resolution, after settling all the other organizational problems involved in holding the Conference, to determine at its twenty-ninth session the question of participation of States, which would be considered by the Sixth Committee.

2. Mr. KOLESNIK (Union of Soviet Socialist Republics) welcomed the delegations of Bangladesh, Guinea-Bissau and Grenada, which were participating for the first time in the work of the Committee.

3. As the Chairman had recalled, the last practical question still outstanding relating to the United Nations Conference on the Representation of States in Their Relations with International Organizations was that of participation. The importance of that question could not be over-emphasized for the fate of the convention to be approved would, to a considerable extent, depend on the solution adopted. An international instrument establishing norms for only a limited number of countries would not be universal. In that connexion he referred to the Vienna Convention on the Law of Treaties,[1] in connexion with which the "Vienna" formula had been adopted, whose discriminatory nature had restricted ratification of the instrument concluded on 23 May 1969.

4. In a time of international détente, the development of the political situation depended on the maintenance of friendly relations among States. To prevent one group of countries from participating in the solution of major international problems would be a dangerous approach that would slow down the development of good relations among States and arouse tensions that could be dangerous for all mankind. That attitude, which was inadmissible in any area, was even more unacceptable in the codification and progressive development of international law. It was important that all States should recognize and use international law to strengthen the juridical bases of international co-operation.

5. From the various statements made from the United Nations rostrum, it appeared that no one questioned the principle of universality; indeed, some did not hesitate to say that the difficulties encountered by the United Nations were largely due to disregard of that principle. However, those same individuals recommended that the "Vienna" formula should be applied to participation in conferences organized under United Nations auspices, although that would in fact delay the implementation of the principle of universality.

6. Some had claimed, for example at the twenty-eighth session during the discussion of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166 (XXVIII), annex), that to depart from the "Vienna" formula would be to rush into delicate situations. The Soviet Union felt that, on the contrary, the international community would encounter more problems if it did not abandon that discriminatory practice and give all Governments the opportunity to participate in conferences organized under United Nations auspices. There was no justification for prohibiting, for so many years, the German Democratic Republic and the Democratic Republic of Viet-Nam from participation in those conferences; there was nothing now to explain the ostracism of the Republic of South Viet-Nam. It might seem strange that in the twentieth century it was still necessary to defend the principle of universality, which had long been recognized in international law. The "Vienna" formula was a step backwards which ran counter to the progressive development of international law.

7. The peace efforts of recent years had made possible the adoption of several international instruments prepared under United Nations auspices in which the principle of universality had been respected. The fact that the "Vienna" formula was outdated had been demonstrated, in particular, by the adoption in 1973 at the twenty-eighth session of the General Assembly of the principle of universal participation in the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (General Assembly resolution 3068 (XXVIII)) and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. It could, admittedly, be maintained that there was a difference between participation in a convention and participation in the conference at which the instrument was adopted. However, if a convention was open to universal participation it was only logical that all States should also be able to participate in the preparatory work. United Nations practice also included other examples of universal participation. For example, the Economic and Social Council, in resolution 1840 (LVI), had decided to issue invitations to all Governments to participate in the World Food Conference to open 5 November 1974 at Rome.

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[1] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

8. He expressed the hope that the regrettable procedures which the adoption of the "Vienna" formula had led to in the convening of the recently held Third United Nations Conference on the Law of the Sea, from which the Democratic Republic of Viet-Nam and Republic of South Viet-Nam had been excluded, would not arise again in connexion with the Vienna Conference of 1975. He also hoped that the Sixth Committee would demonstrate its political maturity by adopting a resolution supporting the principle of universality and by deciding to invite all States without any restriction.

9. Mr. KHAN (Bangladesh) fully supported the position taken by the Soviet delegation and maintained that all States should be able to participate in the future Conference without discrimination.

10. Mr. ALVAREZ TABIO (Cuba) recalled that his Government fully supported the principle of universality. According to the "Vienna" formula only States Members of the United Nations or members of its specialized agencies or of the International Atomic Energy Agency, or parties to the Statute of the International Court of Justice could become parties to conventions elaborated under United Nations auspices. The purpose of that restrictive formula had originally been to prevent a certain number of socialist countries from becoming parties to those conventions.

11. There was no doubt that the principle of universality must triumph, particularly in dealing with the codification and progressive development of international law. The provisions of the conventions concluded in that field were clearly of interest to the international community as a whole, and the principle of consent could not be invoked in such cases. The discriminatory nature of the "Vienna" formula could only be prejudicial to the work on the codification and progressive development of international norms.

12. Mr. YASSEEN (Iraq) stressed that international law could not be valid for only some countries, for the welfare of the international community as a whole depended on it. All nations should therefore be able to collaborate in its codification and progressive development. It was essential to go beyond the "Vienna" formula, which no longer corresponded to the situation of the contemporary world, and to invite all countries of the world to participate in order to benefit international law. All States should be invited to participate in the Vienna Conference of 1975 in accordance with the principle of universality, cherished by the United Nations.

13. Mr. BOULBINA (Algeria) recalled that his country had always supported the principle of universality and expressed the hope that the principle would be applied to participation in the Vienna Conference of 1975. The adoption of international instruments was useful only if all members of the international community participated in preparing, discussing and concluding them. One could, of course, claim that a new State could always accede to an instrument at any appropriate time. However, a movement in favour of universality had developed at the Conference on the Law of the Sea. The decision taken by the Sixth Committee should not be a step backwards but should reaffirm that the United Nations belonged to everybody.

14. Mr. MEISSNER (German Democratic Republic) said that the development of international co-operation enhanced the importance of universal participation. It was necessary that all States should participate in preparing conventions which affected the international community as a whole. The principle of universality derived from the principle of equality of States, which was one of the basic tenets of the Charter of the United Nations. The President of the United States had, incidentally, referred to that principle in his statement to the General Assembly (2234th plenary meeting). The decision taken by the Sixth Committee should be a firm measure and his delegation proposed that all States should be invited to participate in the Vienna Conference of 1975.

15. Mr. BOJILOV (Bulgaria) said that the history of the issue was well known, since the General Assembly at its twenty-eighth session had adopted resolution 3072 (XXVIII), under paragraph 7 of which it had decided to determine at the current session the question of participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations.

16. His delegation wished to remind members that a number of international conferences, including the Conference on the Law of the Sea and the World Population Conference, had actually been held before the opening of the current session. It was a matter of great concern that the question of participation in those Conferences had been resolved on the basis of different interpretations of the "Vienna" formula. It would be most regrettable if those different interpretations of an out-dated formula—a political vestige of the cold war in the field of international law—had the result of ruling out the participation of the Provisional Revolutionary Government of the Republic of South Viet-Nam, a signatory of the Paris Agreements and the Act of the International Conference on Viet-Nam. That Government, which maintained diplomatic relations with a number of States and participated officially in the summit conference of non-aligned countries, therefore had full legal competence to participate in the work of international conferences affecting not only limited interests but also the destiny of nations. It had been the victim, however, of unjustified discrimination which, as a consequence, had prevented the Government of the Democratic Republic of Viet-Nam from participating in the international conferences held in the current year. It was therefore the duty of the United Nations to ensure full implementation of the principle of universality.

17. His delegation attached the greatest importance to the implementation of the principle of universality. That principle stemmed from the principle of the equality of States, which was generally recognized in international law and constituted one of the corner-stones of the Charter of the United Nations. While the time had come to eliminate the last obstacles to the full implementation of that principle, there was a need, nevertheless, to stress that some progress had been made between the twenty-eighth and twenty-ninth sessions of the General Assembly. On 15 May 1974, the Economic and Social Council had adopted resolution 1840 (LVI), which contained, among other things, in paragraph 2 the decision to invite all States to participate in the World Food Conference. That decision

unquestionably marked a decisive step forward of practical as well as conceptual significance, provided that the aforementioned resolution did not contain a restrictive interpretation of the words "all States". In conclusion, his delegation hoped that the Sixth Committee would not pass over the opportunity to proclaim that the principle of universality must be fully implemented; in other words, all States should be invited to participate in the forthcoming Conference on the Representation of States in Their Relations with International Organizations, and that the national liberation movements recognized by the Organization of African Unity (OAU) or the League of Arab States should be invited to designate representatives to participate as observers in the deliberations of that Conference.

18. Mr. STEEL (United Kingdom) expressed surprise at the controversial note which had been introduced into an essentially procedural discussion. The controversy was spurious. All members supported and intended to apply the principle of universality, which was designed to ensure the participation of all States in the proposed Conference. As to the meaning of the words "all States", the Drafting Committee established by the Sixth Committee at the previous session to examine the articles of the draft convention referred to in agenda item 90, had approved without opposition a satisfactory formula, which had then been approved by the Committee and had later been adopted by the General Assembly in its decision concerning that item.[2] The Soviet Union had taken part in the drafting of that formula, which had later been adopted by the Economic and Social Council. In referring to paragraph 2 of Economic and Social Council resolution 1840 (LVI), the representative of Bulgaria had forgotten to remind members of the foot-note concerning that paragraph, which expressly referred to that formula. That being so, there was no reason not to adopt the solution prepared by the Committee itself the previous year and later adopted by the General Assembly and the Economic and Social Council.

19. Mr. KLAFKOWSKI (Poland) reminded members of the views expressed by his Government concerning the draft articles on representation of States in their relations with international organizations prepared by the International Law Commission.[3] Those views were expressed in 1971[4] and 1972.[5] In fact Poland believed: firstly, that the proposed convention should enable representatives of States to international organizations to perform their duties in better conditions and thus enable those organizations to better attain their goals; secondly, that all States should be able to co-operate, if they so desired, with international organizations of a universal character, in the interests of both States and the organizations themselves; thirdly, that in the modern world international organizations represented an important forum for international co-operation in various fields and that the establishment of appropriate rules to regulate the question of the representation of States in their relations with international organizations was a matter of great practical importance; fourthly, since the proposed convention dealt with organizations of a universal character, it must be open to all States; fifthly, the draft articles prepared by the Commission should become a general model for the uniform regulation of the question of the representation of States in their relations with international organizations of a universal character.

20. Mr. ALVAREZ PIFANO (Venezuela) felt that acquaintance with the opinions of countries with different legal, economic and social systems could be achieved only through the participation of all States. Universal participation also encouraged international co-operation on the basis of peaceful coexistence among States, whatever their political and social organization. The principle of universality should therefore be applied in the matter of participation in the proposed Conference.

21. Mr. ZULETA (Colombia), after the Chairman confirmed that the Republic of Viet-Nam was a member of certain specialized agencies, expressed support for the principle of universality in connexion with participation in the proposed Conference. It seemed to him that the words "all States" were intended to cover all the States represented in the United Nations or the specialized agencies or parties to the Statute of the International Court of Justice. However, no State should be accorded dual representation because of internal political differences.

22. Mr. TURPIN (Guinea-Bissau) recalled that his country had long been victimized as a result of the implementation of the "Vienna" formula. His delegation firmly supported the principle of universality whereby all States participated in international conferences.

23. Mr. TENEKIDES (Greece), after welcoming the representatives of Bangladesh, Guinea-Bissau and Grenada, expressed support for the principle of universality in connexion with participation in the proposed Conference, rather than the restrictive "Vienna" formula. An international convention was far more likely to be effective if it was the product of a consensus reached by all the States making up the international community.

24. Mr. HASSOUNA (Egypt) firmly supported the principle of the representation of all States and the participation as observers of the national liberation movements recognized by regional organizations—a principle which had already been adopted by the General Assembly in resolution 3102 (XXVIII) concerning the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, by the Economic and Social Council in its resolutions 1835 (LVI) and 1840 (LVI), relating to the World Population Conference and the World Food Conference, respectively, and by the Third United Nations Conference on the Law of the Sea in rule 63 of its rules of procedure.

25. Mr. BUBEN (Byelorussian Soviet Socialist Republic) recalled that his delegation had always supported the participation in international conferences of all the States concerned, in accordance with the principle of equality of rights. The "Vienna" formula, which was nothing but flagrant discrimination against certain States and which had the effect of slowing down the progressive development of

[2] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 30*, p. 150.

[3] *Ibid., Twenty-sixth Session, Supplement No. 10*, chap. II, sect. I.

[4] *Ibid., Suplement No. 10*, annex I, p. 112.

[5] See A/8753.

international law, was out of date. Yet the Democratic Republic of Viet-Nam and the Republic of South Viet-Nam were still victims of that discriminatory attitude, despite the general atmosphere of détente. The Committee, whose task was to encourage the progressive development of international law, should take a position in favour of the participation of all States without exception in the proposed conference.

26. Mr. GUERRERO (Philippines) observed that all the members seemed to subscribe to the principle according to which all States should participate in the proposed conference. However, for certain States the question arose of establishing which Government should represent them. In that connexion, the principle of a single representative for each State must be observed, but there should be no interference in the internal affairs of the various nations, and each people must be left to decide which was its legitimate Government. It was, moreover, premature to take up the question, for the General Assembly would have to deal with it. Nevertheless, if a decision had to be taken on the question, he thought that due consideration should be given to the opinion of regional organizations, such as the one which linked the States of South-East Asia.

27. Mr. ROSENSTOCK (United States of America) said he thought that the "Vienna" formula was and had always been a perfectly reasonable solution to the question of participation in conferences, for it must be borne in mind that a political entity could be impartially recognized to constitute a State for the purpose relevant in this context only if there was clear evidence that a majority of States concurred in this view. Recognition as such by the majority of the international community through admission to membership in a specialized agency was the best possible evidence of recognition. If for reasons relating to political views which were currently outdated it was considered important to take a different approach to the same result there should be no problem, since the Assembly had already reached complete agreement on a viable alternative. There was no reason to call into question the unanimously agreed understanding which the Sixth Committee had prepared in the previous session and which had been unanimously adopted by the General Assembly. It had been hailed by all as a wise and practical solution to the problem. There was no need to debate the matter further.

28. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) welcomed the admission to membership of three new States: Bangladesh, Grenada and Guinea-Bissau; their admission to the United Nations illustrated the principle of universality. In order to ensure the codification and progressive development of international law the Committee must devise for the question of participation in the proposed conference a solution which rested on that principle. That was all the more necessary because the conference was to adopt a convention on the representation of States in their relations with international organizations, i.e., an instrument which concerned all States without exception. Furthermore, international organizations were the basic elements of a system which was characterized by the increasingly clear progress of international co-operation.

29. The present dynamism of international relations made it essential to apply the principle of universality, which, for want of common sense and logic, had long been disregarded, States such as the German Democratic Republic, the Democratic Republic of Viet-Nam and the Provisional Revolutionary Government of South Viet-Nam being excluded from any participation in the codification and progressive development of international law.

30. Having listened closely to the comments made by delegations, notably that of the United Kingdom, she wished to point out that the term "all States" had been officially used by the General Assembly since its twenty-seventh session and had appeared in the documents of the United Nations, which showed that the "Vienna" formula no longer had currency, no longer corresponded to the present international situation and could not be invoked to solve the problem of participation in a conference whose work was to contribute to the codification of international law. To reject the term "all States", which had increasingly wide acceptance, would be to disregard present realities. The Committee, whose task was to ensure the codification and progressive development of international law, must confirm a trend which was irrevocably manifested in the facts and must recommend the convening of a conference at which all States would be represented.

31. She expressed the conviction that the term "all States" was the necessary and sufficient condition for the representation of States in international organizations and that it should be used for the convening of the conference planned for the beginning of 1975.

32. Mr. WEHRY (Netherlands) drew attention to the artificial nature and unrealistic content of the discussion. No representative had opposed the principle of universality, and the comments made seemed occasioned more by an instinctive reaction or feelings of frustration. The controversy over the question of deciding whether all States should or should not be represented was no longer relevant, since the term "all States" was universally recognized, a situation which his delegation welcomed.

33. Admittedly, controversy would remain about the theoretical legal question how to determine which entities are States, but that was for the international legal profession to debate. It was not for the Committee to give a definition of the notion of State or of Government. It would be sufficient for the purpose of offering guidance to the Secretary-General that the will of the majority be respected as to whom the invitations to the forthcoming conference should be addressed. That solution had already been adopted by the Economic and Social Council, and the Sixth Committee should apply it to the first three agenda items. Any other argument would be nothing but an exercise in rhetoric.

34. Mr. NYAMDO (Mongolia) said that the question was very important, for the problem of the representation of States in their relations with international organizations affected the development of co-operation among States with different political, economic and social systems. Recent practice followed by the international community had shown clearly that the so-called "Vienna" formula –which was designed to exclude certain States–was out of date. There were already precedents, for invitations to some conferences had been sent to all States.

35. His delegation fully supported the proposal that all States without exception should be invited to the conference to be held at Vienna, together with the recognized national liberation movements, which would attend as observers.

36. Mr. ZULETA (Colombia) said that he wished to add to the comments he had already made by stating that, with regard to the proposal of the representative of Egypt, his delegation saw no problem in inviting to the conference the national liberation movements recognized by OAU or by the League of Arab States or in granting observer status to the representatives of the countries about to attain independence. Recalling in that connexion the note addressed by the President of the Third Conference on the Law of the Sea to the Secretary-General in document A/9721 and included in the documentation before the First Committee, he said in conclusion that the universality criterion was clear, but that did not mean that it should admit of the double representation or non-representation of a State.

37. Mr. GHAUSSY (Afghanistan) said he was in favour of the participation of all States, without any discrimination, in all the conferences organized for the codification of international law. His delegation thought that the principle of universality must be respected if the effectiveness of the codification and progressive development of international law was to be ensured; it hoped that political considerations would not present an obstacle to the participation of all States.

38. Mr. ESSY (Ivory Coast) supported unreservedly the proposal of the Egyptian delegation that the recognized national liberation movements should be invited. The proposal was all the more timely since, in view of the evolution of the situation, it was probable that the liberation movements would shortly assume a more formal role. Any formula for issuing invitations should therefore make provision for the participation of the movements; there could be no question of imposing on them the results of the work of the conference.

39. Mr. KOLESNIK (Union of Soviet Socialist Republics) said he wished to comment on the statements made by certain representatives. First, he welcomed the Egyptian proposal, which attested to the positive reaction of the majority of the Committee's members in favour of universal participation in all conferences. Second, he was surprised that the United Kingdom representative had felt it necessary to point out that the Soviet delegation had not opposed the Sixth Committee's adoption at the previous session of the "all States" clause appearing in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The reason why his delegation had drawn attention to the "all States" formula was that it felt that the General Assembly had the responsibility of interpreting that clause and of deciding upon the practice that the Secretary-General would follow in discharging his functions as depositary of international conventions. In each case, the General Assembly's opinion should be requested before countries signed or acceded to such instruments. He stressed that the formula consisted of two elements: the first concerned the practice followed by the General Assembly, which in the past might have given rise to discrimination based on the "Vienna" formula; the second was that the Secretary-General could either consult the General Assembly or not, as he deemed necessary—a situation which explained how it was that in the past he had, for example, been able to return a document addressed to him by the German Democratic Republic. It was therefore clear that the interpretation of the "all States" formula could limit its scope.

40. It was true that his delegation had accepted that formula without objection. But a distinction should be drawn between actually submitting a proposal and, in the interests of a compromise, not objecting to a proposal. His delegation's position had always been consistent; that could hardly be said of the United Kingdom delegation, which, while affirming its support for the "all States" formula, had endorsed an interpretation that would render it meaningless. His delegation had certainly not been trying to prove a fact that was obvious: it had merely wished to stress that the proponents of the "Vienna" formula still existed, and had simply changed their tactics. The discussion had been interesting and useful, having made it possible to reach the conclusion that the only principle that could now be followed was that of the universal participation of all States.

41. Mr. STEEL (United Kingdom) maintained that the representative of the Soviet Union had merely proved what was obvious; he (Mr. Steel) had not been convinced by the Soviet representative's argument regarding the understanding reached at the previous session on the "all States" formula. The reference in that understanding to "the practice of the General Assembly" should be understood to mean the practice currently followed at the time when the question arose and not that which had been followed in earlier years. Where there was no relevant current practice, it would be for the Secretary-General to request the General Assembly for directives regarding the interpretation of references to "all States".

42. The Soviet delegation had drawn a distinction between not raising any objection and submitting a proposal. That distinction, while valid, should not serve as a pretext for undoing a compromise that had in fact been reached and that would be useful and would enable the Committee to proceed on a methodical basis, as the Economic and Social Council had already done by using the same formula.

43. Mr. KUMI (Ghana) recalled that his delegation had supported the participation of the national liberation movements in the Conference on the Law of the Sea held at Caracas. It therefore endorsed the proposal that the national liberation movements recognized by OAU and the League of Arab States should be represented at all future conferences.

44. The CHAIRMAN invited delegations to consult each other for the purpose of preparing draft resolutions which the Committee could take up at the following meeting.

The meeting rose at 5.35 p.m.

1464th meeting

Friday, 27 September 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1464

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued)*

1. Mr. ELIAN (Romania) said that his delegation had always advocated the broadest possible application of the principle of universality in regard to participation in United Nations conferences. If the Conference on the Representation of States in Their Relations with International Organizations was to produce a viable instrument of international law, it would be necessary to have the participation of the largest possible number of States. His delegation would be happy to vote for a draft resolution embodying a provision to that effect.

AGENDA ITEMS 96 AND 97

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties

Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions

2. Mr. ALVAREZ TABIO (Cuba) reiterated the position he had stated at the preceding meeting, namely that there should be no limitation of any kind on the principle of universality either in regard to participation in international conferences or in regard to accession to the international legal instruments adopted at such conferences. On the question of participation, he was pleased to note that the right of the national liberation movements to be represented at international conferences was nearly universally recognized. There still seemed to be some disagreement, however, with regard to the status of the Provisional Revolutionary Government of the Republic of South Viet-Nam. In some quarters it was maintained that there should be no dual representation of the people of South Viet-Nam. In his view, that was an erroneous approach and contrary to the Paris Agreement of 1973, which recognized two Governments in South Viet-Nam having *de facto* jurisdiction over distinct territories. It was therefore incorrect to assert that the Saigon régime, merely because of its membership in certain specialized agencies, was entitled to represent the entire territory of South Viet-Nam. His delegation had repeatedly stated its view that the sole lawful representative of the people of South Viet-Nam was the Provisional Revolutionary Government. It was therefore only right and proper that the Provisional Revolutionary Government should be invited to participate in the Conference on the Representation of States in Their Relations with International Organizations.

3. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) said that his delegation viewed the inclusion of items 96 and 97 in the agenda of the current session of the General Assembly as evidence of increasing recognition of the principle of universality in regard to the participation of States in international legal instruments. Since the Vienna Convention on the Law of Treaties[1] and the Convention on Special Missions (General Assembly resolution 2530 (XXIV), annex) dealt with matters of equal importance to all States, it was essential that all States should be entitled to participate in them. The formula whereby only States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice had the right to accede to international conventions was only a subterfuge enabling certain States to discriminate against others. Particularly victims of that discrimination were the Democratic Republic of Viet-Nam and the Provisional Revolutionary Government of the Republic of South Viet-Nam. Such discrimination was contrary to the purposes of the United Nations as stated in Article 1 of the Charter and represented an attempt to deprive States of their legal rights under the principle of sovereign equality. He hoped that the Sixth Committee would act to remove such discrimination by once and for all opening the Vienna Convention on the Law of Treaties and the Convention on Special Missions to universal participation.

4. Mr. STARČEVIĆ (Yugoslavia) said that the items on the agenda for the current meeting were closely related, since all three involved the principle of universality. His delegation had on many occasions stated its support for that principle and its opposition to the outmoded "Vienna" formula. With regard to the United Nations Conference on the Representation of States in Their Relations with International Organizations, his delegation agreed that invitations should be issued to all interested States without any limitations or discrimination. In addition, it strongly supported the proposal made by the representative of Egypt at the previous meeting that an invitation to participate in the Conference should be extended to the representatives of national liberation movements recognized by the Organization of African Unity and the League of Arab States. The Provisional Revolutionary Government of the Republic of South Viet-Nam, as the sole legitimate representative of the people of South Viet-Nam, should also be invited to participate in the Conference. With regard to participation in the Vienna Convention on the Law of Treaties and the Convention on Special Missions, his delegation drew attention to the Declaration on Universal Participation in the former Convention[2] and to General

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1 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

2 *Ibid.*, document A/CONF.39/26, p. 285.

Assembly resolution 2530 (XXIV), both of which expressed the conviction that multilateral treaties which dealt with the codification and progressive development of international law, or the object or the purpose of which were of interest to the international community as a whole, should be open to universal participation.

5. Mr. YASSEEN (Iraq) said the question of universal participation in the Vienna Convention had been the subject of considerable differences of opinion at the United Nations Conference on the Law of Treaties. The mood of the international community had changed, however, and the General Assembly should follow the current trend toward universality by inviting all States to accede to international instruments drawn up under the auspices of the United Nations, in particular the Vienna Convention on the Law of Treaties, since it promoted the progressive development of international law.

6. Mr. ROSENSTOCK (United States of America) referred the Committee to his remarks at the 1463rd meeting. There was no point in discussing the principle of universal participation as if some difference of opinion still existed. The problem had largely been resolved in the Committee at the twenty-eighth session of the General Assembly.

7. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the questions raised by agenda items 96 and 97 were of far-reaching significance for the progressive development and codification of contemporary international law and for the further intensification of efforts to make the process of international détente irreversible. The principle of the universal participation of all States in international conventions was implicit in the Charter of the United Nations. At the current session of the General Assembly, the Sixth Committee had an opportunity to settle the question of universal participation in two important international legal instruments, a question which had been deferred for many years without justification.

8. A signal defect of the Vienna Convention on the Law of Treaties was the infamous and discriminatory "Vienna" formula, which prevented a number of States from participating in the Convention, thereby substantially detracting from its significance. Aware of that difficulty, the participants in the Conference had adopted the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, which stated unambiguously that multilateral treaties which dealt with the codification and progressive development of international law, or the object and purpose of which were of interest to the international community as a whole, should be open to universal participation. The Declaration noted that articles 81 and 83 of the Convention enabled the General Assembly to issue special invitations to States which were not Members of the United Nations or of any of the specialized agencies to become parties to the Convention and invited the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations in order to ensure the widest possible participation in the Convention. However, because of the obstruction with which any proposal concerning universality was met and because of the discriminatory policies pursued by certain States Members of the United Nations, that matter had not been considered at the twenty-fourth or any of the subsequent sessions of the General Assembly. In imposing the "Vienna" formula, those States had for some time deprived others of their legitimate right to become parties to the Vienna Convention on the Law of Treaties, as well as many other international instruments. The time had come for the General Assembly to lay the "Vienna" formula to rest and to adopt a resolution enabling all States without any discrimination to participate in the Vienna Convention. That would be an important step forward towards universal participation in the Convention and universal recognition of the principles and rules set forth therein, which were unquestionably of interest to the international community as a whole.

9. The Convention on Special Missions had a history similar to that of the Vienna Convention. Despite the General Assembly's decision in resolution 2530 (XXIV) to consider at its twenty-fifth session the question of issuing invitations in order to ensure the widest possible participation in the Convention on Special Missions, that question had been deferred from year to year until the current session. The effectiveness of the Convention on Special Missions, like that of the Convention on the Law of Treaties, would be greatly enhanced by increasing the number of States parties to it. All would stand to benefit by a positive decision on universal participation in those instruments. International co-operation and détente would be furthered by the elimination of discrimination against certain States with regard to accession to those conventions. Recognition by the General Assembly of the desirability of universal participation would correct the abnormal situation which had obtained at the time of the drafting of the conventions. His delegation would support a draft resolution recommending that both conventions should be open for participation by all States members of the international community. Such a draft resolution would promote the interests of international law and the development of comprehensive and fruitful co-operation among States with different social systems.

10. Mrs. HO Li-liang (China) said that her delegation had always supported the participation in international conferences and international conventions of the Provisional Revolutionary Government of the Republic of South Viet-Nam. That Government was the true representative of the people of South Viet-Nam and had for a long time led their resistance to imperialism. That Government had not only waged a heroic struggle for national independence but had contributed to the freedom struggles of peoples in Asia, Latin America and Africa. It had also enjoyed the support of the peace-loving countries of the world. Any attempts to exclude the Provisional Revolutionary Government of the Republic of South Viet-Nam from future international conferences would meet with her delegation's objections.

The meeting rose at 11.50 a.m.

1465th meeting

Monday, 30 September 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1465

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 ***(continued)***

AGENDA ITEMS 96 AND 97

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties ***(continued)***

Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions ***(continued)***

1. The CHAIRMAN informed the Committee that the draft resolutions being prepared on item 88 were not yet ready but that consultations were continuing on the subject.

2. Mr. KHAN (Bangladesh) said that item 88 differed in nature from items 96 and 97. It had already been decided that the principle of universality should apply in respect of the latter two items, both of which dealt with conventions already adopted. As was stated in article 81 of the Vienna Convention on the Law of Treaties,[1] that Convention was open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention. In the case of items 96 and 97, the only issue to be resolved was the question of how invitations to participate were to be issued.

3. On the other hand, it still remained to be decided who was to be allowed to participate in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975. His delegation felt that the principle of universality should be adopted in that regard, as in the case of the Vienna Convention on the Law of Treaties and the Convention on Special Missions (General Assembly resolution 2530 (XXIV), annex). It had already been decided that some States would be allowed to send observers to the Conference and they had already been invited in that capacity and submitted their comments on the topic under consideration. In his view, all States should be allowed to participate in the Conference as full participants and not only as observers. The Conference related to the codification and progressive development of international law and was of interest to the international community as a whole. The main object of the Conference would be the preparation of a convention on the representation of States in their relations with international organizations, and, since all States would be eligible to become parties to the convention, it was only appropriate that they should be allowed full participation in the Conference, so as to make their contributions and be associated with the convention from the very beginning.

4. Mr. APALOO (Togo) said that, from the debate on the question of participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, there seemed to be unanimous agreement that the principle of universality should apply in that regard, i.e., that all States should be invited to participate, including national liberation movements. His delegation fully supported that view.

5. While the legal aspects of participation in the Conference were to be dealt with by the Sixth Committee, it was also necessary for a committee of the General Assembly to submit to the General Assembly in plenary session a draft resolution concerning the financial aspects of the Conference and its working methods. He would like to know whether that side of the question was to be dealt with by the Sixth Committee or by the Fifth Committee. His delegation would also appreciate the circulation of a separately bound copy of the draft articles on the representation of States in their relations with international organizations, together with the commentary thereon, prepared by the International Law Commission at its twenty-third session.

6. The statements made in the Sixth Committee showed that the principle of universal participation was already firmly endorsed with regard to the Vienna Convention on the Law of Treaties. However, some delegations had found the text of the Declaration on Universal Participation in that Convention[2] outdated and were correct in that view. The Committee should expedite the adoption of a resolution on the subject, upholding the principle of universal participation, so that it could proceed to consideration of the next item on its agenda.

7. His delegation regretted that at the current stage of the Committee's deliberations consideration of item 97 was proceeding very slowly and might prevent the Committee from keeping to its agreed schedule of work. While he agreed with the general view that haste would not be in the interests of ensuring the best implementation of the Committee's decisions, he hoped that the Chairman would

[1] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5) document A/CONF.39/27, p. 287.

[2] *Ibid.*, document A/CONF.39/26, p. 285.

ensure that the Committee kept to its agreed time-table and accorded ample time to the most pressing issues on its agenda.

8. Mr. ROSENNE (Israel), referring to the item on participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, said that his delegation was firmly opposed to extending an invitation to any of the so-called national liberation movements recognized by the League of Arab States, in particular the Palestine Liberation Organization, which for nigh on 10 years had been indiscriminately murdering innocent persons both in Israel and abroad. Attacks on diplomats had been widespread and had led to the adoption of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166 (XXVIII), annex). Some of the more dastardly instances were the brutal invasion of the United States embassy in Khartoum, where a number of diplomats had been cynically murdered, the invasion of another foreign embassy in Paris, and a particularly cruel attack on the Israeli embassy in Bangkok, fortunately without loss of life. Letter bombs had been commonplace; attacks had been made in the Athens and Rome airports; civil aircraft had been blown up in the air and others hijacked; and a mass murder of Christian pilgrims had taken place at Lod airport. Other outrages had included the murderous assault on the Israeli sports team at the Olympic Games in Munich and attacks on peaceful villages in Israel, including the one at Maalot on 15 May 1974 in which a large number of schoolchildren had been murdered.

9. The principal objective of the Palestine Liberation Organization was the dismantling of Israel, a Member State of the United Nations. That objective had been confirmed in a number of public statements, although it desecrated the most fundamental principles of the Charter and all that the United Nations stood for. He failed to understand how the Sixth Committee, which was responsible for the preservation of the legal values of the United Nations, could sanction the invitation to a United Nations conference of an organization which ought to be outlawed. It was utterly incongruous that the Sixth Committee, which had failed to take effective action against terrorism, should contemplate inviting proponents of international terrorism to take part in a conference on diplomatic law. Accordingly, his delegation wished to place on record its total opposition to the adoption of any formula which would result in an invitation being extended to the so-called Palestine Liberation Organization or any other like-minded Arab group to take part in the Conference in any capacity whatsoever.

10. Mr. KASEMSRI (Thailand) said that his delegation's position on the question of terrorism had been put on record when the subject had been discussed in the Committee on earlier occasions. However, he wished to point out that the incident at Bangkok referred to by the Israeli representative had been peacefully resolved by the exercise of self-restraint by all parties concerned and in a spirit of international co-operation unsurpassed anywhere else in the world. Moreover, that question was irrelevant to the current debate, especially in so far as the question of the issuing of invitations was concerned. The General Assembly at its twenty-eight session had adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and he hoped that that instrument would prove an inspiration for further progress in that field. For the purpose of clarification, he had felt it necessary to explain that whatever had occurred at Bangkok had little or no bearing on the items currently before the Committee.

11. Mr. PRIETO (Chile) said that, although the majority of delegations which had spoken on the three items currently before the Committee had endorsed the principle of universality, there were minor differences in approach which made complete unanimity difficult to attain. While his delegation supported the principle of universality as set forth in the Vienna Declaration, it felt, in conformity with Chile's policy of firm opposition to colonialism, that the "Vienna" formula should be expanded and that participation in United Nations conferences and conventions should be extended to national liberation movements recognized by the Organization of African Unity and by the League of Arab States. Such increased flexibility would be more in keeping with the interests of the world community. However, his delegation was not in favour of inviting the representatives of any Government which was disputing with another Government the right to represent a people. Invitations to participate in international conferences and conventions should be issued to Governments with international legal status and to entities which were in the state of becoming Governments through the decolonization process. The Committee should not concern itself with the question of the rights and credentials of Governments.

12. Mr. HASSOUNA (Egypt) recalled that his delegation had originated the proposal to invite representatives of national liberation movements to participate in the United Nations Conference on the Representation of States in Their Relations with International Organizations. He had listened with dismay to the baseless allegations made by the representative of Israel against the Palestine Liberation Organization. Such remarks were out of order in the current discussion, and he would refute them at an appropriate time and place. It was clear that, in making such a statement, the intention of the representative of Israel was to distract world public opinion from the Israeli Government's policy of repression and total denial of the inalienable rights of the Palestinian people, in particular their right to self-determination.

13. Mr. KURUKULASURIYA (Sri Lanka) recalled his delegation's consistent advocacy of the principle of universality in regard to participation in United Nations conferences and said that his delegation would support any measure designed to promote the widest possible participation in the further codification and progressive development of international law.

14. The CHAIRMAN said that, if there were no further speakers, he would take it that the general debate on the items under discussion was closed and that the Committee would revert to them at a later meeting only for the purpose of adopting appropriate draft resolutions.

It was so decided.

AGENDA ITEM 93

Review of the role of the International Court of Justice

15. Mr. SETTE CAMARA (Brazil) recalled that during the lengthy debate on the subject at the twenty-sixth session, his delegation had had the opportunity to express its views (1277th meeting) on the importance it attached to the Court and to analyse the numerous suggestions and observations presented by Governments as to ways and means of enhancing the role of the Court and improving its methods of work. The Brazilian Government's views were stated in detail in its reply to the Secretary-General's questionnaire.[3]

16. In previous debates on the subject speakers had unanimously acclaimed the work thus far accomplished by the Court and not a single serious proposal had been made to revise the Court's Statute. If any crisis of confidence had ever existed concerning the role of the Court, its origins were to be found in the unwillingness of Member States to resort to it rather than in statutory or functional deficiencies of the Court itself. Those who had had misgivings regarding the Court's methods of work should derive some satisfaction from the revised rules of procedure.[4] It would be best, in his delegation's view, to wait a few years before attempting to pass judgement on the practical results of that revision.

17. The independence of the judicial branch was an essential feature of national democratic systems based on a tripartite division of powers. Any limitation on the absolute freedom of judgement of members of the judicial branch would impair the authority of their decisions. Those considerations, valid as they were for internal legal orders, could be extended to the International Court of Justice. In his delegation's view, the Court itself was the only authority qualified to appraise the results of its work and to examine steps that might be taken to increase its effectiveness. His delegation was therefore reluctant to support the idea of establishing an *ad hoc* committee of the General Assembly to co-operate with the Court in devising ways to enhance its role. While sympathizing with those who were anxious to make the Court more effective, his delegation doubted that interference with the work of the Court, even though inspired by the best intentions, would be wise. Rather than considering such proposals, he hoped that the Committee would adopt a resolution which would, *inter alia*, recognize the importance of the Court in settling international disputes and urge States to utilize the Court fully whenever controversies arose.

18. His delegation took pride in the fact that the formula concerning compulsory jurisdiction had been devised by a distinguished Brazilian jurist in connexion with the drafting of the Statute of the Permanent Court of International Justice.

19. Unfortunately, the day when compulsory jurisdiction would be a generally accepted principle was still far away. Nevertheless, the provision concerning compulsory jurisdiction in the present Court's Statute had proved to be a very useful means of encouraging States to accept adjudication as the proper way to settle international disputes.

20. For all its faults, the Court was still the first positive step toward the institutionalization of the rule of law among nations. Criticism of the Court could not but hinder the effective accomplishment of its lofty tasks.

21. Mr. VILLAGRAN KRAMER (Guatemala) differed with the representative of Brazil. In his view, there was a continuing need to study means of enhancing the Court's effectiveness, particularly through broader acceptance by States of the principle of compulsory jurisdiction. It was noteworthy that, while the International Court of Justice heard relatively few cases, more specialized international tribunals dealing with economic matters were accomplishing a great deal of useful work. In making that observation, however, he did not wish to belittle the importance of the Court's work, for which he had the highest respect. In conclusion, he expressed the hope that the Sixth Committee would give careful attention to the item, as a thorough debate of the Court's role could be very beneficial to the Court and to the international community which it served.

The meeting rose at 11.50 a.m.

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3 See A/8747

4 See *I.C.J. Acts and Documents No. 2.*

1466th meeting

Tuesday, 1 October 1974, at 10.45 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1466

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)*

1. The CHAIRMAN said that the Swiss Government had replied to the Secretary-General's questionnaire prepared pursuant to General Assembly resolution 2723 (XXV).[1] If he heard no objection, he would take it that, when the Swiss delegation so requested, the Committee would invite that delegation to offer its comments on the item under discussion.

It was so decided.

2. Mr. WEHRY (Netherlands) informed the Committee that his delegation had undertaken informal consultations with other delegations in order to draw up a multiregional

[1] See A/8382, para. 5.

non-controversial draft resolution on the review of the role of the International Court of Justice. He hoped that the draft resolution would be the subject of a consensus in the Committee.

3. Mr. COLES (Australia) thought that the main objective of the review of the role of the International Court of Justice should be to seek the eventual acceptability of its jurisdiction to all members of the international community. As the highest international juridical tribunal, the Court was the focal point in the international legal system for the judicial determination of the law of nations. That judicial process was essential to the peaceful settlement of international disputes.

4. The role of the Court could be enhanced only if the members of the international community brought cases before it. In that respect, he referred the Committee to the statement by the Prime Minister of Australia before the 2249th plenary meeting of the General Assembly.

5. Arbitration and adjudication had long been established as the institutional means of settling disputes when negotiation had failed, but a major development had been the provision by the League of Nations Covenant of an optional clause covering the compulsory jurisdiction of the Permanent Court of International Justice. He regretted that there was not greater awareness among States Members of the United Nations of the need for the compulsory jurisdiction of the International Court of Justice. The acceptance of the principle of compulsory jurisdiction could only serve to enhance the Court's effectiveness, but there still seemed to be a reluctance on the part of States to entrust their international disputes to any form of third party settlement.

6. He further regretted that the review of the role of the International Court of Justice had not aroused the interest it deserved. For example, only a few replies had been received to the Secretary-General's questionnaire prepared pursuant to General Assembly resolution 2723 (XXV). In accordance with his Government's view that the greater efficacy of the Court was a very important matter, his delegation would favour the establishment of a special *ad hoc* committee to review the role of the Court, and to determine whether the method of judicial peaceful settlement of disputes could be strengthened. Such strengthening of procedure was essential in view of the intolerable nature of war as a means of settling international disputes in the modern world.

7. His country had placed its confidence in the Court as an organ of the United Nations, but such confidence should be manifested by all States in their concern for its efficacy in developing the rule of law in international relations. The rule of law could be strengthened in a better world order if the international community was thoroughly committed to the Court's principles and if recourse was made to the compulsory jurisdiction of the Court in accordance with Article 36 of its Statute.

8. Under existing declarations and instruments governing the jurisdiction of the Court and the relationships of United Nations organs and other international organizations with the Court, it was often provided that disputes concerning the application or interpretation of the instrument might be referred to the Court for a decision. The promotion of the rule of law, however, would best be served if future multilateral treaties provided as a matter of course for the compulsory settlement by the Court of disputes arising from their application or interpretation. The international community would thereby be giving effect tp Article 33 of the Charter of the United Nations.

9. It was sometimes said that one of the factors which impeded recourse to the Court was the consideration that such action might be regarded as an unfriendly act by the respondent Government. His delegation hoped that the General Assembly might make a clear statement to the effect that recourse to the International Court should not be considered an unfriendly act. Such recourse would be a responsible alternative when diplomacy had failed. There were precedents for such a statement. Finally, he hoped that a resolution would be adopted at the current session of the General Assembly which would reflect adequately the importance of the principle of the compulsory adjudication of legal disputes between States.

10. Mr. ROSENNE (Israel) recalled that his delegation had explained its position on the item at the twenty-sixth session (1278th meeting) and continued to think that a special committee could then have been set up with useful results. However, the debate in the Committee since the twenty-fifth session had covered most of the major issues of principle concerning the Court, and together with the observations submitted by Governments and the records and analytical reports of the Committee gave a fairly clear picture of current thinking on the role of the Court. A more systematic presentation of that material was perhaps the only useful contribution that remained to be made at the current stage.

11. The 1972 amendments of the Rules of Court[2] were welcome to the extent that they contributed to modernizing the Court's practices. However, some of them were undoubtedly controversial, and judicial experience since their normalization suggested that the new rules might not always be adequate in achieving one of the principal objectives of their authors, namely to render the conduct of proceedings before the Court more expeditious and less expensive.

12. While the Permanent Court had found it possible to publish the records of its internal discussions on its Rules of Court, the present Court had not. Experience had shown that such records were of the greatest practical utility for those who practised before the Court, and the role of *travaux préparatoires* in the interpretation and application of texts was well known. They were also needed to facilitate political understanding of what had been done. The United Nations had developed extremely refined and effective techniques of record writing, and if the Court had valid reasons for not publishing the verbatim records of internal discussions it should explore ways to publish an authoritative and objective account of the issues discussed and the texts rejected in the process of reviewing the Rules in 1946 and 1972 and the 1968 resolution on the internal judicial practice.

2 See *I.C.J. Acts and Documents No. 2.*

13. During the discussion of the item in 1972, proposals had been made (A/C.6/L.887 and L.894),[3] but never put to the vote, according to which the General Assembly would have gone on record as having welcomed the 1972 amendments to the Rules of Court. Both for constitutional reasons connected with the mutual independence and autonomy of the Court and the General Assembly, and in the light of some doubts regarding the substance, it would be preferable not to push that kind of proposal to a vote.

14. Since the Court was still considering further revisions to its Rules, his delegation wished to make a number of comments. The first concerned the publicity and general public relations activities of the Court. The annual report submitted by the President of the Court to the General Assembly (A/9650) served no useful purpose, being merely a severely truncated version of the Court's Yearbook, and containing formulations that might be viewed as tendentious in some quarters. Constitutional and institutional reasons also made the submission of such a report inadvisable. Its cancellation would naturally entail the discontinuance of the pertinent General Assembly agenda item. However, no objection would be seen to the distribution of the Court's Yearbook as a General Assembly document, without impairing its unofficial character as having been prepared by the Registry.

15. Another comment concerned the publication of legal articles and books by members of the Court, certain of whom were now even publishing articles dealing with current aspects of the Court's activities, which might lead to polemical confrontations. Could the international community really accept that its elected judges should engage in what might develop into wounding literary disputations?

16. It was essential that the basic principle of the secrecy of judicial deliberations should be preserved. His delegation was dismayed by the incident which had led to the Court's communiqué No. 73/30 and to the resolution of 21 March 1974. That was another reason for believing that it was undesirable to publish articles which might mislead the reader into thinking that he was being given secrets from the inner sanctum. The Statute of the Court contained adequate provisions enabling every judge to make public his views on any aspect of the judicial activities of the Court: the Court should consider whether its members were justified to go beyond that.

17. One aspect of the actual judicial working of the Court should be carefully re-examined. Article 56 of the Statute required that every judgement—which in practice also meant every order and advisory opinion—should state the names of the judges who had taken part in the decision, and Article 57 entitled every judge to deliver a separate opinion. Articles 79 and 90 of the 1972 Rules of Court made it obligatory for every judgement and advisory opinion to state the number of judges constituting the majority. However, the practice had grown up by which it was not always possible, from the separate opinions, to identify how each judge who was present had voted. If the secrecy of deliberations was protected by the Statute, as well as the right of every judge to deliver his own opinion, it did not necessarily follow that the anonymity should extend so far that it became impossible to determine the composition of the majority and minority in a given case.

18. The issue had to be decided on the basis of international requirements, which justified a change in that practice. In that connexion, it might be noted that the records of the Security Council always indicated how each member voted, including the fact that a member might not have taken part in the vote. It was not adequate for a judicial pronouncement of the International Court simply to indicate which judges were present, without indicating how each one voted. No amendment of the Statute would be required to bring about a change in that practice.

19. There could be no point in attempting artificially to stimulate the judicial business of the Court. The long discussions of the item had been useful in revealing various aspects of political interest, and encouraging governmental and academic interest in the question. Above all, they had confirmed the continued political interest in the maintenance of the Court as established in the Charter and Statute. It would therefore be sufficient for the Committee to adopt a non-controversial resolution recording that fact, without any value-judgements on the Court's performance or any suggestions regarding its future action. In particular, it should not contain elements susceptible of interpretation as attempting to amend the Charter or the Statute of the Court, or to change the order established by the Statute.

20. Mr. SA'DI (Jordan) said his delegation attached great importance to the item under consideration. Close scrutiny of civilization in general revealed that courts had evolved as the best device for resolving human conflicts. Arbitration, conciliation and direct negotiation had always been part of the machinery for resolving disputes, but the judicial process was the most efficient means of achieving that end. Civilization could not establish a better forum for resolving international disputes than an international court system.

21. In a world in which power politics and national interests prevailed, the weight of the respective parties to a dispute would determine the settlement. Only in a court system could the weak and the strong enjoy equality, and justice reign. Moreover, only in an international court could the Charter of the United Nations and international law stand a reasonable chance of being observed. That was not merely a theoretical argument: if applied to all the disputes threatening world peace, the practical value of an increased role for the international court system would be readily apparent. There could be no doubt, for example, that the Israeli-Arab dispute would have had a better chance of being resolved if the International Court had had wider jurisdiction. His delegation would therefore support any initiative to increase the Court's powers and relevancy.

The meeting rose at 11.45 a.m.

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[3] See *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 90, document A/8967, paras. 6 and 9 respectively.

1467th meeting

Wednesday, 2 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1467

Organization of work

1. The CHAIRMAN recalled that the Committee had before it two draft resolutions. The first (A/C.6/L.980) dealt with item 88, "Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975". The second (A/C.6/L.981), of which the Ukrainian SSR had become a sponsor, concerned items 96 and 97, "Declaration on Universal Participation in the Vienna Convention on the Law of Treaties" and "Question of issuing special invitations to States which were not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions". Since the first draft called for a statement of financial implications in accordance with rule 153 of the rules of procedure, the Committee could not take a decision on it until such a statement had been prepared by the Secretariat. He therefore suggested that the two drafts should be examined together at a subsequent meeting and that the Committee should proceed to consider the item relating to the role of the International Court of Justice.

2. If there was no objection, he would take it that the Committee approved of his suggestion.

It was so decided.

AGENDA ITEM 93

Review of the role of the International Court of Justice ***(continued)***

3. Mr. ALVAREZ TABIO (Cuba) felt that the review of the role of the Court should be carried out on the basis of Articles 33 and 95 of the Charter, which provided for various means of settling disputes. Judicial settlement was therefore only one of the methods envisaged in the Charter and the role of the Court should not be exaggerated.

4. While acknowledging the valuable contribution of the Court to the progressive development of international law, it should be noted that the majority of States were reluctant to have recourse to the Court for the settlement of disputes which, at first glance, might appear to be capable of judicial settlement. States pointed out, *inter alia,* that the Court applied customary law which was uncertain and did not reflect predominant legal trends, and that its composition was not representative of the great changes that had taken place within the United Nations.

5. In addition, two trends could be discerned in the replies to the Secretary-General's questionnaire.[1] Some States considered it essential to strengthen the role of the Court and were in favour of the principle of compulsory jurisdiction, while others were of the opinion that judicial settlement had not always been the most effective method and that it was above all necessary to preserve freedom of choice of means, in conformity with Article 33 of the Charter.

6. In accordance with its position of principle, his delegation felt that respect for the Charter and the Statute of the Court constituted the best means of increasing the Court's effectiveness. No measure adopted by the General Assembly and no attempt to extend the compulsory jurisdiction of the Court could help to increase confidence in judicial settlement. To impose the compulsory jurisdiction of the Court on States would be tantamount to establishing a supranational body in violation of the principle of the sovereignty of States. It was therefore unnecessary to try to strengthen the role of the Court, whose duty it was to make full use of the possibilities available to it under the Charter and its Statute.

7. Mr. PARTHASARATHY (India) congratulated the Officers of the Committee on their election and the representatives of the People's Republic of Bangladesh, the Republic of Guinea-Bissau and Grenada on their countries' admission to the United Nations. He then observed that it could not be maintained that the International Court of Justice had too little business before it, for since the inclusion of the item in question in the agenda of the General Assembly the Court had handed down three decisions, two advisory opinions and several orders.

8. The usefulness of the Court and its role in the settlement of disputes between States should not be minimized. It was, however, true that States were generally reluctant to utilize the mechanism of the Court to find a solution to their disputes. That was because a wide range of peaceful means of settlement of disputes was listed in the Charter, giving them full freedom of choice in that matter. The Court was therefore not the only body to which States could have recourse and the authors of the Charter had rejected the idea of making the jurisdiction of the Court in contentious cases compulsory and automatic. Moreover, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), the Organization had reaffirmed the soundness of the solutions proposed in the Charter for the peaceful settlement of disputes.

9. The Charter and the Statute also offered means of enhancing the prestige and increasing the usefulness of the Court. In that connexion, he pointed out that the Court had adopted amendments to its Rules which had entered into force on 1 September 1972 with a view to simplifying

[1] See A/8382, para. 5.

and accelerating proceedings and reducing costs for the parties. Two other factors also had some bearing on the effectiveness and prestige of the Court, namely, its composition and the applicable law. Although the composition of the International Court of Justice was more balanced than that of the Permanent Court of International Justice, it did not reflect changes which had occurred in the international community. With regard to the applicable law, account should be taken of the fact that new States were seeking to establish a new international economic and political order based on equity and justice. International law must therefore respond to the aspirations of the majority of the members of the international community. Thus, it was to be hoped that States would endeavour to promote the progressive development and codification of international law and that the Court would assume its responsibilities in that regard and ensure that the law responded to the requirements of international life.

10. Mr. YASSEEN (Iraq) said that item 93 had been included in the agenda because the international community was in difficulty owing to the many disputes between States and to the fact that States only rarely made use of the Court to settle them. But, to understand the role of the Court properly, it was essential to determine its position in the international legal order, and for that purpose it was necessary to avoid two analogies.

11. First, it was necessary to avoid comparing international law to internal law because judicial settlement in internal law was a basic element of the legal order and usually it was not possible to conceive of a dispute that could not be brought before a judge. In international law, however, there was no law jurisdiction under general law and the Court had only exceptional jurisdiction based on the mutual consent of the parties. Moreover, in internal law, there were no problems which did not have a legal solution: the sources of law were inexhaustible and judicial precedents filled the gaps in the law. That was not true in the case of the Court, which could apply only international conventions, international custom and the general principles of law, using precedents and doctrine as auxiliary sources of law. The possibility could therefore not be ruled out that the Court might find a deficiency in the international legal order, and in any event it could rule *ex aequo et bono* only with the consent of the parties.

12. Second, it was not possible to compare the international community of the League of Nations to that of the United Nations. Since the time of the League of Nations, there had been a decline, relative to the growing number of States, in the number of cases in which States had accepted the compulsory jurisdiction of the Court. The League of Nations, a closed society from which nearly all the countries of Africa and Asia had been excluded, had been of a relatively homogeneous nature which facilitated recourse to compulsory jurisdiction, while the international community of the United Nations was a nearly universal society representing a mosaic of forms of civilisation, legal systems and levels of economic development.

13. There nevertheless seemed to be two factors favouring acceptance of the compulsory jurisdiction of the International Court of Justice. First, the Court was much more representative than it had been at the beginning of the era of the United Nations and that was a positive element which might give rise to greater confidence. Second, the codification and progressive development of international law in the United Nations system played an important role because, in order for the parties to accept the jurisdiction of the Court, they had to know in advance the rules which would be applicable to them. Having thus defined the Court's position in the legal order of the international community of the United Nations era, it seemed pertinent to wonder what the General Assembly would be able to do at the end of the debate on the item, which had been before it for several sessions. Most of the written commentaries of Governments and the oral statements made showed that it was not necessary to amend the Statute of the Court, but it was fair to point out that the debate had provided the essential elements for a final resolution.

14. That resolution should recall the possibilities offered by Article 36 of the Statute of the Court with regard to acceptance of compulsory jurisdiction; it should also recall the preference for the legal settlement of disputes of a legal nature stated in Article 36 of the Charter. It should, moreover, invite States to include in the treaties they concluded provisions envisaging recourse to the Court with regard to any dispute concerning the application or interpretation of the treaties. In that connexion, he cited the example of the Vienna Convention on the Law of Treaties,[2] which stipulated the compulsory jurisdiction of the Court with regard to disputes relating to the incompatibility of a treaty provision with a norm of *jus cogens*.

15. International law was evolutive and its rules developed so rapidly that there had been talk of "customary law run wild" or "revolutionary customary law". At the same time other rules were falling into disuse. The Court would certainly have to confirm the introduction and the abrogation of various rules; to that end it could, without going beyond its Statute, draw from the work of international organizations, especially the General Assembly, which, though having only the force of recommendations, reflected the progressive development of the international legal order. Of course such resolutions could not in themselves create law, but they could provide proof of the introduction or abrogation of some of the rules of international law when they were consistent and adopted unanimously or without opposition.

16. He paid tribute to the International Court of Justice for the work it was doing and expressed the hope that States, as far as possible, would resort more often to its jurisdiction.

17. Mr. CASSESE (Italy) recalled that two conflicting attitudes had emerged among members concerning the question of the role of the International Court of Justice, which had been on the Committee's agenda since 1970. A first group of delegations, including his own, had proposed to seek ways and means of strengthening the role of the Court and expanding its activities. To that end, those countries had proposed the establishment of a relatively small *ad hoc* committee. The countries which favoured that

2 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

approach had always emphasized that the establishment of such a committee would in no way prejudice the interests of the States which did not accept the compulsory jurisdiction of the Court or were opposed in general to the judicial settlement of disputes.

18. The delegations which had taken the opposite point of view argued that there was no need to review the Court's role, as the cause of the crisis of confidence in the Court lay in the unwillingness of Member States to utilize it, rather than in any functional deficiencies of the Court or inadequacies of the Statute.

19. However, no one could deny the importance for the international community of the decisions and pronouncements made by the International Court of Justice. The methods of creating international rules were no longer the same as they had been in classical international law. A greater number of States, with different ideological and political outlooks, now contributed to the formation of international law. In addition, there now existed new ways of creating law, such as the adoption of general resolutions or declarations by the United Nations, which, though they were not binding *per se*, could spell out and to some extent elaborate existing customary rules or rapidly contribute to the formation of new ones. The French lawyer Dupuy had rightly referred to a "wild" custom, to emphasize the rapidity and strength with which custom currently comes into existence. It was plain that such evolution could give rise to great uncertainty as to the content and scope of the rules of international law, which were for the most part unwritten. There were only two ways of dispelling that uncertainty: through codification or through recourse to a competent body possessing the necessary authority to state clearly what the law was. Codification was a slow process which moreover could not be applied to all areas of international law. Furthermore, even codified provisions could give rise to disputes. There was therefore undoubtedly a need for a judicial body with the power to clarify the law. The most suitable body for that task was the International Court of Justice, which was the highest international judicial organ and consisted of judges representing the main legal systems and the various civilizations of the world. The composition of the Court afforded a guarantee that no State had any reason to fear that in its pronouncements the Court would disregard the new trends which were continually emerging in the community of States. In that connexion it should be noted that at the United Nations Conference on the Law of Treaties the overwhelming majority of States had affirmed their confidence in the Court by entrusting it, under article 66 *(a)* of the Vienna Convention, with the task of determining the existence of peremptory norms of general international law and by granting the Court compulsory jurisdiction on the matter.

20. There was now no hope of setting up an *ad hoc* committee and his delegation regretted that five years of work had not finally led to any concrete results. However, the discussions had been useful as they had enabled States to express opinions which could stimulate further discussion in the future.

21. His delegation hoped that to conclude its work on the item the Committee would adopt a non-controversial and well-balanced draft resolution in which it would stress the importance of the role of the International Court of Justice as a means of settling international disputes peacefully and would affirm the desirability of enabling the Court to play a more effective role. Furthermore, States should be reminded that recourse to the judicial settlement of international disputes should in no way be considered as an unfriendly act, and they should also be called upon to submit their disputes to the International Court of Justice. His delegation also hoped that in the text the Secretary-General would be requested to bring the resolution to the attention of the International Court of Justice, the States Members of the United Nations and the States parties to the Statute of the Court. It hoped, finally, that the Committee would resume its consideration of the role of the Court when the operation of the Court under its revised Rules had provided the necessary material for such a study.

22. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) shared the opinion of the representative of Brazil (1465th meeting) and considered, as indeed the discussion showed, that there was no need to set up an *ad hoc* committee or even to continue consideration of the question, as nothing could justify a change in the Statute of the Court. Other delegations had affirmed that the best way of strengthening the role of the Court would be to modify some of the fundamental provisions of its Statute.

23. None of the proposals put forward would ensure the strengthening of the Court's basic role. That was particularly clear with regard to compulsory jurisdiction. During the discussion some delegations had maintained that the role of the Court would be strengthened if more States recognized its compulsory jurisdiction. However, it would be contrary to the Charter of the United Nations itself to impose recognition of the Court's compulsory jurisdiction, as the Charter did not impose a judicial solution but offered States a choice of means to settle their disputes peacefully. That principle of the free choice of means also corresponded well to the conditions of the contemporary world. It had, moreover, been reaffirmed by the General Assembly at its twenty-fifth session in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. And lastly, it had been confirmed in practice in connexion with treaties. It should also be noted that less than a third of the States parties to the Statute of the International Court of Justice had recognized its compulsory jurisdiction and that that number was diminishing each year. The imposition of the compulsory jurisdiction of the Court would thus not be sufficient to strengthen its role; such a proposal was not realistic.

24. The possibility had also been raised of extending the Court's competence by granting more international bodies the right to resort to its jurisdiction and to request advisory opinions from it. Such a change would indeed increase the number of cases submitted to the Court but would not alter the place, role and functions of the Court in the system created by the Charter. Moreover, the right of the specialized agencies to request an advisory opinion was recognized by the Charter, or at least was not excluded by it. But that right was not used in practice. There was no point in facilitating the use of a right which had no practical application.

25. Her delegation noted that all proposals to revise the Statute of the Court gave rise to serious objections of principle and seemed difficult to justify.

26. On 1 September 1972 the Court had modified certain articles of its Rules so as to save time and accelerate procedure, and thus improve its efficiency. That evolution was in conformity with the wishes of her delegation, which was in favour of the principle of the pacific settlement of disputes and of the strengthening of all means of pacific settlement, including recourse to the International Court of Justice, and maintained its opinion that it was possible for the Court under its Statute to increase its effectiveness. Nothing would therefore justify the creation of an *ad hoc* committee and there was no longer any reason to retain the question of the review of the role of the International Court of Justice on the agenda of the Sixth Committee.

27. Mr. LEE (Canada) recalled that the views of the Canadian Government on the question under consideration were set out in document A/8382. The fact that Canada had been one of the delegations which had sponsored the inclusion of item 93 in the Sixth Committee's agenda showed the importance which the Canadian Government attached to the role of the International Court of Justice, which constituted one of the means by which to achieve the realization of the principle of the pacific settlement of disputes contained in Article 33 of the Charter.

28. All Member States seemed to agree that full use had not been made of the Court's potential. That was due not so much to institutional defects or the quality of the Court's work as to the reluctance of States to submit themselves to binding decisions which affected their interests. The importance attached in the contemporary world to the concept of the sovereignty of States also contributed to that attitude. Among the attitudes which tended to detract from the role of the Court, there was also the fear that recourse to the Court could be interpreted as an unfriendly act towards the other party, and finally uncertainty as to the content and scope of the rules which were applicable in the international sphere.

29. His delegation considered that by drawing the attention of States to the existing potential of the Court, they could be encouraged to make greater use of it. It was with that idea that many States, including Canada, had suggested that greater use should be made of the possibility of forming chambers as provided for in Articles 26 to 29 of the Statute of the Court. The advantages of the advisory role of the Court, which was bound by less rigid rules than its strictly judicial role, should also be stressed.

30. His Government firmly believed in the importance of accepting the Court's compulsory jurisdiction as provided in Article 36 of its Statute. That was a concrete means of achieving the pacific settlement of disputes.

31. It seemed that there were undoubted limitations to the effects that the decisions of the Sixth Committee and of the General Assembly could have; but the Canadian delegation was convinced that the moral authority of a resolution by the General Assembly which pointed out the potential of the Court would be of great value. His delegation would be willing to join the sponsors of any draft resolution embodying the points mentioned by Canada if it would serve to obtain a consensus on that important agenda item.

32. Mr. USTOR (Hungary) welcomed the delegations of Bangladesh, Grenada and Guinea-Bissau, which had recently been admitted to the Organization.

33. The first question raised by the item under consideration was whether or not there was a need for reviewing the role of the International Court of Justice. Those who favoured such review had drawn attention to the small number of cases referred to the Court. The Charter of the United Nations provided for the peaceful settlement of disputes and mentioned a number of means of achieving that end, including judicial settlement. It was for that purpose that the United Nations had established the International Court of Justice.

34. Some delegations regretted that greater use was not made of the Court. But even if it were conceded that the situation was regrettable, it was doubtful that it could be remedied. Caution with regard to judicial proceeding was one of the facts of life. Political entities naturally preferred to settle their disputes by political means, so that they did not lose control over events, as happened with recourse to a court. However, the International Court of Justice, by reason of its very existence, had an influence on the attitude of Governments. In any case, such recourse should always be possible; furthermore, it contributed to the progressive development of international law.

35. The Hungarian delegation had the greatest respect for the Court and thought that it was for the Court itself to improve its own procedure and adapt to changes in the international situation within the limits of the possibilities afforded by the Charter and the Statute.

36. The reluctance of States to submit their disputes to the Court was—beyond a certain point—an unhealthy phenomenon in the opinion of his delegation, which was sure that a General Assembly resolution would not suffice to induce States to have more frequent recourse to the International Court of Justice or to any other procedure. The attitude of States was due to the present political climate, that is to say, the political factors which hampered the workings of international law. The problem was mainly a problem of confidence and the success of efforts to bring about international détente was the surest means of restoring that confidence and thereby strengthening the role of the International Court of Justice.

37. Mr. ROSENSTOCK (United States of America) observed that there was no issue that could be of greater importance to the Committee than the problem of the application of law to the peaceful settlement of disputes. No one could deny that the current state of the world was conclusive proof of the necessity of making greater use of the machinery for the peaceful settlement of disputes, the main organ of which was the International Court of Justice. Indeed, the sincerities of assertions of support for the prohibition of the threat or use of force could, in large part, be measured by the presence or absence of a willingness to settle disputes by peaceful means, including judicial means.

38. Ideally, all disputes should be prevented; but States, like individuals, came into conflict when interests clashed. International lawyers did not always succeed in drafting international agreements in such a way as to avoid all problems of interpretation or application; circumstances changed and sometimes the most perfectly drafted document no longer applied. It was therefore necessary for such disputes to be settled peacefully. The existence of a Court had the effect, moreover, not only of affording a solution where a dispute could not be settled through negotiations, but also of encouraging the out-of-court settlement of disputes.

39. The Court must form the cornerstone of any over-all dispute settlement system, and his delegation believed that the United Nations must continue to concern itself with strengthening the role of that organ so long as there were still unresolved disputes, so long as there were States which did not accept the compulsory jurisdiction of the Court, and States which felt disadvantaged for want of a forum in which the strong and the weak could deal from as near equal positions as possible.

40. His delegation had been among those delegations which had advocated one particular method of strengthening the role of the Court, namely, the creation of an *ad hoc* committee of governmental representatives. However, it recognized that the suggestion was not the only possible one, and had an open mind as to how each State might best contribute to that goal. It rejected only that position which would so ignore the realities of the world as to suggest that there was cause for complacency.

41. In any case, the discussions held in the Committee on the question over the years had been a contribution to the strengthening of the Court. Important areas of agreement had emerged on the importance of the Court, the indispensability of the peaceful settlement of disputes and the fact that it could never be an unfriendly act to take a dispute to the Court. A number of interesting suggestions had been advanced by a number of countries in the statements made in the Committee and in replies to the Secretary-General. Since the Committee's discussions on the item had begun, the Court had amended its Rules, mainly with a view to alleviating some of the problems pointed out in earlier discussions in the Committee. The Security Council had made its first request for an advisory opinion and the Court had expeditiously responded to that request. The Committee on Applications for Review of Administrative Tribunal Judgements had also requested and received an advisory opinion from the Court.

42. The Committee should build on what had been learned and agreed upon in earlier discussions. It should heed the appeal made by the Secretary-General in the introduction to his report on the work of the Organization (A/9601/Add.1) and should continue to examine the reasons why States had not made greater use of the Court, and explore potential uses of the Court which had not been fully recognized. Since the Committee had begun its consideration of the item there had been further developments which were not encouraging, and the Committee should consider how those actions, which were outside the control of the Court, could have taken place.

43. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) thought that the item dealt with an artificial question, since the role of the Court derived quite clearly from the Charter and the Statute of the Court, which required no changes in that respect. The Charter specified the conditions in which the Court might settle disputes of a legal nature or hand down advisory opinions.

44. As for the suggestions made with a view to enhancing the role of the Court there was no need, first of all, to alter the conditions set forth in Article 96 of the Charter in order to increase the opportunities for requesting advisory opinions of the Court, which would be tantamount to turning the Court into a purely advisory organ. As for the view that all States should accept the compulsory jurisdiction of the Court, it was incompatible not only with the principle of State sovereignty but with the very letter of the Charter. Article 33 afforded a choice of various solutions for the peaceful settlement of disputes, and Article 95 even envisaged the possibility of States entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or to be concluded in the future. It should also be noted that only 45 Member States recognized the compulsory jurisdiction of the Court and that recent international agreements, such as the Vienna Conventions on diplomatic relations and on consular relations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, gave States Parties the option of peacefully settling their disputes as they wished.

45. The reluctance of States to submit their disputes to the Court was due, not to the Statute of the Court, but to the fact that the Court applied uncertain rules of law and that its procedures were lengthy and costly. Now that the Court had amended its Rules, it should be given a time to improve its working procedures as a result. As for the establishment of an *ad hoc* committee, it would be superfluous as the item had now been under consideration since the twenty-fifth session and the proposed body would serve only to impose yet another burden on the United Nations budget.

46. He observed that if all States scrupulously respected the Charter and complied strictly with the Statute of the Court, the question of the Court's role would not even need to be raised.

47. Mr. KHAN (Bangladesh) pointed out that the central role assigned to the Court as the main judicial organ of the United Nations had become increasingly important with the progressive development of international law. The General Assembly had therefore rightly included the item under discussion in the agenda for its twenty-fifth session, and the delegation of Bangladesh welcomed the priority that was being accorded, at the current session, to the consideration of that item, which the Assembly had been unable to discuss at the previous session for want of time.

48. In his delegation's opinion the reluctance of States to submit their disputes to the Court was due to concern over the time-consuming procedures involved and to their

uncertainty about the law to be applied. With regard to procedure, it might be as well if the Court applied the provisions contained in Article 29 of its Statute to ensure that the cases brought before it were dealt with expeditiously. As for extending the compulsory jurisdiction of the Court, more frequent provision should be made in international agreements for referral to the Court of disputes which might arise in connexion with the interpretation or application of those agreements. Lastly, it was important to bear in mind the possibility of requesting advisory opinions of the Court.

49. Mr. WEHRY (Netherlands) thought that the examination of the item under consideration had enabled the members of the Committee to express, in one way or another, their anxiety about the functioning of the Court. It had gradually become clear that the problem originated essentially in the unwillingness of States to refer their disputes to the Court. That attitude on the part of States was reflected in the great variety of reservations which States had made when accepting the compulsory jurisdiction of the Court, in accordance with Article 36 of its Statute.

50. After hearing the statements and reading the comments made by many States since the inclusion of the item in the agenda, his delegation remained of the opinion that recourse to the Court could and should be further strengthened. Apart from the classical means of conferring jurisdiction upon the Court in the case of litigation, the parties to a dispute could enter into an agreement to the effect that they would submit their dispute to the Court either in full or in part. The judicial settlement of a dispute was often rejected because the dispute was mainly of a political character. That objection could be met by pointing out that the Court could adjudicate the legal elements of a dispute alone. Without going into the question of the distinction between the political and legal elements of a dispute, his delegation considered that it could not be denied that many disputes were of a mixed character. The parties to a dispute could agree to submit certain legal questions to the Court, the political aspects being settled separately. Thus the Court's decision would settle only part of the dispute, while providing an additional basis for the continuance of negotiations and clearing the way for a final solution by the parties themselves. His delegation had already pointed out that that had been done in the *North Sea Continental Shelf* cases. In that instance, the Court itself had taken the initiative of settling the disputes before it only in part, restricting itself to ruling on the points of law involved, and inviting the parties to negotiate on that basis.

51. His delegation had already stressed on various occasions another way of facilitating the peaceful settlement of disputes through the Court. If the parties to a dispute were reluctant to submit it to the Court for a final decision, they could at least agree to request it to establish the basic facts relating to the dispute. A major field of application of that course of action would be cases involving a change of circumstances, where the gist of the dispute lay in determining the facts.

52. With regard to the action to be taken on the item under consideration, his delegation did not think it would be advisable to seek to adopt, by a marginal vote, a resolution on the question which would be opposed by many States. The current differences of opinion needed time to evolve and that fact must be taken into account in a non-controversial resolution which would bring consideration of the item to an end in a positive manner at the current session. His delegation believed that those considerations were met in the draft resolution based on the informal consultations held among a large number of delegations from various regional groups. The draft, which was as yet anonymous but which his delegation was prepared to support, had been reproduced, and he asked the Chairman to be kind enough to have it circulated before the end of the meeting, if no delegation objected.

53. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed that the draft resolution mentioned by the representative of the Netherlands should be circulated.

It was so decided.

54. Mr. STARČEVIĆ (Yugoslavia) said that the search for means to enhance the role of the Court should be based on strict respect for the principles and provisions of the Charter of the United Nations, particularly with regard to the peaceful solution of international problems, and that there should be no thought of making any substantive change in the Court's Statute. His Government had already expressed its views on that subject in its reply to the questionnaire prepared by the Secretary-General.

55. It must be borne in mind that the main precondition for the greater effectiveness and wider utilization of the Court was the degree of readiness of States to have recourse to that organ. Current conditions were not favourable to wide acceptance of the Court's compulsory jurisdiction; barely one third of Member States had accepted it, often with significant reservations. Recourse to the Court thus remained essentially within the sphere of free decision-making by States, and reversal of that trend would depend on further developments in international relations.

56. However, the attitude of States depended largely on the law applied by the Court, its methods of work, its speedy dispatch of business, its structure and its composition. The Court must resolutely apply the new legal concepts which had emerged since the Second World War in the area of codification and progressive development of international law. In that way, the Court could contribute to promoting the progressive interpretation of international law. His delegation also favoured the proposals to the effect that the Court should take due account of relevant United Nations decisions.

57. With regard to the Court's methods of work, it should be noted that the Court had amended its Rules two years previously, with a view to achieving greater flexibility, avoiding delays and simplifying procedures in both contentious and advisory proceedings. Those changes should increase the Court's effectiveness, which did not, however, depend on the Court alone.

58. With regard to the composition of the Court, his delegation had always been of the opinion that it should

represent not only all legal systems but also all regions of the world. Since most Member States were developing countries, those countries should be adequately represented in the Court. It must be acknowledged that some progress had been made in that regard.

59. His delegation also favoured greater recourse to the advisory opinions of the Court, and felt that intergovernmental organizations, including regional organizations whose members belonged to the United Nations, should be given an opportunity to seek such opinions from the Court.

60. The question of the review of the role of the Court, which had been on the agenda since the twenty-fifth session of the General Assembly, had been useful. Although few States had replied to the Secretary-General's questionnaire, the review had given rise to interesting suggestions about the possible future development of the Court. The Court itself had helped to improve its position. Although it had not considered a great number of cases recently, at least some of the cases concerned had been of wide interest to the international community. The time had perhaps come for the General Assembly to conclude its consideration of the current agenda item; the resolution it adopted on that subject might be just as significant as resolution 171 (II), thus marking the conclusion of one more phase of the continuing interest of the United Nations in enhancing the role of the Court.

61. Mr. FERNANDEZ BALLESTEROS (Uruguay) said his delegation took a great interest in the item under consideration, which involved the very existence and development of international law. All efforts to codify international law would be fruitless unless joint action was taken to endow that law with the contentious framework essential to its full application. It was necessary to overcome the traditional objection to international law, namely that there was no jurisdiction to apply it. It was regrettable that barely one third of Member States had accepted the compulsory jurisdiction of the Court. In that connexion, his delegation appealed to the spirit of reflection and compromise of all. Uruguay was in a particularly good position to do so, for its Government had always supported the peaceful settlement of international disputes by an impartial, specialized third organ. As early as the second International Peace Conference, held at The Hague in 1907, Uruguay had proposed a system of compulsory arbitration for settling disputes among members of the international community. Uruguay had likewise been the first State to accept the compulsory jurisdiction of the Permanent Court of International Justice, and had subsequently accepted the compulsory jurisdiction of the current Court. Moreover, Uruguay, in the most important bilateral agreement of its political existence, the Treaty on the River Plate and its maritime front, concluded with Argentina in 1973, had provided that the Court should have jurisdiction to settle any dispute concerning that instrument which could not be resolved by direct negotiation. Moreover, his delegation had been one of the signatories to the letter dated 14 August 1970[3] which had led to the adoption of resolution 2723 (XXV), by which the General Assembly had included the item in its agenda. On that occasion his delegation had suggested that an *ad hoc* committee should be set up to study the obstacles impeding the functioning of the Court with a view to eliminating them, without ruling out the possibility that the Court might be given new functions.

62. His delegation considered that since the twenty-fifth session of the General Assembly the review of the role of the Court had produced good results. The Court itself had shown its willingness to act upon the suggestions made by States in the Committee and in reply to the Secretary-General's questionnaire. In recent years the Court had considered many more cases than had been submitted to it prior to 1971, and had demonstrated commendable rapidity. For that reason, his delegation was no longer pressing for the establishment of the *ad hoc* committee, which was not necessary, given the way in which the Court had developed. It therefore proposed that the item under consideration should be dropped from the agenda and held in reserve for possible future evaluation.

63. His delegation urged all other delegations to make a joint effort to achieve a definitive enhancement of the role of the Court. The first step to that end would be for States which had not yet accepted the compulsory jurisdiction of the Court, or which had renounced that jurisdiction, to accept it. States must also respect the provisions of the Statute of the Court, which was an integral part of the Charter. In that connexion, he stressed that the Court was the best judge of its own competence, and that it was necessary to assist the Court so that its decisions would reflect strict justice, to refrain from hampering its activities–which had enabled it to review its Rules, and to respect the independence of the judges.

The meeting rose at 6.05 p.m.

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3 See *Official Records of the General Assembly, Twenty-fifth Session, Annexes,* agenda item 96, document A/8042 and Add.1 and 2.

1468th meeting

Thursday, 3 October 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1468

In the absence of the Chairman, Mr. Broms (Finland), Vice-Chairman, took the Chair.

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)*

1. Mr. VILLAGRAN KRAMER (Guatemala) said that his country recognized the need for supervision of legality and the peaceful settlement of international disputes. Guatemala had always been in favour of the International Court of Justice, which had passed judgement *ex aequo et bono* in a legal action between Guatemala and the United Kingdom over Belize; however, the United Kingdom had not felt able to accept the judgement. More recently, Guatemala had been called before the Court by Liechtenstein and had appeared before the Court out of respect for the primacy of the law.

2. The discussion on the role of the International Court of Justice had been going on for several years and as a result the Court had started to amend its Rules. The law applied by the Court was positive law, the law of treaties and customary law, and it was not empowered to create law except in the case of judgements *ex aequo et bono.*

3. With reference to document A/8382, which gave the comments of some Governments on that issue, he pointed out that according to the United States it was uncertainty regarding the law to be applied which made States hesitant to appear before the Court; that according to Yugoslavia the role of the Court in the settlement of disputes depended on the codification and the modernization of international law; and that the comments of Iraq mentioned the accession to independence of many new States, which had led to the introduction of new forms of civilization and new legal systems which were inadequately represented on the Court. It was therefore clear that the law applied by the International Court of Justice was the crux of the problem, with regard to both form and substance. From the point of view of form, it was envisaged that more subjects of international law, particularly organizations, would have access to the Court. As for substance, many developing countries which had recently achieved independence were mainly concerned with economic and social questions and were seeking the adoption of rules on international economic security; that was why a charter of economic rights and duties was contemplated. Those new States were faced with a system established at the turn of the century, which did not meet their needs.

4. He recalled that the Government of Mexico had repeatedly proposed that the legal scope of the resolutions and decisions of the United Nations and other international organizations should be defined, and also noted that the Court had on occasion invoked General Assembly resolutions. Certain norms of international law were to be found in the resolutions adopted by international organizations, and it would be necessary to define to what extent those decisions could be invoked by the international judicial bodies.

5. It has been pointed out in the course of the discussion that the regional courts were more active than the International Court of Justice. The reason was that those courts did not always deal with strictly legal questions, but also with political problems which were thus resolved by legal means. The European Court had already handed down a most interesting series of judicial decisions. He also mentioned the court of the East African Community, where one did not need to be a barrister in order to plead a case, and the Andean Group's legal authority, where the judges were not necessarily nationals of the member countries of the Group, and where experts were taking an ever increasing part in the proceedings.

6. Although his delegation did not favour the establishment of an *ad hoc* committee, it none the less continued to concern itself with the question of the International Court of Justice, while recognizing that it would be difficult to strengthen the role of that body as long as its compulsory jurisdiction was not universally accepted.

7. He recalled that, for small countries like his own, a guarantee of the primacy of international law was fundamental. The Court must get abreast of the times and pursue its process of modernization, not only in terms of the Rules and the Statute, but by seeking to reflect the legal thinking of the international community. His delegation would favour a draft resolution which would highlight the important role of the Court and the concern its problems caused the international community.

8. Mr. MASUD (Pakistan) said that it would be appropriate to look back some 29 years when the International Court of Justice had been conceived as a legal organ of the United Nations under the Charter. In the post-war period there had been a burning desire among States to see their disputes settled by that international organ. However, the number of judgements and advisory opinions handed down by the Court since its establishment was much lower than that handed down by the Permanent Court of International Justice over a similar period. The question thus arose whether that organ was operating in the manner which its designers had visualized.

9. Those who had drafted the Charter had thought that Member States would accept the compulsory jurisdiction of the Court over legal disputes, since at that time the majority of States had been in favour of that approach. At the end of the 1950s, the United Nations had had 60

Member States, 34 of which had accepted the compulsory jurisdiction of the Court, as had two non-member States. In 1973, the number of Member States had risen to 132, but only 46 nations, including three which were not Members of the United Nations, had filed the declarations accepting compulsory jurisdiction.

10. His country had always been in favour of the peaceful settlement of disputes through a compulsory procedure recognized as valid between States. However, even though Article 2, paragraph 3, of the Charter made the peaceful settlement of disputes mandatory, it did not impose on Member States the obligation of referring them to an international body. Article 33, paragraph 1, while enumerating the variety of procedures for settlement, did not make any particular procedure obligatory; the effects of paragraph 2 of that Article were not clear. Therefore, partly because of the nature of those provisions, the peaceful settlement of disputes by the Court was not as effective as it should be. It was essential for the jurisdiction of the Court to be extended. Unfortunately, the Court's procedure took too long and was based on legal technicalities developed by the European States, without taking the interests of the new independent States sufficiently into account.

11. In the past the International Court of Justice had given an impression of being conservative in its outlook, which was not compatible with the progressive codification and development of international law. States should be able to seek advisory opinions on legal questions vis-à-vis other States. Article 96 of the Charter provided that advisory opinions might be sought by the General Assembly or the Security Council or by specialized agencies if so authorized by the General Assembly. But the Court had been reluctant to give advisory opinions on matters referred to it under that Article if, in its opinion, the legal questions amounted to disputes between States. In view of the reservations over the compulsory jurisdiction of the Court it would be desirable if a State could request an advisory opinion that would not be binding on the other State but would impose on the latter a moral obligation to negotiate a settlement in good faith. If that were done, States would be eager to refer their disputes to the Court, which would gain the confidence of the developing countries.

12. His delegation had welcomed the proposal to set up an *ad hoc* committee of the General Assembly. Qualified persons should be nominated to the *ad hoc* committee, which should undertake a thorough examination of the role of the Court and report to the General Assembly. Countries which were not Members of the United Nations but which had become parties to the Statute of the Court could also be co-opted as members of the *ad hoc* committee which, however, should only study the matter and not be empowered to act in respect thereof.

13. His delegation hoped that the principal judicial organ of the United Nations would be able to play its full part in the work of the Organization, which was to promote a structure of peace and justice in the world.

14. Mr. MONTENEGRO (Nicaragua) said that the international community wished to preserve peace and security; one of the ways of doing that was to settle differences between States by peaceful means–direct negotiation, arbitration, or the submission of disputes to the International Court of Justice. Nicaragua had accepted the compulsory jurisdiction of the Permanent Court of International Justice in 1929. Later, when there had been a frontier dispute with Honduras, Nicaragua had turned to the International Court of Justice and, although the Court's decision had not been in its favour, it had accepted the decision and handed over part of its national territory to Honduras, an action which had facilitated the improvement of relations between the two countries. Some speakers had reproached the Court for being inactive in comparison with national courts. But that inactivity was not a deliberate decision by the Court: it was the fault of States, which did not have recourse to it often enough. While recourse to national courts was practically compulsory, such was not the case for the International Court of Justice and until such time as its jurisdiction was compulsory it would be insufficiently active, but it could not be blamed for that. Nevertheless, the Court was the judicial organ of the United Nations, and States should make an effort to have recourse to it more often to prove their desire to use peaceful means to settle their disputes. The Court represented all the legal systems existing in the world, and if States did not show any wish to have recourse to it, that was only because there was a crisis with regard to law throughout the world.

15. The Court had amended its Rules so as to reduce the time and cost of proceedings. The international community could strengthen the role of the Court by following the recommendation made by the representative of Iraq at the previous meeting to accept the introduction in bilateral or multilateral treaties of a clause providing for recourse to the International Court of Justice in case of disputes over the application and interpretation of treaties.

16. His delegation would become a sponsor of any draft resolution aimed at reinforcing the role of the Court.

17. Mr. ELIAN (Romania) said it was not possible at the current stage to make an exhaustive assessment of the place of the Court in international life. Nevertheless, there was a need to stress that the role of that principal organ of the United Nations depended on its Statute, the current situation in international relations, and the level of development of international law. At the current stage it was necessary to determine whether it was a good idea to review the role of the Court more thoroughly, independently of other peaceful means of settling disputes. The examination of the judicial settlement of international disputes must be made in the general context of the system of pacific settlement instituted by the Charter and in the light of the fundamental principles of international law, taking into account in particular the principle of peaceful settlement of disputes between States. According to that principle, international disputes must be settled on the basis of sovereign equality of States and free choice of means. The parties to the dispute must agree on appropriate peaceful means corresponding to the circumstances and nature of the dispute. Article 2 of the Charter stated explicitly the principle of the sovereign equality of States; it also laid down that international disputes must be settled by the peaceful means enumerated in Article 33: judicial settlement was only one of those means.

18. The principle of the peaceful settlement of international disputes was no more than a restatement of a recognized rule of international law that all international jurisdiction must be based on the consent of the States concerned. Neither the optional compulsory jurisdiction clause in Article 36, paragraph 2, of the Statute of the Court nor the arbitration and judicial settlement treaties had fundamentally affected the rule that there was no universal legal obligation on States to settle their disputes through judicial channels.

19. For a number of reasons, the best course would no doubt be to consider all peaceful means of settlement together. Firstly, although they were different in some ways, there was in principle no fundamental contradiction between judicial procedures and direct agreement procedures. The aim of both was to obtain a peaceful settlement without any constraint, in other words, a solution that would improve friendly relations between nations. Secondly, while customary law did not establish a hierarchy of settlement procedures, there was a tendency in practice to use them one after another in a certain order and, in most peaceful settlement treaties, the exhaustion or failure of direct agreement procedures was a condition for recourse to judicial procedures. Thirdly, the types of procedure were interdependent: the judicial settlement of disputes was certainly influenced by direct agreement procedures and vice versa. States were able to see to it that the Court remained within the limits of its mandate. It also had to be pointed out that diplomatic negotiations were the starting-point for judicial procedures, and that the preparation of an arbitration agreement by direct negotiation was an important phase of the settlement process. The dependence of judicial procedures on direct agreement procedures was due to the subsidiary nature of the judicial channel. Moreover, the two types of procedure could use the same working methods, for example the inquiry. Moreover, in every instance where a judicial decision provided only a partial solution to a dispute, or when the parties refused to act in accordance with the decision, direct agreement procedures had to be used to break the deadlock. Furthermore, recourse to a court did not necessarily stop direct negotiations, and it was not unusual for the two types of procedure to be going on simultaneously. Finally, negotiations between the parties were necessary to execute international decisions whenever difficulties arose over the interpretation of the decision and the way in which it was to be executed.

20. If the judicial and direct agreement procedures were brought closer the institution of peaceful settlement of disputes would make progress. The Court itself had handed down decisions in favour of compromise and amicable arrangements. Its role would grow to the extent that it reflected the political configuration of the contemporary world and the new processes of international life; it would contribute in that way to the promotion of the fundamental principle of international law. By identifying the meeting points of the various means of peaceful settlement and by encouraging successive or simultaneous recourse to those means solutions would be found that were in accordance with law and acceptable to the States concerned.

21. The General Assembly should therefore carry out a comprehensive study of the peaceful settlement of international disputes covering the whole range of settlement procedures, starting with negotiation, as the principal method, and then going on to good offices, mediation, conciliation, enquiry, arbitration and judicial settlement. Four years earlier, the General Assembly had begun to consider the role of the International Court of Justice. Since then, the Court had revised its own Rules and it would perhaps be wise to await the practical results of the changes. The Court itself might continue to draw on its own possibilities and, for example, in addition to the sources of Western law used almost exclusively so far, take into account the wisdom of the principles of law applied throughout the world which belonged to the whole of mankind. In the meantime, the General Assembly might appeal to all the Members of the United Nations and of the Court to support the efforts made by the Court to increase its activity.

22. Mr. RAKOTOSON (Madagascar), after having congratulated the officers of the Committee on their election and the three new Members of the United Nations, referred first of all to the remedies to be introduced into the organization of the Court itself in order to enhance its effectiveness. In that connexion, he suggested a more rapid rotation of judges, to ensure better representation of the various regions and the various legal systems and to guarantee the independence of judges. He also suggested that the appointment of *ad hoc* judges provided for in Article 31 of the Statute of the Court should be abolished and that the right to bring a case before the Court should be extended to international organizations and non-governmental organizations and the right to consult the Court should be extended to regional organizations.

23. With regard to some of the reasons why States showed a certain reluctance to appeal to the Court, namely the slow pace of proceedings and the heavy costs involved, one suggestion might be for the parties to opt for the more rapid procedure provided for in Articles 26 and 29 of the Statute. The idea of creating permanent regional chambers would be justified only if States put an end to the practice of increasing the number of specialized tribunals of all kinds. In any event, the cause of the disaffection of States with the Court lay in the nature of the present-day international community in which States were increasingly jealous of their national sovereignty. Moreover, recourse to international jurisdiction was regarded as a hostile act to be envisaged only after other means of peaceful settlement of disputes had failed.

24. The real remedy for the crisis through which the Court was currently passing should be sought in the States themselves, since any reform would be artificial unless the international community demonstrated goodwill and confidence in judicial settlement. Many conflicts could in fact have been avoided or resolved if the international community had had faith in the primacy of law.

25. As for the argument that international law was still vague, it should be recognized that international law could develop only as the Court was seized of a greater number of disputes from which it could evolve its case law. The United Nations should accord a more important role to the International Law Commission so that it could peruse the

development and codification of all branches of international law.

26. In his view, the confrontation of ideas within the Sixth Committee would yield long-term positive results and there was no need to establish an *ad hoc* committee to study the role of the Court. His delegation was, however, prepared to consider any proposal designed to enhance the role of the Court.

27. Mr. YOKOTA (Japan) pointed out that his delegation was among those which at the twenty-fifth session had requested the inclusion of the item under consideration in the agenda of the General Assembly. As his delegation had already stated on several occasions, the judicial settlement of disputes constituted a safeguard of international peace. It had two distinctive merits which set it apart from other peaceful means of settlement. First, it ensured great impartiality, since a dispute was decided by law and not by the greater or lesser force of the parties. Secondly, it led to a decision binding on both parties, thus definitively settling the dispute.

28. Although the International Court of Justice was the most important institutional means of judicial settlement, it must be admitted that it had not been used to the fullest extent desirable and that its role remained limited. One of the obstacles to the satisfactory functioning of the Court was to be found in the attitude of States towards it. His delegation considered the misigivings sometimes expressed regarding the independence and impartiality of the judges to be unfounded.

29. The General Assembly should recognize the desirability of having the greatest possible number of States accept the compulsory jurisdiction of the Court with as few reservations as possible. It should also ask States to include in treaties a provision whereby contentious cases relating to those instruments would be referred to the Court. For its part, the Court, being fully conscious of its responsibilities and of the problems that had to be resolved, had revised its Rules in order to expedite its work and to make it easier for States to refer disputes to it. States should therefore make full use of the new possibilities opened up by the revised Rules.

30. His delegation had proposed the establishment of an *ad hoc* committee to study the role being played by the Court, the problems involved and ways and means of solving them, but if the majority of the members of the Committee felt that it was unnecessary to establish such a committee, it would not insist on its proposal. The General Assembly should, however, continue to give attention to the role of the Court since it would thus contribute to the strengthening of law and the maintenance of international order.

31. He said that, as his delegation saw some connexion between the item under consideration and the item entitled "Need to consider suggestions regarding the review of the Charter of the United Nations", it reserved the right to revert at a later stage to the aspect common to the two items.

32. Mr. TENEKIDES (Greece) said that Greece had always maintained an unequivocal position on the question of the International Court of Justice: it had faith in that high judicial organ since it believed in the primacy of law. Greece's position was in keeping with a centuries-old tradition; he pointed out that international arbitration had been born on Greek soil and that the principle of compulsory jurisdiction had been recognized in the treaties concluded in Greece as far back as the fifth century B.C. The Greek Government remembered cases in which it was interested that had been referred to the Permanent Court of International Justice and to the International Court of Justice and it had nothing but praise for the judgements and advisory opinions handed down on those occasions. International jurisdiction excluded by definition behind-the-scenes pressure and action, which were current practice in diplomatic meetings. It was for that reason that, while not wishing to interfere in the internal affairs of Cyprus, an independent and sovereign State, the Greek Government hoped that in the event of a settlement freely accepted by the Cypriot people by means of a democratic procedure, any dispute which might arise out of that settlement would be referred to the Court.

33. Turning to the question of the crisis through which the Court was passing, he referred to the reluctance of States, the lack of clarity in the applicable law, the slow pace of proceedings and the composition of the Court. The Committee could, of course, adopt the draft resolution submitted unofficially, provided that the text was strengthened on some points, but in doing so it would in no way contribute to a solution of the problems. It also seemed unnecessary to establish an *ad hoc* committee to study the role of the Court. What was needed above all was a search for the underlying causes, the psychological causes of the crisis in international justice. His delegation did not think that the principle of compulsory jurisdiction jeopardized the sovereignty of States nor that it was a hostile act to refer a dispute to the Court. Since there was a close link between the normative legal order and the jurisdictional order, the crisis would be overcome, not when international law had become clearer, nor when the Statute of the Court had been revised, but when States abandoned *real-politik* and meticulously and generously applied the fundamental rules of the Charter and the rules which would be progressively codified. International law, shield of the weak against the strong, was also the protector of mankind, and States, particularly the big nuclear powers, should be conscious of that fact.

34. Mr. QUENTIN-BAXTER (New Zealand) said that, in his opinion, the debates of the Sixth Committee concerning the International Court of Justice had served to give a better understanding of the problems of judicial settlement. Also, it was heartening to hear from so many delegations their avowals of belief in the value of judicial settlement, and those avowals were not in any way diminished by the recognition that that was not in itself the only means or, in particular cases, even the best means of settling a dispute. It was, after all, a feature of the times that a dispute often had political implications and that States then preferred to seek other means of settlement, but the other methods of settlement were more likely to succeed if as a last resort the parties realized that there was the possibility of a judicial settlement.

35. As to the question of the compulsory jurisdiction of the Court, it was true that some States, such as New

Zealand, had accepted it with reservations which had an historical basis. Perhaps the States in question might attempt to have fewer and more rational reservations so that the law would be applied more evenly. It also happened that States sometimes agreed to submit an issue to judicial settlement because they valued good relations with each other more than they were concerned with the outcome of the issue in question, but such a decision demanded great sacrifice and a certain degree of courage. It must be conceded that in the world of today there were some disputes which could not automatically be submitted to judicial settlement. Just as it was true that States often wished to reserve to themselves political and other non-judicial means of settlement, so also it was true that States which had made changes in their own position or their national aims in order to conform to international law would want the assurance that when a difference of opinion arose it could be dealt with objectively and impartially by judicial settlement.

36. The International Court of Justice was an institution which belonged to the international community and was financed by the United Nations, and it would therefore be tragic if States did not feel that it was their own and found it impossible to seek the assistance of the Court. In that connexion, more emphasis should be placed upon the role of the States themselves. The Court, for its part, had taken steps to make it easier for States to use its facilities. As was clear from the introduction to the report of the Secretary-General on the work of the Organization (A/9601/Add.1) the delays incurred in the consideration of disputes were in large measure the responsibility of the States involved. His delegation also thought that the question of the expenditure entailed in approaching the Court was exaggerated and that it was wrong to suppose that the services of the Court were available only to the great Powers and the prosperous States. Turning to the question of the composition of the Court, he expressed the view that the major systems of law were represented on the Court, and he pointed out that some States, in view of their limited resources, were often obliged to rely on other States whose position was more or less similar to their own to represent them in certain instances.

37. Everything that the international community of lawyers did in the Sixth Committee and in other bodies, international or regional, helped, or should help, to create the conditions in which all forms of peaceful settlement, including judicial settlement, could be effected.

38. Mr. STEEL (United Kingdom) reaffirmed the strong attachment of the United Kingdom to the principle of the peaceful settlement of international disputes, and in particular to the settlement of legal disputes by judicial or similar means and, even more specifically, to the reference of such disputes to the International Court of Justice where they had not otherwise been resolved and if appropriate to the nature of the case. That attachment had, moreover, been put into practice on a number of occasions when the United Kingdom had submitted its disputes to the International Court of Justice and had then faithfully abided by the decisions of the Court whether they had been in its favour or not.

39. Having said that, he also wished to say—and there was no inconsistency between the two statements—that the United Kingdom was still not satisfied with the role which the Court was playing in the life of the international community today. It was a body which, by virtue of its powers and functions and by virtue of its position in the United Nations system, ought to be playing a major role in the solution of international problems and in providing a framework of uniform law for friendly and peaceful co-operation among States. It was a body which, by virtue of the integrity and learning of its members, the strength of its established jurisprudence and its receptiveness to modern currents of thought, was eminently capable of playing such a role. However, there was no denying the fact that it had not played that role in recent years and that there was little prospect of its doing so in the immediate future.

40. Many analyses of the reasons for that situation had been made both in past debates and in the present debate. Some of the fault in the past might well have been attributable to the Court itself. There was now every reason to think that the new procedures which the Court had recently brought into operation would give it flexibility and the power to adapt its methods to the needs of each particular case. There seemed, however, to be general agreement that for the most part the fault had been with the States Members of the international community. The fault had lain in the inability or unwillingness of States to take advantage of what the Court and its machinery had had to offer; to a certain extent that might have been due to their lack of imagination or their timidity, but mostly it had been due to an excessive preoccupation with a narrow notion of national sovereignty.

41. The essence of the problem thus lay in the discrepancy between the role which the Court should be playing and the role which it was in fact playing in current international life. In so far as the Court had been guilty of short-comings, it had largely remedied them. It was now for the States to modify their attitudes and practices, both individually and as Members of the United Nations and members of other international organizations. In his delegation's opinion, that was a matter which ought to occupy the attention of the General Assembly. It believed that the Assembly should set up some machinery whereby the problem might be examined in depth and possible remedies considered. An *ad hoc* committee would be one possibility, but it was only one of many solutions which might be contemplated. However, his delegation was aware that there were delegations which saw difficulties in such a proposal and others which thought that it was premature. His delegation was therefore prepared, with some reluctance and some misgivings, to refrain from pressing its view that some specific machinery for conducting a review of the role of the International Court of Justice should be established. That decision was based on its desire to avoid dividing the Committee on a subject of such importance. He hoped none the less that the Committee would adopt a resolution which would express in suitably emphatic terms the General Assembly's view of the importance of the role of the Court, would draw the attention of States and of the relevant organs of the United Nations system and other international bodies to the possibilities which the Court afforded for the settlement of disputes and the resolution of legal problems, and, finally,

would reaffirm the need for the General Assembly to give continuing attention to the potential role and the actual role of the Court in international law.

42. The draft resolution prepared by the Netherlands delegation corresponded to some extent to the wishes expressed by his delegation, which, however, would prefer more forceful language and the introduction of a provision calling for the adoption of concrete measures by the General Assembly.

43. Mr. GÜNEY (Turkey) recalled that his country's views and suggestions on the subject under consideration were given in document A/8382/Add.3 and had been put forward at the 1283rd meeting of the Committee.

44. The principal reason for the reluctance of States to resort to the International Court of Justice seemed to be an excessive concern for their sovereignty, although account must also be taken of the disappointing results of the attempts made since the Second World War to rely on political machinery for the solution of international disputes. The failure of such means had set the stage for the current world situation in which most disputes remained unresolved and were a threat to international peace and security. A further reason for the reluctance to rely on judicial machinery for the peaceful settlement of disputes was the vagueness and the lack of development of international law.

45. His country had made a number of suggestions for changing those conditions. One of the most effective ways of restoring security and the rule of law in the international community was to recognize the primacy of law. The judicial settlement of disputes was an important method of settlement, at least in so far as legal disputes were concerned. The distinction between political and legal disputes was to be sure a difficult one to make, and precise legal rules must exist for doing so. The superiority of the judicial method of settlement lay in the finality of the solution to which it led. States should, in addition, be encouraged to present to the Court disputes which pertained to the non-codified area of international law so that the Court might be able by its decisions to lay down rules for some of the grey areas. Its opinion of 1969 regarding the *North Sea Continental Shelf* was a good example of the role it could play. The component elements of that famous decision had made, and were still making, a great contribution to the development of the law of the sea, the codification and progressive development of which were still being pursued.

46. The structure of the Court could hardly be an obstacle to recourse to that institution. The election procedures and the length of the term of office of judges were satisfactory. Consideration could, however, be given to the possibility of allocating more seats to judges from developing countries. It would no doubt also be preferable to make the term of office of judges non-renewable. On the other hand, Turkey was in favour of maintaining the institution of *ad hoc* judges and the establishment of regional chambers or courts.

47. With regard to the competence of the Court, the Court's jurisdiction should at least be made compulsory after all the peaceful means enumerated in Article 33 of the Charter had been exhausted. It might also be useful to invite States to make the declaration referred to in Article 35, paragraph 2, of the Statute and to refrain from making restrictive reservations. Another possibility would be to consider the declarations valid until the State gave notice to the contrary. It would also be desirable to extend the competence of the Court to enable international organizations, or some such organizations, to bring cases before the Court; to encourage States to include in their bilateral and multilateral treaties clauses whereby the Court would have jurisdiction with respect to any disputes arising out of those agreements; and to consider the possibility of giving international organizations access to the advisory procedure. Moreover, if the Court had stricter control over the length of the written procedure and oral statements, its proceedings could surely be made less time-consuming. Lastly, it would be as well to consider granting financial assistance at the request of States, especially with a view to helping developing countries wishing to appeal to the Court.

48. Turkey was in favour of the idea of entrusting an *ad hoc* committee with the task of considering the role of the International Court. The draft resolution submitted by the Netherlands did not meet that point. However, his delegation was willing to consider any suggestion that might enhance the authority of the Court, which was the highest judicial organ of the United Nations.

49. Replying to the statement made by the representative of Greece, he said that his country was just as interested as Greece in the question of Cyprus. The Turkish delegation considered that the question of Cyprus had its own forum. It was neither appropriate nor useful to raise and discuss that question out of context or in unsuitable organs. Turkey, which firmly believed in and strictly adhered to the celebrated maxim *pacta sunt servanda,* which was a basic principle of the law of treaties and consequently of international law, had frequently stated that the solution of the problem must be sought and applied within the framework of the Treaties of alliance and guarantee of 1960, which were still in force, and by means of negotiations between the two communities–the Turkish-Cypriot community and the Greek-Cypriot community–which had the same rights and obligations under the treaties establishing the Republic of Cyprus and in conformity with the constitutional system deriving from those instruments. To raise the problem in an inappropriate framework and in unsuitable bodies was a regrettable approach which would in no way contribute to the solution of the Cyprus problem.

50. Mr. GARCIA ORTIZ (Ecuador) welcomed the presence of the delegations of Bangladesh, Grenada and Guinea-Bissau, which had recently been admitted to the United Nations.

51. The problem posed by the role of the International Court of Justice was, basically, merely one aspect of a more general problem: the disparity between the life of the international community and the aspirations of the peoples who sought to place it within a strictly legal framework. The fundamental role of the Court, as indicated in the Charter and the Statute of the Court, was to serve as a last

resort for the peaceful settlement of disputes, which Ecuador strongly favoured. However, the Court had other functions, including an advisory role, which could be expanded if the Court were given the task of defining the law, and particularly customary law. The progressive development of international law revealed a world in which juridical norms were constantly changing. States tried to define the law while, by its very nature, the International Court of Justice tried to establish it. That might be one of the reasons for the obvious reluctance of States to accept the compulsory jurisdiction of the Court, an attitude which could hardly be explained by the structure of the Court itself. Amendments to the Court's Statute would therefore not suffice to dissipate the conflict that had come to light.

52. States were seeking to co-ordinate their activities within the international community so as to ensure that all aspects of international life were subject to internationally accepted standards, which alone could guarantee a measure of security. That trend could be seen by the efforts made to establish an international criminal court to complete the international legal order. However, those aspirations were still far from being fulfilled; hence the reluctance of some States to accept compulsory jurisdiction. The International Court itself was not the issue; but there was nothing to prevent a State from refusing to accept its compulsory jurisdiction until the international community abided by a universally accepted body of law.

53. Ecuador was ready to support any measure that would promote the rule of law, and hoped that no time-limit would be placed on the study of the role of the International Court of Justice, which could clearly not be completed at the twenty-ninth session. His delegation favoured in-depth consideration of the Court's role through the establishment of an *ad hoc* committee if necessary.

54. Mr. ORREGO (Chile) said that his country firmly believed in the validity of the principle of the peaceful settlement of disputes, as it had demonstrated by accepting clauses to that effect in numerous multilateral and bilateral treaties. In 1902, Chile, together with Argentina, had also from the beginning participated in the signing of the first general treaty of international arbitration in the history of the world.

55. His delegation considered it of capital importance to strengthen the role of the International Court of Justice. Viewed in an over-all perspective, the sum total of the Court's work must be considered positive, although in many cases the developing countries could not feel entirely satisfied. The Court had already helped to lend a measure of cohesion to an international order that showed a tendency to disintegrate. The Court was the victim of a more general crisis affecting the international community as a whole. The remedies to that crisis had to be considered within that broader framework.

56. Before questioning the evident reluctance of States to accept the compulsory jurisdiction of the Court, it was necessary to consider if and how international law and international judicial procedure could effectively help to bring about a peaceful settlement of international disputes. Failure to make that effort could lead to the adoption of an ineffectual resolution.

57. The Chilean delegation had no preconceived views as to the method to be adopted and was willing to agree to any satisfactory solution. Perhaps the Court itself could propose a method whereby its role could be studied within the international community. His delegation reaffirmed its faith in the competence of the judges of the Court and its President. There was reason to hope that a study of the question of the Court's role would promote the development of international law and make it possible to strengthen the efficacy of the role played by the International Court of Justice.

58. Mr. TENEKIDES (Greece), exercising his right to reply, said that the statement by the representative of Turkey was a reflection of the crisis in international law and, what was more, the crisis with regard to international jurisdiction. The Greek delegation had never said that any dispute arising with regard to the settlement of the Cyprus question should be referred to the International Court of Justice; it had merely expressed a hope in the event of a solution to the crisis. He was glad that the Turkish delegation had mentioned the maxim *pacta sunt servanda,* which certainly held good for treaties, but also was applicable to the Charter, and particularly to the principle of the non-use of force, to the fourth Convention respecting the laws and customs of war on land signed at The Hague in 1907, to the Geneva Conventions of 1949 for the protection of war victims, to the tripartite guarantee treaty of 1960 and to the Geneva cease-fire agreements. He sincerely hoped that that maxim would be applied to the case of Cyprus.

AGENDA ITEMS 96 AND 97*

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties *(continued)*

Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions *(continued)*

59. The CHAIRMAN announced that the Byelorussian Soviet Socialist Republic and the German Democratic Republic had become sponsors of draft resolution A/C.6/L.981.

The meeting rose at 6.05 p.m.

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* Resumed from the 1465th meeting.

1469th meeting

Friday, 4 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1469

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued) (A/C.6/L.980, L.982)**

1. Mr. RUTLEDGE (Chief Editor, Department of Conference Services) drew attention to paragraph 15 of document A/C.6/L.982, in which the Secretary-General had pointed out that, in the light of the over-all pattern of conferences and in particular of the decision taken by the Third United Nations Conference on the Law of the Sea to hold its fourth session at Geneva from 17 March to 10 May, he had most serious doubts concerning the Secretariat's ability to secure the necessary conference servicing staff for the period 17 March to 15 April, during which the Conference on the Law of the Sea would overlap with the Conference on the Representation of States in Their Relations with International Organizations. The major problem in that regard was the difficulty of recruiting qualified free-lance language staff to service those conferences during the period of the overlap. It had been suggested that the timing of the Conference on the Representation of States in their Relations with International Organizations might be reconsidered. One possible way of avoiding an overlap would be to convene the Conference on 12 February for a five-week session, i.e., until 14 March, and to reconvene it for the remaining four weeks sometime early in 1976. Another possibility would be to accelerate the pace of the Conference so that it could complete its work by 14 March. That could be accomplished by modifying the present arrangements so that, instead of having a single committee of the whole and a drafting committee, the Conference could divide its work between two main committees with the drafting committee meeting as required. It might also be helpful if the Conference could meet somewhat earlier than 12 February, but that would depend on the host Government. The financial implications of accelerating the pace of work of the Conference would be, roughly, of the same order of magnitude as the figure cited in document A/C.6/L.982, since although the duration would be reduced the level of services required would be nearly double that on which the present estimate had been based. If either alternative was considered to be acceptable, the Secretariat would be happy to give more exact figures.

2. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his comments would be of a preliminary nature since his delegation had just received document A/C.6/L.982. He had been somewhat surprised at the amount of $672,000 referred to in the statement, since he had thought that the question of financial implications had been resolved in 1973, when the Advisory Committee on Administrative and Budgetary Questions had expressed the opinion that the requirements for the Conference should not exceed $250,000.[1] He did not see why the costs of the Conference should be increased merely because it had been decided in the interim to hold a session of the Conference on the Law of the Sea at Geneva which would overlap with the Conference on the Representation of States. Any additional expenditures incurred because of the need to recruit temporary staff should be assigned to the Conference on the Law of the Sea. He recalled that the General Assembly had taken an unequivocal decision in resolution 3072 (XXVIII) to hold the Conference on the Representation of States early in 1975 at Vienna. Thus, the issue of timing had already been decided and there could be no question of postponing the Conference to 1976. However, serious thought should be given to the idea of accelerating the pace of the Conference and perhaps starting it a week or so earlier, if the host Government was amenable to that suggestion.

3. Mr. STEEL (United Kingdom) said that his delegation would like to hear the views of others before choosing among the alternatives outlined by Mr. Rutledge. It should be noted, however, that the scheduling of so many conferences early in 1975 posed problems for delegations as well as for the Secretariat. If anything, the problems of delegations were greater since the number of legal experts qualified to attend such conferences was very limited and it was particularly difficult for representatives to go straight from one legal conference to another without any time in between for briefings and consultations. He felt that the suggestion to accelerate the pace of the Conference by dividing its work between two committees was not a good solution since it would only compound the manpower difficulties facing delegations. In the circumstances, it might be helpful to consider the possibility of deferring the Conference in part or in whole to 1976. He wondered whether the Austrian Government would be able to accommodate such a change.

4. Mr. HASSOUNA (Egypt) said that his delegation could not agree to deferring the Conference, even in part, to 1976. As the USSR representative had pointed out, the General Assemby had taken a firm decision that the Conference should be held early in 1975. That had been a compromise solution, worked out after extensive consultations, and it would be better not to reopen the matter at the present stage. Among the alternatives suggested by Mr. Rutledge, he saw some merit in the idea of accelerating the work of the Conference and perhaps starting somewhat earlier.

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* Resumed from the 1465th meeting.

1 See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 8A*, document A/9008/Add.15, para. 12.

5. Mr. RUTLEDGE (Chief Editor, Department of Conference Services), replying to points raised in the discussion, apologized for the wording of paragraph 16 of document A/C.6/L.982, which might give the erroneous impression that the decision to hold a Conference on the Representation of States in Their Relations with International Organizations was still pending. That decision had, of course, already been taken in General Assembly resolution 3072 (XXVIII), and there had been no intention on the part of the Secretariat to imply that the matter was still open. He would also like to dispel any doubts that the estimate of $672,000 given in the statement of financial implications was in any way attributable to the overlapping of the Conference on the Law of the Sea with the Conference on the Representation of States. In fact, both Conferences would have to be staffed almost entirely by free-lance personnel. There was no plan to use permanent staff to service the Conference on the Law of the Sea at the expense of the Conference on the Representation of States. As was clear from paragraph 11 of document A/C.6/L.982, an effort was being made to assign some permanent staff to service the Conference on Representation of States if it were held at Headquarters. In the case of the Conference on the Law of the Sea, it was unlikely that any permanent staff would be available. As to the cost of the Conference, the figure of $250,000 arrived at by the Advisory Committee on Administrative and Budgetary Questions had been based on the assumption that a relatively large number of permanent staff would be available to service the Conference. In the light of subsequent decisions affecting the over-all pattern of conferences, that assumption was no longer valid. The "first come, first served" approach enunciated by the Advisory Committee in that particular case had not been specifically proposed to nor adopted by the General Assembly as a basis for conference scheduling; the General Assembly would consider the over-all problem in that area at the current session.

6. Mr. ROSENSTOCK (United States of America) said that his delegation attached great importance to the Conference on the Representation of States in Their Relations with International Organizations and therefore felt that it should be adequately staffed. Since the Conference on the Law of the Sea was equally important, it would be unwise to persist in maintaining the decision taken by the Committee and the General Assembly at the twenty-eighth session to hold those two Conferences during a period which would coincide with that by a major non-United Nations diplomatic conference on humanitarian law. There would be a severe shortage of even free-lance conference-servicing staff, particularly interpreters, who must be of the highest quality in view of the precision required in dealing with the matters to be discussed.

7. He would appreciate hearing the reply of the Austrian delegation to the question put by the representative of the United Kingdom.

8. Mr. VEROSTA (Austria) said that the decision taken at the twenty-eighth session of the General Assembly concerning the Conference on the Representation of States had been reached as a result of a difficult compromise. Furthermore, at Caracas, a decision had been taken confirming the General Assembly decision that the fourth session of the Conference on the Law of the Sea should be held from 17 March to 15 April 1975. Those two Conferences would overlap for a period of four weeks. He realized the difficulties involved, but it was stated in paragraph 7 of document A/C.6/L.982 that the only possible approach would be a "first come, first served" basis.

9. He assured delegations that his Government would do its utmost to ensure that the Conference on the Representation of States could take place as scheduled in 1975; he would report back to the Committee on any developments. Perhaps the Secretariat could in the meantime show that the Conference could complete its work in six weeks instead of nine by adopting the two-committee system. The new proposal for an earlier date should be considered, but it would prove very expensive for his Government to make arrangements for the week prior to 12 February 1975.

10. Mr. SA'DI (Jordan) said that the original date should be maintained if for no other reason than that inflation might considerably increase the costs of the Conference, currently estimated at $672,000.

11. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that the question of the date of the Conference on the Representation of States had been extensively discussed in the Committee at the twenty-eighth session of the General Assembly. The arguments currently being advanced in favour of postponing the Conference had been made then, and her delegation had at that time agreed to a one-year postponement in a spirit of compromise. The decision to postpone the Conference had been due in part to the scheduling of the second session of the Conference on the Law of the Sea in 1974, but there could be no question of a further postponement because of other international conferences arranged since that decision had been made.

12. Furthermore, the codification of international law on the representation of States in their relations with international organizations was being unwarrantably delayed. The International Law Commission had submitted its draft articles in 1971[2] after working on them for nine years. Three more years had now elapsed. Any further delay in convening the Conference would aggravate the problems facing the Sixth Committee and the United Nations in connexion with the codification of international law and the need for increasing the effectiveness of that important United Nations activity. The Conference should therefore not be postponed again.

13. Mr. NJENGA (Kenya) said that in view of the importance of the Conference on the Representation of States and of the events which had occurred since the decision concerning that Conference had been taken at the twenty-eighth session of the General Assembly, the Committee should reconsider the feasibility of holding the Conference, as scheduled, in 1975. There were delegations such as his own which would be unable to be represented at both conferences because of the limited number of jurists available. In other words, those countries which wished to maintain the schedule were forcing his delegation to choose which of the two conferences it could attend. He therefore

2 *Ibid., Twenty-sixth Session, Supplement No. 10*, chap. II, sect. D.

reluctantly requested that the Committee should reverse its earlier decision and that the Conference should be postponed until 1976.

14. Mr. ZULETA (Colombia) supported the views of the representative of Kenya and requested that the scheduled dates of the Conference should be reconsidered in the light of discussions in the Committee and talks with the Austrian Government.

15. Mr. ROSENNE (Israel) said that the difficulty concerning representation at the major conferences scheduled for the spring of 1975 was compounded by the problems faced by Governments in sending instructions to representatives on current issues and changing situations. The question was how to establish a conference pattern which would permit the achievement of the best possible results in the discussion of topics of major importance. The possibility of organizing the Conference on the Representation of States on the basis of two main committees should be reconsidered, since that possibility had not been fully dealt with in the memorandum on the methods of work submitted by the Secretary-General.[3] He suggested that the Secretariat might hold consultations concerning that possibility with the Special Rapporteur on relations between States and international organizations, of the International Law Commission, or with the Chairman of that Commission.

16. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that it was quite improper to be discussing the possibility of postponing the Conference on the Representation of States. If any decisions taken by the General Assembly were to be revised, there were procedural rules in the United Nations for that purpose which should be observed.

17. The arguments put forward for postponement were merely a blind to disguise the fact that some States were opposed to the Conference and found the draft articles adopted by the International Law Commission in 1971 unacceptable.

18. The only solution he would favour would be a compromise reached within the framework of the decisions already taken.

19. Mr. MUSEUX (France) supported the views of the representatives of Kenya and Israel and said that a more feasible date for the Conference on the Representation of States should be found.

20. Mr. BOJILOV (Bulgaria) said it appeared that a dispute which had occupied the Committee's attention for a prolonged period the previous year had been resumed. In 1973, a compromise had been reached and was reflected in General Assembly resolution 3072 (XXVIII). Any attempt to revise that resolution would inevitably involve the Committee in a procedure which it seemed desirable to avoid. While the holding of three international conferences at the same time in 1975 would make it difficult for small delegations to participate actively and effectively, it should be possible to find a solution, with the co-operation of the Austrian Government. Perhaps the Conference on the Representation of States might begin earlier in the year. It would not be reasonable to associate the Conference on the Representation of States with the Third United Nations Conference on the Law of the Sea; he would not be so bold as to assume that the latter would be able to complete its work in 1975.

21. Mr. RYBAKOV (Secretary of the Committee), replying to the question put to the Secretariat earlier, said that the Secretariat had already studied the substantial aspects of organizing the Conference on the Representation of States on the basis of two main committees meeting simultaneously. From past precedents it appeared quite possible that, following such a system, the Conference could finish its work in five or six weeks, thus avoiding any overlap with any other conferences. That possibility would be reflected in a new paper on administrative and financial implications prepared in the light of the current debate. It might also be covered in a special paper on the organization of the work of the Conference. The conditions would be approximately the same as those provided for in 1973, on the assumption that the Conference would meet from 12 February to 14 March 1975.

22. Mr. BRACKLO (Federal Republic of Germany) said that his Government had serious doubts concerning the possibility of keeping to the dates decided upon for the Conference on the Representation of States because of the difficulty of holding several important international conferences at the same time. However, his delegation also shared the concern expressed by many delegations that a major conference might once again be postponed. His delegation attached great importance to the General Assembly's abiding by its decisions, especially when a consensus had been reached after considerable difficulty. Nevertheless, the present schedule presented serious problems, and all possible solutions must be explored carefully. The proposal that the Conference should work through two committees was most interesting, although he was not entirely sure that that was the real solution.

23. Mr. ALKEN (Denmark) said that what appeared to raise difficulties for Member States with larger administrations than Denmark's created an impossibility for the Danish administration. The schedule set forth in paragraph 15 of document A/C.6/L.982 meant that his country would be obliged to participate on a lesser scale than it desired in one of the conferences referred to in that paragraph. It was stated in paragraph 7 of the same document that the Advisory Committee had noted "the absence of machinery for setting priorities among conferences". It was precisely that lack of cohesion among decisions concerning dates—especially those taken amid highly political circumstances—which placed the international legal community in such a problematical situation year after year. His delegation would support any constructive solution which would resolve the problem of the overlap of the three conferences. His delegation would prefer that the Conference on the Representation of States should be deferred to a later date in the spring of 1975, but it would agree to any generally acceptable compromise solution.

[3] A/9167.

24. Mr. HASSOUNA (Egypt) said it was clear from the debate that there was a general consensus concerning the importance of the Conference on the Representation of States in Their relations with International Organizations. His delegation would have the greatest difficulty in accepting the proposal to postpone the Conference until 1976. It had been argued that the Conference was important and complex and required a lot of preparation by Governments. However, the General Assembly should adhere to the decision which it had taken the previous year; there had been ample time for Governments to make preparations. Furthermore, since it was by no means certain that the Conference on the Law of the Sea would complete its work in 1975, that Conference should not be made the grounds for postponing the Conference on the Representation of States. Again, the Austrian Government's position should be considered. That Government had already made preparations in the light of the General Assembly's decision, and to reverse that decision by postponing the Conference would be highly improper.

25. There were two possible solutions. On the one hand, organizational arrangements could be made to accelerate the work of the Conference on the Representation of States, perhaps by having two main committees meet simultaneously, so as to avoid an overlap with other conferences, or, on the other hand, the Conference might be held at an earlier date. That might present some difficulties for the Austrian Government, but it would be better than postponing the Conference until 1976.

26. Mr. KUMI (Ghana) said that the importance of the Conference on the Representation of States in their relations with International Organizations was not in dispute. Since the General Assembly's decision to hold the Conference early in 1975 had been reached as a compromise, his delegation would be reluctant to invoke the relevant provisions for revision of that decision. However, countries with small delegations, particularly the developing countries, could not send representatives to too many conferences. The calendar of conferences was overloaded, and such a drain on manpower and other resources should be avoided in the future.

27. The arguments adduced concerning the difficulty for developing countries to participate effectively and the fact that the Conference on the Law of the Sea was already in session and had been unable to complete its work at Caracas were adequate grounds for calling for postponement of the Conference on the Representation of States until 1976. The Committee should explore the Secretariat's proposal concerning the possible solution of organizing the Conference on the basis of two main committees meeting simultaneously, but, even if one Conference followed the other instead of overlapping with it, the difficulty of effective representation would still remain. If it proved not viable to hold the Conference in 1975, the General Assembly would have no choice but to reverse its previous decision.

28. Mr. VAN BRUSSELEN (Belgium) said that the previous year the Committee had agreed on a compromise and his delegation had gone along with that decision. If possible, the Committee should try to abide by its decision. As had been stressed by previous speakers, the difficulties which the Committee was encountering were due to an unfortunate set of circumstances. The arguments adduced by the Kenyan and Ghanaian delegations applied in the case of the Belgian delegation also. For practical reasons, it would be difficult for Belgium to be represented at a large number of conferences in 1975. Belgium attached great importance to the Conference on the Representation of States and to the Conference on the Law of the Sea and would like to be represented adequately at both. He hoped that the Committee would be able, taking due account of the Austrian Government's views, to consider postponing the Conference on the Representation of States until 1976 or to consider any other proposal which might be acceptable to all from the viewpoint of organization and financial implications.

29. Mr. VARELA (Costa Rica) said that, while appreciating the importance of the Conference on the Representation of States, his delegation like the Kenyan and Danish delegations, felt that, having a limited staff, it would be unable to attend so many conferences at the same time. Because of the importance of the Conference on the Representation of States, he hoped that the Committee would agree to hold it sometime in 1976.

30. Mr. GÜNEY (Turkey) said that Turkey had been a sponsor of the compromise resolution adopted by the General Assembly at its twenty-eighth session. His delegation still maintained the position it had stated the previous year and hoped that the Committee would try to find a compromise solution to resolve its difficulties. His delegation would be willing to consider any alternatives that would resolve the current impasse.

31. Mr. USTOR (Hungary) said that, speaking on behalf of the Hungarian delegation only, he would like to draw the Committee's attention to the interests of the codification and progressive development of international law which had been so eloquently stressed by the delegation of the Ukrainian SSR. The draft articles on the representation of States in their relations with international organizations for submission to the forthcoming Conference had been submitted to the General Assembly by the International Law Commission in 1971. If the Conference was held in 1975, four years would have elapsed between the submission of the draft articles and the Conference. The Commission, in its report on the work of its twenty-sixth session (A/9610), had submitted a further set of draft articles for consideration by a United Nations conference, namely, the draft articles on succession of States in respect of treaties. He did not feel that the Commission would be very happy if further delay ensued in the consideration of draft articles adopted as early as 1971. His delegation therefore felt that there were valid reasons for not postponing the Conference on the Representation of States until 1976. Means should be found, such as the course suggested by the Secretariat, to enable the United Nations to convene the Conference in 1975.

32. Mr. AL-SABAH (Kuwait) said that the current discussion centred on the question of postponing the Conference on the Representation of States until 1975, as a result of the recommendation of the Third United Nations Conference on the Law of the Sea that it should convene at Geneva in 1975. In his delegation's view, the question of

the Conference on the Representation of States should be considered independently of any recommendation made by any other conference which might overlap with it. A 1975 date for the Conference on the Representation of States had been agreed upon in a resolution of the General Assembly, and the agreed schedule should be adhered to.

33. Mr. CHARLES (Haiti) said that he wished to associate himself with those speakers who had advocated postponing the Conference on the Representation of States until 1976. That did not mean that his delegation regarded it as of secondary importance but rather that it felt that the arguments of the Kenyan and Costa Rican delegations were valid and hoped that the Committee would take account of them.

34. Mr. MONTENEGRO (Nicaragua) said that his delegation assigned priority to the Conference on the Law of the Sea. While the Conference on the Representation of States was important also, it would be preferable, in view of the overwhelming importance of the Conference on the Law of the Sea, which was already in session, to postpone the other Conference.

35. The CHAIRMAN said that it would be advisable to request the Secretariat to prepare a new document on the administrative and financial implications of the alternatives suggested in the course of the current debate, and particularly in the light of the Chief Editor's statement. The Committee could continue the debate after consultations and consideration of the new document.

36. He announced that Tunisia had become one of the sponsors of draft resolution A/C.6/L.980 and also one of the sponsors of draft resolution A/C.6/L.981 submitted in relation to items 96 and 97 of the agenda.

The meeting rose at 1 p.m.

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The meeting rose at 1 p.m.

1470th meeting

Monday, 7 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1470

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued)* (A/C.6/L.980, L.982)

1. The CHAIRMAN said that, before continuing the review of agenda item 93, he wished to revert to the question of the United Nations Conference on the Representation of States in Their Relations with International Organizations. He thought that, in the light of the debate held at the previous meeting, the Committee might wish to request the Secretariat to prepare a brief note suggesting a possible allocation of the draft articles adopted by the International Law Commission to two main committees in the event of the adoption of that solution for the Conference. The note would provide useful information for the continuation of the Committee's work on the question. However, that obviously did not in any way prejudge the decision which would be taken on the subject of the Conference itself.

2. If he heard no objection, he would take it that the Committee approved his suggestion.

It was so decided.

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)**

3. Mr. FEDOROV (Union of Soviet Socialist Republics) said that the Soviet delegation had already made known its position on the question of the review of the role of the International Court of Justice and that, since the inclusion of that item on the agenda of the General Assembly, it had always been categorically opposed to such a review which amounted to diverting the attention of States from important questions. The problem was how to take full advantage of all the possibilities offered by the Charter of the United Nations and the Statute of the Court. However, there could be no question of seeking to change the role of the Court, for any such attempt would have the result of upsetting the balance of powers between the principal organs of the United Nations, as defined in the Charter.

4. Under the pretext of studying the possibilities of increasing the effectiveness of the Court, those who advocated a review of the role of that institution were in fact seeking to expand its competence to the detriment of the Security Council and the other organs of the United

* Resumed from the 1468th meeting.

Nations. It was clear that they would like to achieve their ends by revising the Statute of the Court and interpreting its Rules and judicial practices in a different manner. The attempts to make the Court's jurisdiction compulsory were being camouflaged under the title "Review of the role of the International Court of Justice". As the report of the Court indicated (A/9605), less than a third of States Members of the United Nations had said that they were prepared to accept the compulsory jurisdiction of the Court and many States had included in their statements reservations which made those statements illusory. The principle of compulsory jurisdiction violated the freedom of choice of peaceful means of settling disputes and undermined the sovereignty of States, since by recognizing the compulsory jurisdiction of the Court States would be making it a supra-national body with powers greater than those of the Security Council, which was unacceptable. Some representatives invoked as a reason for imposing the compulsory jurisdiction of the Court the special importance given to judicial settlement among the peaceful means of settling disputes listed in Article 33 of the Charter. However, the Charter established no hierarchy at all among those various methods. Furthermore, some delegations had tried to extend to international organizations the right to petition the Court, but his delegation considered that the only subjects of international law were States and that it was inconceivable that international organizations could be parties to a judicial settlement. Further, other delegations proposed that the Court should be empowered to rule on decisions taken by other international tribunals. All those proposals would have the result of changing the very nature of the United Nations and, if individuals and companies were also granted the right to petition the Court, that institution would become a supra-national body which would be able to interfere in the internal affairs of States; the Charter formally rejected such interference.

5. The problem of granting to international organizations, which were organizations of co-operation between States and could not have the same rights and obligations as States, the right to petition the Court was related to the problem of granting to international and regional organizations the right to request advisory opinions. It would be entirely inappropriate for the Court to become a legal advisory body, since it would then lose all significance and the basic principle of its operation would be violated. If international and regional organizations, States, national tribunals, individuals and companies were able to request advisory opinions from the Court, it would have to concern itself with questions which did not come within its competence. It would be required to consider cases of secondary importance and disputes of all kinds involving political disagreements or domestic jurisdiction, which would completely discredit it. The Court's task was to contribute to the cause of peace and international détente.

6. The many proposals relating to the creation of regional chambers, the depoliticization of the system for the election of judges, the election of judges for life, the establishment of age-limits for judges, the establishment of a two-thirds majority procedure for judgements given by the Court, a change in the procedure for selecting judges and the granting of preference to citizens of countries which had accepted the compulsory jurisdiction of the Court concealed the long-term designs of their sponsors, who were seeking to change completely the nature and role of the International Court of Justice in the United Nations system.

7. Moreover, his delegation regarded as unacceptable the idea of establishing an *ad hoc* committee to review the role of the Court; in addition, such a measure would only entail additional financial implications.

8. The effectiveness of the International Court of Justice in fact depended upon the extent to which its judgements reflected the purposes of the United Nations and its activities were in keeping with the generally accepted norms of international law. By conforming to those goals and norms, the Court would help to foster co-operation among States with different social systems. His delegation was therefore convinced that there was no need for a further review of the role of the Court in the General Assembly. The Court itself, incidentally, also seemed to hold that view. For its part, the Court had adopted amendments to its Rules that were designed to accelerate its procedures and to make them more flexible and less costly. The review of the Court's role had therefore lost all interest and the results of the measures which the Court had taken should now be awaited. The Court's functioning was closely linked to the activities of the organs of the United Nations and any change in the Statute of the Court would deal a fatal blow to the proper functioning of the United Nations itself. The main need was for States to respect the foundations of international law and international legality and to ensure scrupulous respect for all the provisions of the Charter.

9. His delegation reserved the right to state its views later on the draft resolution submitted informally by the delegation of the Netherlands.

10. Mr. ALVAREZ PIFANO (Venezuela) said that his delegation attached fundamental importance to the role played by the International Court of Justice within the framework of the United Nations and considered it essential, in the interests of the international community, that the machinery for the peaceful settlement of disputes should function properly. However, it thought that the review of the functions of the Court should not be an opportunity for imposing on States the obligation to accept the jurisdiction of that organ. States were free to choose from the means of pacific settlement of disputes listed in the Charter.

11. Furthermore, it was for the Court itself to study any suggestions designed to strengthen its role in the life of the international community and to examine the amendments which it could make to its Rules in order to improve its effectiveness. In that regard, his delegation welcomed the amendments which the Court had made to its Rules with a view to making its procedures more rapid, simpler and less costly.

12. In 1970, when the Sixth Committee had begun its examination of the item under consideration, the International Court of Justice had been faced with certain difficulties caused mainly by the attitude of States towards it. A review of the functions of the Court had been justified at that time, but the situation had changed; the Court had a sufficient volume of work and greater confidence was

placed in it by the international community. It would therefore serve no purpose to establish an *ad hoc* committee to review the functions of the Court, and the study of the item by the Sixth Committee should be terminated.

13. Mr. GÖRNER (German Democratic Republic) recalled that the German Democratic Republic had always confirmed in its multilateral and bilateral treaty relations its respect for the obligation to settle international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, which it considered to be one of the fundamental principles of the Charter of the United Nations. To ensure a speedy and lasting settlement of international disputes, the Charter provided that parties should seek a solution by peaceful means of their own choice. That gave States the freedom to choose the means of pacific settlement which they thought appropriate to the circumstances and nature of the dispute. The first of those means listed in Article 33 of the Charter was negotiation, which allowed maximum consideration for the sovereign rights and legitimate interests of the States concerned. In recent years serious international conflicts had been settled by direct negotiation. Considering existing practice, his delegation did not share the view that judicial settlement through the International Court of Justice should be the principal method for settling disputes peacefully. The provision of Article 92, whereby the International Court of Justice shall be the principal judicial organ of the United Nations, could not be used to support the view that judicial settlement was the principal means of settling disputes or that any expansion of such practice would be justified. His delegation felt that any attempt to expand the jurisdiction of the International Court of Justice would unfairly restrict the freedom of choice granted to States under the Charter itself.

14. It was of course true that the Court could play an important role in the codification and progressive development of international law. He welcomed the efforts made by the Court to enhance the efficiency of its work within the framework of the Charter and of its Statute. By using those texts in the way it had, the Court could itself help to increase States' confidence in its work and also enhance its role in the pacific settlement of disputes. There was therefore no need to establish an *ad hoc* committee to review the role of the Court, and there was no longer any justification for retaining that item on the agenda as all representatives had had the opportunity to state their views fully in the debate on the item.

15. Mr. GOMEZ ROBLEDO (Mexico) said that the deliberations of the Committee showed that the basic reason for the crisis facing the International Court of Justice lay not in structural defects but in the nature of the law which the Court had to apply under Article 38 of its Statute. There seemed to be two reasons for the reduced activity of the Court in comparison with that of its predecessor, the Permanent Court of International Justice. Firstly, it should be noted that the Permanent Court had exercised its jurisdiction principally between countries in the European or American continents which had all applied traditional international law. That situation had now changed and the international community was now characterized by the diversity of its component States. It should also be pointed out that Article 38 of the Statute of the Court had been in existence for over 50 years, as there had been a similar provision in the Statute of the Permanent Court and it had in fact originated in the work of the Hague Conferences of 1898 and 1907.

16. In the new international situation, however, the International Court of Justice was an integral part of the United Nations system, of which it was the principal judicial organ. It should therefore play a fundamental part in the codification and progressive development of international law. In that connexion, his delegation felt it would be useful to amend the provisions of Article 38, as proposed by the delegation of Austria in its reply to the questionnaire of the Secretary-General[1] to include resolutions and declarations by international organizations which were not binding among the subsidiary means for the determination of rules of law. He also supported the proposal by the representative of Iraq (1467th meeting) that General Assembly resolutions should be regarded as evidence of the content of new norms of international law.

17. Those elements of reform were not included in the anonymous informal draft circulated by the delegation of the Netherlands, which was otherwise acceptable. He suggested that the preamble could be expanded to include a new paragraph dealing with the possible uses of United Nations decisions. If that view was supported by several other delegations, he would be willing to formulate a proposal to that effect.

18. Mr. WISNOEMOERTI (Indonesia) welcomed the delegations of Bangladesh, Grenada and Guinea-Bissau which had recently been admitted to membership of the United Nations.

19. His delegation believed that the basic problem raised by the question of the review of the role of the International Court of Justice was the reluctance of States to recognize the compulsory jurisdiction of the Court. Lack of confidence in the Court, its composition and the nature of the law it applied were the factors cited to explain that reluctance. Some delegations also pointed to the structure and procedure of the Court as obstacles to acceptance of its complusory jurisdiction by States. The Court itself had shown its sensitivity to that analysis by revising its Rules in an effort to simplify its procedure and to provide for greater flexibility in its proceedings.

20. It would, however, be useless to pretend that changes of that nature would be enough in themselves to encourage States to accept the complulsory jurisdiction of the Court, because their reluctance to do so was primarily due to a lack of political will.

21. As other representatives had pointed out, it was often difficult to differentiate between a legal dispute and a political dispute in contemporary international circumstances. Accordingly, many States were reluctant to seek recourse to international adjudication, especially by *a priori* acceptance of the Court's compulsory jurisdiction, for they would then have no control over the ultimate settlement of a matter affecting their vital interests. They preferred to use other means of pacific settlement of disputes provided

1 See A/8382, p. 26.

under Article 33, paragraph 1, of the Charter or to resort to regional conciliation agencies. That attitude was confirmed by the lack of any reference to the Court in connexion with the settlement of disputes in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). It was also significant that procedures for the pacific settlement of disputes adopted by international organizations such as the Organization of African Unity and the Organization of American States did not include recourse to judicial settlement.

22. Given the nature of the international system, his delegation believed that it would not be possible to try to impose on States the compulsory jurisdiction of the Court either through a General Assembly resolution or otherwise. His delegation, aware of the important role of the Court in the unification of the interpretation and application of international law, took the view that the Court should adapt itself to the conditions of the contemporary world, and it would therefore support any effort to increase the effectiveness of the Court by improving its procedures and structures. It could not, however, accept any endeavour to impose any restriction on the freedom of choice of States provided under the Charter of the United Nations with regard to the means of pacific settlement of disputes. The establishment of an *ad hoc* committee to review the role of the Court could not serve any useful purpose, and his delegation considered that there was no longer any justification for retaining item 93 on the agenda of future sessions of the General Assembly.

23. Mr. BRACKLO (Federal Republic of Germany) pointed out that his country had twice shown its confidence in the Court by bringing before it, together with Denmark and the Netherlands, the dispute over the North Sea continental shelf and, with Iceland, the dispute over the extension of fishery zones. The Federal Republic of Germany regarded the International Court of Justice as the corner-stone of all institutions for the peaceful settlements of disputes. Indeed, it believed that the possibility of having disputes among States decided on a judicial basis reflected a high standard of development in international relations. It acknowledged, however, that direct means of bringing about agreement between parties to a dispute, namely negotiation and compromise, remained the normal and ideal way of settling disputes. Furthermore, only if both parties reached agreement on the substantive matters as well as on the procedure of settlement would there be an accommodation of interests which would establish a genuine peace.

24. However, the mere existence of a permanent judicial body could enhance the general readiness for conciliation, negotiation and agreement. It strengthened the awareness of the value of law in international relations. Furthermore, the International Court of Justice had gained a high reputation owing to the judgements it had given and, by amending its Rules, it had remedied certain shortcomings in its proceedings.

25. His delegation shared the concern expressed by many delegations that, although States showed a greater readiness than before to bring their disputes before the International Court of Justice, the number of States which did so was still far from sufficient to enable the Court to play its role as the principal judicial organ of the United Nations. The lack of confidence in the Court was most regrettable and that state of affairs could only be remedied if the idea of the peaceful settlement of disputes was strengthened and if politically powerful States, too, were prepared to submit important questions to the Court.

26. The fact that the strengthening of the role of the Court formed part of a more comprehensive problem should not prevent the General Assembly from taking action, particularly from establishing an *ad hoc* committee. On the contrary, the General Assembly could adopt a resolution whereby it would appeal to Member States to make more use of the principal judicial organ of the United Nations; his delegation would support such a resolution. Furthermore, the General Assembly could help to remove certain preconceived ideas and make it clear that recourse to the Court did not constitute an unfriendly act towards another State and that not only to recognize the jurisdiction of the Court in individual cases, but also to accept compulsory jurisdiction, did not conflict with the principle of the national sovereignty of States. The draft resolution submitted informally by the Netherlands delegation contained a number of acceptable proposals, but his delegation would prefer that the text be drafted in stronger terms. Even if consideration of the strengthening of the role of the court was concluded during the current session, the General Assembly should continue to be concerned with the question of international jurisdiction. In the General Assembly, as in other bodies, special consideration should be given to the question of what kind of disputes would lend themselves to judicial settlement. In that connexion, the law of the sea, as developed by the United Nations Conference on the Law of the Sea, was an interesting subject which could provide the International Court of Justice with a whole range of new tasks.

27. Mr. KABBAJ (Morocco) welcomed the presence of the delegations of Guinea-Bissau, Bangladesh and Grenada, new States Members of the United Nations.

28. The question of the review of the role of the International Court of Justice, in which the Sixth Committee had been engaged since the twenty-fifth session of the General Assembly, indicated the importance that the international community attached to the Court which, under the Charter, was one of the principal organs of the United Nations and its principal judicial organ. The debates which had taken place within the Committee had enabled the question to be given all due attention and had provided an opportunity for all States to contribute by their remarks and suggestions to the search for adequate ways and means of conferring on the Court the effectiveness and dynamism which it needed in its work.

29. The Court had not always been responsible for the position in which it had found itself. In recently amending its Rules, it had, moreover, endeavoured to help to enhance its effectiveness. But it was above all at the level of the law which it had been obliged to apply that the disaffection of States with the Court had been manifested. Indeed, until fairly recently, the Court had drawn upon legal concepts of traditional international law, which had been elaborated

without the participation of a large part of the international community. Fortunately, the work of the codification and progressive development of the law undertaken by the United Nations had begun to give international law an appearance more in keeping with the legal realities and the new spirit which reigned in international relations. The Court should not only continue but assist that evolution and, as the representative of Iraq had said, it could play a primary role in the field of international custom by promoting the intensive and progressive development of that field.

30. Morocco believed that the International Court of Justice was an important instrument for the peaceful settlement of legal disputes, the more so since it had never had occasion to take issue with the decisions handed down by the Court even when it had been a protectorate, particularly the 1952 judgement of the Court on the rights of United States nationals in Morocco. It was in that spirit that King Hassan II had, on 17 September 1974, proposed submitting the dispute between Morocco and Spain over the western Sahara to the International Court of Justice. In that connexion, Morocco was pleased to note that Mauritania had associated itself with that proposal by accepting recourse to international jurisdiction. Its attitude showed, if that was necessary, that Morocco acknowledged the primary importance of the International Court of Justice and was extremely interested in strengthening its role.

31. Mr. JACOVIDES (Cyprus) warmly welcomed the representatives of Bangladesh, Guinea-Bissau and Grenada who would no doubt make a positive contribution to the work of the Committee.

32. His delegation had had an opportunity at previous sessions to express its views on the item under consideration and its views on the substance remained the same. Perhaps for reasons more pressing than those of other delegations, his delegation was strongly attached to the principle of the peaceful settlement of international disputes and it seemed that that was the position generally held. However, recent events, which were only too well known, had left his delegation with few illusions regarding the universal application of that principle, which was more often proclaimed than applied.

33. His delegation was in general agreement with the ideas set out in the informal draft resolution circulated by the delegation of the Netherlands, although it reserved the right to introduce certain amendments, for example, on the question of the legal effect of United Nations resolutions. The recommendation that legal questions within the Court's competence that arose in the course of United Nations activities should be referred to the Court for an advisory opinion was of particular interest, especially in the case of disputed questions of the interpretation of treaties.

34. The question of Cyprus would be fully discussed by the General Assembly in plenary meetings, and it was to be hoped that the debate would be constructive. The speakers would, no doubt, also cover the legal aspects of the problem, considering that Cyprus had been the victim of naked aggression in circumstances involving a gross violation of the basic rules of international law, including humanitarian law. However, he would touch briefly upon such aspects of the question as related directly to the item under consideration, in accordance with normal practice. The representative of Turkey had referred (1468th meeting) to the principle *pacta sunt servanda* and the treaties of 1960 as an excuse for his country's actions. Although he did not intend to expound on the subject, on which many books had been written and extensive debates, including those in the Security Council and the Sixth Committee, had been held, he wished to quote a passage from the statement made by the President of Cyprus on 1 October 1974 before the General Assembly (2251st plenary meeting) which summarized the situation. In that statement, the President had maintained that the Treaty of Guarantee of 1960, which had been invoked by Turkey, could not give Turkey the right of military intervention in Cyprus and, furthermore, that the very nature and conduct of the Turkish military operation in Cyprus had been in direct violation of the declared purposes of the Treaty. So much for Turkey's professed dedication to the solution of international disputes by peaceful means. His delegation reserved its right to revert to that point should it deem it necessary.

35. Mr. BARARWEREKANA (Rwanda) welcomed the representatives of the three new States Members of the United Nations: Bangladesh, Grenada and Guinea-Bissau.

36. His delegation believed that the review of the role of the International Court of Justice was timely because the circumstances in which the Statute of the Court had been drawn up no longer reflected the current situation of the United Nations, whose membership currently numbered almost 140 States and whose ideas and trends had matured over the years. The countries of the third world, which had formerly lived under the yoke of those who had proclaimed themselves defenders of justice, has since attained their independence and had become influential Members of the United Nations.

37. His delegation attached great importance to the question of the review of the role of the Court but felt that it should have been considered after the item concerning the review of the United Nations Charter, which had been drawn up in the same circumstances as the Statute of the Court. The Court to date had handed down only 20 judgements–an unsatisfactory record if one took into account the injustices in the world and the funds assigned to enable it to function.

38. His delegation believed that one of the first matters to be discussed was the possibility of moving the seat of the Court and establishing it preferably in a third world country which was willing to act as host country; any actual decision on the subject would, of course, be left to the General Assembly. A country which had suffered great injustice should be a fitting environment for the administration of justice.

39. The ineffectiveness of the United Nations in coping with certain situations and the ineffectiveness of the International Court of Justice resulted from a failure to adapt the Charter of the United Nations and the Statute of the Court to the contemporary situation in the world. It would therefore be desirable to insert an article or a clause in the Statute of the Court stipulating explicitly that the

Statute would be reviewed periodically every five years or at least every 10 years. Most countries, and those of the third world in particular, would no doubt prefer to settle their disputes either with the assistance of a third country or through the good offices of an intergovernmental organization. That perhaps gave food for thought.

40. Mr. GÜNEY (Turkey), speaking in exercise of his right of reply, observed that the Committee had heard the representative of the Greek Cypriot community. In fact, in view of the constant changes in that community, it was not certain that he represented the present Greek community in Cyprus; but, in any event, he certainly did not represent the Turkish Cypriot community, which had the same rights and the same obligations as the other community under the international treaties on which the constitutional system of Cyprus was based. Until the Turkish Cypriot community had its own representative, the Turkish delegation would take it upon itself to represent it. The representative of the Greek Cypriot community thought he had the right to judge Turkey's acts; yet for more than 11 years the Greek Cypriot community seemed to have taken no account whatever of the law and jurisdiction of the International Court of Justice. The main guarantee of the constitutional status of Cyprus was the equality of the two national communities. Neither could impose its will on the other or claim to represent the other before international bodies.

41. Following the coup of 15 July, Turkey, after having tried to establish contacts and having exhausted every means of negotiation, had intervened in order to restore order, end the chaos and avoid the annexation of Cyprus by Greece.

42. He reminded members that the question of Cyprus had its own forum, and discussion of it in any body under any item of the agenda would not help to bring about a solution.

43. Mr. JACOVIDES (Cyprus) pointed out that his delegation's credentials had been approved by the General Assembly in a plenary meeting, and that Turkey had given its assent. He added that his delegation, which represented the Republic of Cyprus, was conscious of the fact that it represented all the citizens of Cyprus, including those of the Turkish minority. He would not engage in polemics in the Sixth Committee, regarding, *inter alia,* the treatment meted out to the minorities in Turkey, since the question of Cyprus would be fully discussed in the General Assembly.

44. Mr. GÜNEY (Turkey) said that the representative of the Greek Cypriot community could in no way represent the native Turkish Cypriot community until constitutional order was restored in Cyprus. In the meantime, the point of view of that community would be represented by the Turkish delegation.

45. Mr. JACOVIDES (Cyprus) replied that it was the first time in the history of the United Nations that the representative of a country had questioned credentials recognized by the General Assembly.

46. Mr. GÜNEY (Turkey) said that as long as a country crushed minorities which were entitled to the protection of constitutional order, such repercussions would be inevitable.

47. The CHAIRMAN announced the closure of the general debate on the question of the review of the role of the International Court of Justice.

48. After an exchange of views concerning the organization of work, in which the CHAIRMAN Mr. WEHRY (Netherlands), Mr. TENEKIDES (Greece), Mr. SIEV (Ireland), Mr. SADI (Jordan) and Mr. BOULBINA (Algeria) took part, the CHAIRMAN said that, if there were no objections, a small group of the delegations particularly interested in the item would meet the following morning at 11 o'clock to prepare a draft resolution on the question of the review of the role of the International Court of Justice, and that a discussion of the two draft resolutions A/C.6/L.980 and L.981 concerning agenda items 88, 96 and 97 would be held when the Committee had been provided with fuller information on the implications of the Vienna Conference of 1975 at which time it would be possible to vote on the two draft resolutions in question.

It was so decided.

The meeting rose at 12.50 p.m.

1471st meeting

Tuesday, 8 October 1974, at 3.15 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1471

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression (A/9619 and Corr.1)

1. Mr. SANDERS (Guyana), Rapporteur of the Special Committee on the Question of Defining Aggression at its seventh session, introducing the report of the Special Committee (A/9616 and Corr.1), said that the draft definition of aggression, which had been adopted by consensus by the 35 members of the Special Committee on 12 April 1974, appeared in paragraph 22 of the report. That draft definition, which had been arrived at in accordance with the mandate given to the Special Com-

mittee and with the relevant comments made in the Sixth Committee between 1968 and 1973, had a simple structure, consisting of 10 preambular paragraphs–all of which were very important–and 8 articles. The work had been completed after long days and nights of negotiation, moments of great gloom, pessimism and frustration and moments of elation when difficulties had been overcome and compromises achieved. The completion of the dratt definition marked the end of over 50 years of endeavour. The names of the members who had participated in the final session were listed in the report, but those who had worked together in 1973 and 1974 were conscious of the great debt they owed to their predecessors in the Special Committee since its inception and first meeting in 1968. He mentioned in particular Mr. Yasseen of Iraq, who had been the first Chairman of the Special Committee, Mr. Gonzalez Galvez of Mexico, Chairman of the Working Group in 1972, and Mr. Rossides of Cyprus, Chairman of the Special Committee at that time.

2. During the two years in which he had served on the Special Committee, there had been no argument, no proposal and no idea that had not been canvassed for by one representative or another. Account had been taken of every comment made in the Sixth Committee. Throughout the final sessions of the Special Committee's work, delegations had fought as hard as was humanly possible for their points of view. All members–the small States, the medium-size States and the big States–had given ground in the effort to compromise, and all had gained. The completion of the draft definition was a tribute to the reason and good-will of those who had prepared it, under the patient and wise leadership of Mr. Broms of Finland. It was an example of the harmonizing of viewpoints of civilized nations in the attainment of a common end.

3. No one could deny that the draft definition had short-comings. To criticize it might be easy, but it was impossible to produce a definition which would satisfy 138 States completely. It should be borne in mind throughout the debate in the Sixth Committee that the draft definition had been reached by consensus and was extremely fragile. Almost every word was of significance and the result of really tough negotiations.

4. Mr. BROMS (Finland), Chairman of the Special Committee on the Question of Defining Aggression at its seventh session, said that at the 113th meeting of the Special Committee several members had expressed satisfaction with the contents of the draft definition, some members had made a few reservations and others had indicated that they intended to make their final comments in the course of the current debate in the Sixth Committee.

5. He wished to point out that the draft definition represented a most carefully balanced compromise. He paid a tribute to all his colleagues in the Special Committee; the positive outcome of the Committee's work had been achieved solely as a result of their willingness to work hard, their flexibility and common understanding and especially the spirited atmosphere which had led to a most intensive search for a solution to all the problems before them. They were, unquestionably, all anxiously waiting to hear the comments of those delegations which had not participated in the work of the Special Committee.

6. The draft definition should be judged as a whole. Indeed, as was stated in article 8, in their interpretation and application its provisions were interrelated and each provision should be construed in the context of the other provisions. The draft defintion concerned, in accordance with article 1, only those cases where armed force was being used by a State against another State, or in any other manner inconsistent with the Charter of the United Nations. In other words, the Special Committee had formulated its definition of armed aggression in the light of the Charter of the United Nations.

7. He had noticed that some dissatisfaction had been expressed because the draft definition did not cover economic aggression. When the Special Committee had held its first session at Geneva in 1968, various types of aggression, and economic aggression in particular, had been mentioned by several members of the Special Committee. Nearly all members of the Special Committee had felt, however, that the definition should be drafted in the light of the provisions of the Charter of the United Nations and should concentrate on armed aggression. During subsequent sessions of the Special Committee that opinion had prevailed, and, as that solution had also been accepted by an overwhelming majority of those delegations which had participated in the lengthy debates on the item in the Sixth Committee in recent years, the Special Committee had concluded that its task was to limit the draft to armed aggression. In that connexion, he drew attention to article 4, which made it clear that the acts enumerated in the preceding article were not exhaustive and that the Security Council might determine what other acts constituted aggression under the provisions of the Charter. When that provision was seen in the light of article 2, which had been one of the most difficult provisions of the entire draft definition on which to reach a consensus, he felt that the various practical alternative cases were reasonably covered.

8. The second paragraph of article 5 seemed to trouble some representatives. The first sentence of that paragraph stated that a war of aggression was a crime against international peace and the second sentence included a provision to the effect that aggression gave rise to international responsibility, but that should not be interpreted so as to imply that aggression would not in the future lead to any criminal responsibility. That question had been left open–after a debate which to a certain extent had unfortunately been semantic–bearing in mind the fact that the Special Committee had originally been set up to draft a definition of aggression to be used in the work of drafting a code of offences against the peace and security of mankind, a task begun by the International Law Commission at its sixth session, in 1954. The General Assembly had subsequently adopted resolution 897 (IX) of 4 December 1954, wherein consideration of the report of the International Law Commission on the draft Code had been postponed until the General Assembly had taken up the report of the Special Committee on the Question of Defining Aggression. General Assembly resolution 1186 (XII), further postponing consideration of the topic, had been adopted in 1957. The legal consequences of an act of aggression would thus be dealt with by the General Assembly in due course, once the definition of aggression had been adopted, and the definition, when adopted, would form a basis for continued

work to strengthen law and order in the international community.

9. The maintenance of peace under the United Nations system might not be dependent on the existence of a definition of aggression. In his view, however, it was of paramount importance that the Security Council and all Members of the Organization should fulfil their obligations under the Charter to the best of their ability, and a definition of aggression might be a substantial step towards that end.

10. The CHAIRMAN congratulated the Special Committee on the completion of its lengthy and arduous task. The Sixth Committee had been concerned with the question of defining aggression since 1968, and he hoped that its deliberations at the current session would be successful.

11. Mr. ROSSIDES (Cyprus) suggested that delegations might expedite the Committee's work by indicating in advance if they had objections to or comments on specific articles of the draft definition, so that members of the Committee could concentrate on those articles and have time to prepare their own comments on them. Cyprus had been a member of the Special Committee for seven years and was well aware of the time it had taken to prepare the draft definition. Since work on defining aggression had begun in the League of Nations, its completion had been held up by one impediment or another for 50 years. His delegation was anxious that its final adoption should not be delayed by further lengthy discussions.

The meeting rose at 3.50 p.m.

1472nd meeting

Wednesday, 9 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1472

In the absence of the Chairman, Mr. Broms (Finland), Vice-Chairman, took the Chair.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. KOLESNIK (Union of Soviet Socialist Republics) noted with satisfaction that the Special Committee on the Question of Defining Aggression had succeeded in preparing a draft definition of aggression (see A/9619 and Corr.1, para. 22) which represented a compromise acceptable to all countries. The adoption of the draft definition was a great victory for those who had long striven to accomplish that task and for all peace-loving forces sharing the conviction that only under conditions of peaceful co-operation could mankind successfully cope with the many problems facing it. The improved political climate in the world, which was the result of international détente and the mobilization of all peace-loving forces, had contributed greatly to the successful completion of the work on the definition of aggression. The peace initiatives of the Union of Soviet Socialist Republics, undertaken together with other socialist countries, had played an important role in that success.

2. The definition of aggression would be of great help to the United Nations and its principal organ, the Security Council, in determining the existence of acts of aggression and applying against the aggressor the measures laid down in the Charter. Of course, being the instrument of consensus in the Special Committee that it was, the definition could not completely satisfy everyone. His delegation saw some short-comings in it, but the definition had accomplished its main purpose of depriving a potential aggressor of the possibility of using juridical loop-holes and pretexts to unleash aggression. The definition had cleared the way for the adoption of measures to prevent and suppress acts of aggression, thus meeting the interests of all States which valued international peace and security.

3. It was important to note that the definition, having been worked out in strict accordance with the Charter of the United Nations, dealt only with cases of armed aggression. From the very outset of its work the Special Committee had agreed to concentrate on armed aggression, which was the most dangerous form of the illegal use of force.

4. The definition took the form of a draft resolution to be adopted by the General Assembly. In its preambular part, it reaffirmed the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence; reaffirmed also that the territory of a State should not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter; and stated the conviction that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and would also facilitate the protection of the rights and lawful interests of the victim. Those were the main provisions of the preamble, which expressed the desire of peaceful States to put an end to wars of aggression and the illegal use of force.

5. Turning to the operative part of the draft definition, his delegation wished to comment on those articles which had

given rise to considerable discussion in the Special Committee. With regard to article 1, his delegation had agreed in a spirit of compromise to the inclusion of the word "sovereignty" on the understanding that in that context, violation of the sovereignty of a State meant the use of armed force against territorial integrity and political independence. Article 2 had given rise to lengthy debates in the Special Committee, with the fundamental differences centring on the problem of priority and aggressive intent. The principle of priority was essential to the definition of aggression if an objective distinction was to be made between acts of aggression and actions taken in self-defence. A successful compromise had been reached on the wording of article 2, which, while putting the principle of priority in the foreground, also enabled the Security Council to take into account other relevant circumstances. Among such circumstances, the Security Council would, of course, attach importance to the aims of the States in conflict. In connexion with article 3, his delegation wished to emphasize that subparagraph *(g)* could not under any circumstances be interpreted as casting doubt on the legitimacy of struggles for national liberation or resistance movements. At all stages of work on the definition of aggression his delegation had consistently defended the right of peoples to self-determination and therefore welcomed article 7, which recognized that the armed struggle of peoples for self-determination, independence and liberation from colonial oppression was an instance of the legal use of force. In their struggle against colonialism and racism, peoples had the right to seek and receive political and material support. Thus, the assistance given such peoples by many States Members of the United Nations was entirely lawful. Regarding the interpretation of article 5, his delegation considered that the words "international responsibility" meant responsibility under international law, i.e., responsibility for acts which were defined as international crimes in the relevant instruments of international law. His delegation also attached importance to article 6, which established a connexion between the provisions of the definition and the text of the Charter of the United Nations.

6. The successful completion of the Special Committee's work was the result not only of the efforts the Soviet Government had made since its submission of a draft definition of aggression in 1933, but also of the efforts of many other States, in particular the developing countries, for whom the struggle for peace and against aggression constituted a basic and unchanging element of foreign policy. Although relations between States had become closer and more friendly since 1933, the adoption of a definition of aggression was no less urgent. In resolution 2644 (XXV), the General Assembly had stressed the desirability of achieving the definition of aggression as soon as possible. In the general debate at the current session of the General Assembly the representative of Kenya had welcomed the completion of the work of the Special Committee (2257th plenary meeting) and, while recognizing that the definition was far from perfect, had stressed its value in deterring potential aggressors and assisting the Security Council in fulfilling its functions under Article 39 of the Charter. Although not fully satisfied with the provisions of the definition, the representative of Kenya had supported it and had expressed the hope that the General Assembly would adopt it. The Soviet delegation also urged the adoption of the draft definition in the form in which it had been submitted by the Special Committee. Any attempt to change the text at the current stage would disrupt the broad compromise reached in the Special Committee and threaten the results of many years' work. It was essential, therefore, that the Sixth Committee recommend that the General Assembly adopt the draft definition. The resolution making that recommendation might also contain an appeal to all States to refrain in their international relations from actions which would constitute acts of aggression under the definition, as well as an appeal to the Security Council to give the definition binding force by adopting a decision to that effect.

7. Mr. RYDBECK (Sweden) said that his Government had long been of the view that a definition of aggression must declare as aggression the first commission of certain types of acts. The text adopted by consensus in the Special Committee had wisely taken that approach. While States would inevitably seek to influence other States, it was essential to make a distinction between legitimate and impermissible ways of influencing others. Aggression was the worst of the impermissible ways of influencing other States, but the label of aggression should be reserved for acts involving the use of armed force. The Special Committee had been wise not to include in its definition those acts which had sometimes been referred to as "economic" or "ideological" aggression. Some such acts were highly reprehensible and contrary to international law, but branding them as aggression might tend to dilute the concept and to provoke extensive interpretations of the right to self-defence. Limiting the definition of aggression to cases where armed force came into play meant including only certain kinds of intervention, namely, those which took place openly by armed units or through the sending of armed bands and the like. Other types of intervention, in particular those which many States used to term "indirect aggression", fell outside the scope of the present definition of aggression. That did not mean that such acts were legal. Any doubts on that score should be set to rest by the explanation of the concept of intervention given in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (General Assembly resolution 2131 (XX)) and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex).

8. The Special Committee could not be criticized for having drawn up a non-exhaustive list of acts of aggression; however, a fundamental weakness was inherent in that approach. A State accused of aggression on the grounds of having first committed one of the enumerated acts could reply that its acts had been taken in response to other acts which, although not contained in the enumeration, in its opinion constituted aggression. The value of the list lay in the fact that the acts enumerated were presumed to be aggression and the onus of rebutting that presumption would fall on the State committing them. In the infinite variety of situations that might arise, one could not exclude cases where such rebuttals would be convincing. Hence, the acts enumerated constituted only *prima facie* evidence of aggression. The Security Council, acting under Article 39 of

the Charter, would have the duty of weighing the evidence. However, the Council would not be limited to the mechanical task of comparing the acts committed with the enumeration. The full preservation of the powers given to the Council by the Charter was, indeed, expressly underlined in article 2 of the draft definition. That article further wisely counselled that acts which were "not of sufficient gravity" might not deserve being labelled as aggression.

9. Another virtue of the draft was that the acts were described objectively. There was no need under the definition to prove a subjective intent behind an action to allow the conclusion that it constituted aggression.

10. Adoption of the definition would not magically eliminate aggression from the relations between States. It would have the merit, however, of putting States on notice with less uncertainty as to what the international community regarded as condemnable acts. Such awareness on the part of States and consistent reactions on the part of the international community would in the long run influence the conduct of States. With that hope, his delegation was ready to vote in favour of the draft definition.

11. He hoped that the adoption of the draft definition would lead to a resumption of work on the draft Code of Offences against the Peace and Security of Mankind[1] and the topic of an international criminal jurisdiction,[2] of which questions the General Assembly had decided to defer, by resolutions 1186 (XII) and 1187 (XII), on the understanding that they would be taken up at a later session when further progress had been made in arriving at a generally agreed definition of aggression. Much work remained to be done in the sphere of international criminal law. The question of the definition of war crimes and responsibility for them had not received adequate attention, nor had any discussion taken place at the governmental level of the idea of an international criminal tribunal.

12. Mr. KLAFKOWSKI (Poland) said his delegation felt that the seventh session of the Special Committee had been fruitful, and he paid a tribute to the members of that Committee for the results achieved. Thanks to their efforts, their patient negotiations and their spirit of compromise, a generally acceptable legal text had been prepared.

13. Although Poland had not been a member of the Special Committee, it had always shown a keen interest in defining aggression, from both the political and the legal viewpoints. It had always taken every opportunity in the Sixth Committee to stress the extreme importance of the question of defining aggression and to give concrete assistance to the Special Committee in its work.

14. His delegation supported the Special Committee's recommendation to the General Assembly in paragraph 22 of that Committee's report and was ready to approve the adoption of the draft definition without change at the current session of the General Assembly. In its view, the draft definition was as complete and balanced as possible and should be regarded as reflecting the outcome of over 50 years of arduous endeavour. His delegation had some general comments to make both from the viewpoint of practice and from the viewpoint of the codification of international law. He wished to stress, above all, the arguments which militated in favour of the approval of the recommendation of the Special Committee.

15. His delegation agreed with the view of the Chairman of the Special Committee that the successful work of that Committee had been possible mainly due to the current international situation and that it reflected the spirit of true détente. The climate of international relations constituted an essential factor for success in the legal work of the United Nations. The draft definition was not only the result of the current détente but also a contribution towards its strengthening.

16. Attention should be drawn to the fact that the Special Committee's draft definition was closely linked not only with the United Nations Charter but also with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the United Nations Charter. The preamble of the definition stressed that element. The Special Committee's definition was closely linked also with the Declaration on the Strengthening of International Security (General Assembly resolution 2734 (XXV)) and with many other General Assembly resolutions concerning the condemnation and prevention of the use of force in international relations. One might mention also document A/BUR/182, in paragraph 26 whereof the Secretary-General drew the attention of the General Committee to questions consideration of which had been long deferred by the United Nations, such as the draft Code of Offences against the Peace and Security of Mankind and the question of an international criminal jurisdiction. Consideration of those questions had been deferred until such time as the General Assembly should have adopted a definition of aggression. The current draft definition could thus assist the United Nations in strengthening its paramount role in the maintenance of international peace and security.

17. The definition of aggression could strengthen the role of the Security Council and the whole United Nations machinery for the maintenance of international peace and security. In his delegation's view, the Special Committee's definition recognized the primordial role of the Security Council under the Charter. The legal definition of aggression could help in the legal perfecting of the functioning of the United Nations system of collective security and could serve as a guide to the Security Council, which, under Article 39 of the Charter, had competence to determine the existence of any threat to the peace, breach of the peace or act of aggression.

18. The draft definition opened a new chapter in the progressive development and codification of international law. In the contemporary system of international law, the definition of aggression was an essential element of the legal system of international security as defined by the Charter. While a definition of aggression could not miraculously prevent the emergence of a threat to the peace or breach of the peace, there were nevertheless clear and concrete

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1 See *Official Records of the General Assembly, Ninth Session,*, *Supplement No. 9*, chap. III.

2 *Ibid., Supplement No. 12.*

advantages to the adoption of such definition, for example, the legal identification of an aggressor, objective criteria for establishing that an act of aggression had been committed, the strengthening of the activity of the Security Council in the exercise of its functions under the Charter, and also the deterrent aspect.

19. The fact that the Special Committee's definition had been adopted by a consensus based on compromise was a considerable attainment from the viewpoint of the codification of international law. The definition represented a delicate compromise between the three drafts which had served as a basis for the Special Committee's work for seven years. It was the interest of the international community as a whole which had made it possible to reconcile divergent views and reach that compromise. The Special Committee had managed to formulate a well-balanced definition which was compatible with the Charter. That was a proof that only by a process of reciprocal concessions could generally acceptable results be achieved.

20. In addition to constituting a reasonable advance in international law, the definition of aggression opened the way for codification in other fields of international law and constituted a precedent for the preparation of other legal instruments consideration of which had so far been deferred.

21. The draft definition was not entirely satisfactory to all delegations, either in the Special Committee or in the Sixth Committee, and the Special Committee's report contained statements setting forth differing interpretations of the draft definition. He recalled the axiom *omnis definitio periculosa est;* any compromise in the field of the codification of international law could be the subject of different interpretations. Divergences of views were almost inevitable, and the statement, in article 8 of the draft definition, that in their interpretation and application the provisions of the definition were interrelated and that each provision should be construed in the context of the other provisions was particularly important. His delegation hoped that the draft definition would be adopted, without change, at the current session of the General Assembly.

22. Mr. MIGLIUOLO (Italy) said that his delegation, which had served on the Special Committee, was well aware how difficult it had been to bring the labours of that body to a positive conclusion. Divergent views on several crucial points had emerged at the outset and had been restated year after year, until a more favourable international climate had given a fresh impetus to the patient and painstaking negotiations held within the Special Committee and had made it possible to overcome a number of difficulties and to reconcile views which had seemed to be diametrically opposed. Many delegations, including his own, had had to move a long way from their original positions. Therefore, the definition of aggression that had been adopted by consensus did not fully satisfy his delegation any more than it did any other single delegation. That was, however, true of any compromise, and the draft definition had rightly been welcomed as a major achievement. All members of the Special Committee should be praised for their conciliatory attitude and for their willingness to co-operate. The definition would no doubt represent an invaluable reference point for the Security Council in its deliberations and would greatly facilitate its task of determining whether acts of aggression had been committed. Furthermore, as indicated in the ninth preambular paragraph of the agreed text, the definition should also have a deterrent effect on potential aggressors. In addition, the definition could contribute to the codification of general international law concerning wrongful acts of States, as well as international crimes.

23. The agreed text, being the result of concessions made on all sides, was not flawless, but it represented a fair, balanced and therefore acceptable compromise. Consequently, his delegation hoped that the text would be approved by the General Assembly by consensus, without substantive changes which would upset the balance that had been struck with such great difficulty by the Special Committee. The formulation of interpretative comments, which was common practice in the United Nations even with regard to texts on which a consensus had been reached, could take place, however, without impairing the basic agreement on the definition. His own observations should be accepted in that spirit.

24. With regard to the legal value of the definition, it would, in his delegation's view, have the same recommendatory status as any other General Assembly resolution and would provide the Security Council with useful general guidelines for action under Article 39 of the Charter. As was stated clearly in article 4 of the draft definition, the acts of aggression enumerated therein were not exhaustive; accordingly, the Security Council would be at liberty to determine what other acts constituted aggression under the provisions of the Charter. Nevertheless, the definition, if adopted by the General Assembly by consensus, could have a major impact on the development of international law, both by spelling out and elaborating existing customary rules and by giving an impetus to the codification of international law governing offences against peace and mankind.

25. Turning to specific provisions of the definition, he said that article 3, subparagraphs *(e)* and *(f)*, should be taken to mean that the territorial State could be called upon to answer for an act of aggression only if it had actively participated in the wrongdoing, for example by specifically allowing troops of another State stationed in its territory to commit aggression against a third State. The territorial State could not be held responsible for acts of aggression carried out without its consent. In his delegation's view, only the active participation of the territorial State in aggression committed by another State could be the source of international responsibility for the territorial State.

26. Turning to article 5, second paragraph, he stressed that, as stated in the explanatory note included in the Special Committee's report (see A/9619 and Corr.1, para. 20, subpara. 3) the term "international responsibility" was used without prejudice to its scope. In other words, article 5, second paragraph, did not purport to have any bearing on international criminal law and did not prejudge the question of the nature and extent of international responsibility. The legal consequences of acts of aggression were and remained those provided for in existing international law.

27. In his delegation's view, article 7 must be read in conjunction with the sixth preambular paragraph; the right of peoples to self-determination, as restated in article 7, could not imply the legitimization of actions aimed at disrupting the territorial integrity of a State which conducted itself in compliance with the principles of the Charter, particularly those pertaining to equal rights and self-determination, and which was thus ruled by a Government representing the people inhabiting its territory.

28. Mr. VEROSTA (Austria) said that law could not exist and operate without definitions. A definition in law not only stated what a word legally meant but was a part of the rule of law, and an action corresponding to its legal definition had legal consequences. There were different ways of working out a definition. The classic way was to concentrate in one phrase all elements which should qualify actions corresponding to the defined concept. Very often, however, the concept to be defined was so complex that it seemed impossible to formulate it in a general phrase, because such a definition would be too vague, as was the case, for instance, with regard to the concept "consular functions". Thus, the definition in article 5 of the Vienna Convention on Consular Relations[3] was enumerative and not exhaustive, and, being open-ended, it allowed for the possibility of functions not enumerated in the definitional list being introduced into the practice of States. Such a non-exhaustive definition was not without value, because it ensured that the typical actions or functions expressly listed were within the definition.

29. There remained the possibility of giving no definition at all and entrusting the determination as to whether a certain action constituted a breach of the law to an organ of the society concerned; that organ might be political or judicial. That had been the method followed by the Covenant of the League of Nations and by the Charter of the United Nations. Both basic documents mentioned "aggression" or "armed attack" but refrained from defining those terms. Under Article 39 of the Charter, it was for the Security Council to determine the existence of any threat to the peace, breach of the peace or act of aggression and to recommend or decide what measures should be taken. Similarly, the task of defining aggression from case to case had been left to the Council of the League of Nations. When, in the early 1930s, the Soviet Union had concluded a series of bilateral non-aggression pacts, those treaties had followed the enumerative method. The list of the aggressive acts included in those treaties was now contained in the Special Committee's draft definition.

30. The Special Committee had combined very skilfully all three methods he had mentioned, so that the partisans of all three should be satisfied. Article 1 contained a general definition of aggression; article 3, following the second method, gave an enumeration of acts which qualified as acts of aggression; and, following the third method, article 4 stressed that the list of aggressive acts was not exhaustive and that the Security Council might determine that other acts constituted aggression under the Charter. As the definition was intended primarily for use within the United Nations system, the central role of the Security Council in determining what constituted an act of aggression was maintained. The Special Committee had not only succeeded, after arduous labour, in arriving at a definition, but had also dealt ably with some legal consequences of an act of aggression, in articles 5 to 7.

31. The draft definition distinguished between four different categories of aggression. In the first category came the first use of armed force "not of sufficient gravity" to be qualified as aggression. It was stated in article 2 of the draft definition that the first use of armed force in contravention of the Charter would constitute *prima facie* evidence of an act of aggression, although the Security Council might, in conformity with the Charter, conclude that a determination that an act of aggression had been committed would not be justified in the light of other relevant circumstances including the fact that the acts concerned or their consequences were not of sufficient gravity. That category of acts which were aggressive *in se* would be considered by the Security Council as armed incidents to which the procedures for the pacific settlement of disputes under Chapter VI of the Charter should be applied.

32. In the second category came the first use of armed force which was "in the light of other relevant circumstances" not qualified as aggression. While the first category was based on an objective factor, namely the lack—always in the assessment of the Security Council—of sufficient gravity, for the second category there were only the words "in the light of other relevant circumstances". That wording was the result of a delicate compromise. A number of delegations in the Special Committee had not insisted on an explicit reference to the question of aggressive intent. Had there been an understanding that the subjective factor was to be considered by the Security Council in determining whether an act of aggression had been committed? Those were very rare cases indeed in which the Security Council would abstain from qualifying an aggressive act as aggression under Article 39 of the Charter because the Council had evidence that the act of force lacked aggressive intent. His delegation could not accept such a procedure as a general rule. On the other hand, there might, under the second category, be cases where the aggressive intent of a State was manifest. For example, if a State concentrated increasing numbers of troops at the border of another State, the menaced State could, under general international law and under the Charter, exercise its inherent right of individual and collective self-defence. If, in such a situation, the menaced State fired the first shot, the Security Council could "in light of other relevant circumstances" qualify the menacing State, on the basis of sufficient evidence, as the aggressor and recognize the right of self-defence of the menaced State.

33. The third category consisted of cases of aggression determined as such by the Security Council. Such cases were dealt with in articles 4 and 5 of the definition. The fourth category, namely the war of aggression, was mentioned only in article 5 of the draft definition and was qualified as a crime against international peace. The draft gave no further definition. It might be assumed that the magnitude of the aggressive acts and/or the damage caused would serve to qualify an act of aggression as a war of aggression. In such cases, the procedure to be followed by the Security Council was the same as for acts falling within the third category. The legal consequences were the same

3 United Nations, *Treaty Series*, vol. 596, No. 8368, p. 261.

for the aggressor State. However, as a war of aggression was qualified by the draft as a crime against international peace, it could imply a personal responsibility of the competent organs of the aggressor State. The culprits should be judged individually according to international criminal law. As the Chairman of the Special Committee at the preceding session had said in his introductory remarks, some of the legal consequences of an act of aggression and of a war of aggression would have to be dealt with after the adoption of the draft definition of aggression.

34. He paid tribute to the Special Committee for its work. Although some not unimportant questions had remained unresolved because the draft was a delicate compromise between different conceptions, it was as a whole satisfactory and his delegation, while reserving its position, was in favour of the recommendation of the Special Committee contained in paragraph 22 of its report.

35. Mr. ELIAS (Spain) said he was gratified that the Special Committee had been able to adopt the draft definition of aggression by consensus in a spirit of co-operation. His delegation attached great importance to the item under consideration, since its purpose was the international regulation of the use of armed force.

36. The draft definition was a set of guidelines designed to help the Security Council in its work. Therefore, as stated in article 8, the separate parts of the definition were closely interrelated, and each part must be interpreted in the context of the others. Only in that way could the definition of aggression contribute to the maintenance of peace.

37. Although his delegation was fully aware of the merits of the definition it was not completely satisfied with it, and therefore wished to draw attention to a number of short-comings which the Sixth Committee might wish to consider correcting, without upsetting the delicate balance achieved by the Special Committee. In the first place, concerning the powers of the Security Council, which under the Charter was responsible for determining the existence of an act of aggression, the definition provided the Council with guidelines but left it sufficient freedom to decide according to the circumstances of each case. In that sense, article 2 of the definition was fully justified. However, its wording was somewhat ambiguous. For example, the part beginning with the words "the Security Council may, in conformity with the Charter, conclude" might be taken to mean that the Security Council could reach an agreement not to declare that in a given case an act of aggression had existed; if that were the intention, a better phrasing would have been: "the Security Council may abstain (or may refrain) from determining". It was therefore not clear whether the conclusion of the Security Council contemplated in article 2 was an explicit or implicit conclusion; in the first instance, the Council would have the power to absolve the aggressor using armed force from blame, a power which had not been conferred on it by the Charter. Article 2 might therefore seem to extend the powers of the Security Council, which was an undesirable development. However, that short-coming was partly corrected by article 6 and by the fourth preambular paragraph, and he hoped that the situation would never arise where the Security Council assumed the power to excuse from blame those using armed force in contravention of the Charter, when it suited the reciprocal interests of the most influential Powers in the Security Council to declare such an aggressor innocent.

38. Article 7, concerning the right of peoples to self-determination, freedom and independence, should also include the right of peoples to territorial integrity. Although article 1 guaranteed the territorial integrity of States, his delegation did not agree with those interpretations of international law according to which territorial integrity was a right of States but not of peoples. However, that short-coming was partly corrected by the sixth preambular paragraph, which reaffirmed earlier United Nations resolutions which held territorial integrity to be a sacred right of peoples as well as States.

39. There was an inconsistency in article 5, second paragraph, which stated that a war of aggression was a crime against international peace and that aggression gave rise to international responsibility. His delegation was aware that it was raising a difficult point, but that paragraph gave rise to an *a contrario sensu* interpretation which might prove particularly insidious. Everyone was aware of the existence of responsibility without fault and the wording of article 5, second paragraph, left the impression that an act of aggression which did not result in a war might not be defined as a crime, and give rise only to some indeterminate form of responsibility.

40. He appealed to the Committee to discuss the short-comings of the definition without acrimony and with a sincere desire to achieve a practical result beneficial to the international community. Despite the short-comings he had mentioned, his delegation was ready to participate in a consensus on the definition as it stood if those short-comings could not be corrected without endangering the consensus, which was of the utmost importance.

41. Mr. BOJILOV (Bulgaria) said that his delegation attached great importance to the consideration of the report of the Special Committee on the Question of Defining Aggression. As a member of the Special Committee since its inception, his delegation believed that a generally recognized definition of aggression would contribute not only to the development and codification of international law but also to the maintenance of international peace and the strengthening of international security. It therefore welcomed the elaboration and adoption by consensus of a definition of aggression after almost seven years of work undertaken on the initiative of the Soviet delegation.

42. Article 2 of the definition was the key provision and it struck a proper balance between the question of priority and the question of intent, in other words between the objective element and the subjective element of any use of armed force. The first part of article 2 dealt with the concept of priority, and the second part with the concept of intent. In the first part of that article, the expression "in contravention of the Charter" was essential, since the Charter specifically authorized the first use of armed force under certain circumstances. Moreover, Article 42 of the Charter empowered the Security Council to take such action as might be necessary to maintain or restore international peace and security. In the second part of

article 2, the intent was clearly covered by the phrase "other relevant circumstances", while it was also clear that the text sought to ensure that the definition left no room for branding an innocent State as an aggressor.

43. Under Article 39 of the Charter, it was incumbent on the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression". In determining such act of aggression, almost the only legal guidelines available to the Security Council were those laid down in Article 2, paragraph 4, of the Charter. However, article 3 of the definition listed a number of acts which, subject to and in accordance with the provisions of article 2, should be qualified as an act of aggression. Such guidelines would help the Security Council in its activities. He stressed that it was his delegation's understanding that the wording of article 3 *(g)*, could in no way prejudice the right of peoples to struggle for self-determination, freedom and independence.

44. Article 4 gave the definition flexibility by stipulating that the list of acts in article 3 was not exhaustive. Consequently, the Security Council might determine that other acts also constituted aggression under the provisions of the Charter. The nucleus of article 5, dealing with the question of responsibility for aggression, was the provision that a war of aggression was a crime against international peace. The definition would have gained much had the Special Committee succeeded in adopting by consensus the concept that aggression was a crime against international peace. However, the absence of such a stipulation could not be regarded as a deliberate lacuna which made possible an a *contrario sensu* interpretation.

45. Article 7 reaffirmed that nothing in the definition could prejudice the right to the self-determination of peoples suffering under colonial and racist régimes or other forms of alien domination, and it also reaffirmed the right of those peoples to struggle to that end and to seek and receive support in order to achieve their goals. Those rights derived not only from the Charter and the Declaration on Friendly Relations, but also from other important United Nations documents. If the Charter and the Declaration alone were cited in respect of such rights, it was because the need to adopt the definition of aggression as a whole by consensus had rightly prevailed in the Special Committee.

46. The definition of aggression as a whole represented a balance struck by the Special Committee on the basis of three draft proposals which were submitted to it:[4] that by the USSR, that submitted by 13 Powers and another submitted by six Powers. The final consensus was the result of concessions made by different States and groups of States in a spirit of co-operation. The adoption of the definition affirmed the common will to strengthen the role of the United Nations in maintaining international peace and security and protecting the territorial integrity or political independence of Member States. His delegation endorsed the views expressed in the ninth preambular paragraph concerning the effects of the adoption of the definition. The definition had been adopted mainly as a result of the spirit of détente which had prevailed at the two final sessions of the Special Committee and of the contribution made by the third world countries.

47. His delegation attached paramount importance to the fact that the definition of aggression had been adopted by consensus, since any definition which did not reflect the consensus of the international community, including that of the five permanent members of the Security Council, would be meaningless. The definition of aggression before the Committee should be adopted as it stood.

48. Mr. SA'DI (Jordan) said that no amendments should now be made to the definition of aggression and that no new dialogue should be undertaken which would postpone consideration of the item. His delegation accepted the draft definition and would like to ensure that in principle it could not preempt the right of occupied countries to use armed force in order to liberate themselves, once negotiations to resolve the problem by peaceful means had failed. Article 2 of the definition covered the first use of armed force by a State in contravention of the Charter, but recourse to armed force where peaceful means had been unsuccessful would not be in contravention of the Charter. Article 7 noted that nothing in the definition could prejudice the right to self-determination, freedom and independence, as derived from the Charter, and that article should also explicitly include the right to use armed force for the liberation of occupied lands.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued)** (A/C.6/L.980, L.982)

49. The CHAIRMAN announced that the delegation of Mali had joined the sponsors of draft resolution A/C.6/L.980.

The meeting rose at 5.30 p.m.

4 See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex I.

* Resumed from the 1470th meeting.

1473rd meeting

Thursday, 10 October 1974, at 12.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1473

In the absence of the Chairman, Mr. Broms (Finland), Vice-Chairman, took the Chair.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. WEHRY (Netherlands) said that the Netherlands had been a member of the Special Committee on the Question of Defining Aggression established in 1952 and had even filled the post of Rapporteur of the second Special Committee established in 1954. When the Special Committee had been revitalized in 1967, the Netherlands, having somewhat lost faith in the usefulness of the enterprise, had abstained in the vote on the pertinent resolution but had nevertheless continued to follow the work done in that field with interest.

2. Despite the many ambiguities and other shortcomings in the text, his delegation welcomed the draft definition proposed by the Special Committee (see A/9619 and Corr.1, para. 22). It was an important document which, if endorsed in that form by the General Assembly, would constitute a valuable new source of international law. The definition appeared to be primarily a text of reference at the disposal of the Security Council and a warning to be added to the Charter to discourage potential aggressors. His delegation therefore considered that the definition would be another weapon in the legal arsenal of the Security Council, which was the United Nations organ responsible for combating the illegal use of force by all available means. It must, however, be acknowledged that, since its establishment, the Security Council had shown political and psychological wisdom in placing the search for a lasting solution to conflicts before attempts to establish the culpability of one or other of the parties. His delegation was therefore gratified to note that the draft definition rightly recalled and safeguarded the discretion of the Security Council, particularly in the preamble, article 2 and the first sentence of article 3 where it was provided that "any of the ... acts" in the illustrative categories listed "shall ... qualify as an act of aggression". It could rightly be inferred from that formula that those acts did not constitute acts of aggression *per se*, but that the Security Council must weigh them in the light of all relevant circumstances, including the intent of the perpetrator. Those few examples showed that his delegation did not ask for, nor had ever expected, a perfect definition. To insist on perfection would be tantamount to opposing the adoption of a universally acceptable definition. His delegation would therefore in principle be against any attempt to modify the draft definition in any way before it was finally adopted by the Assembly. No definition of an offence could be applied automatically; it was always applied to an offender through the action of a judge, and judges in no way needed a rigid definition of offences to render fair justice.

3. Having accepted the existence of certain ambiguities in the text of the draft definition, his delegation nevertheless wished to put on record its interpretation of some of its provisions. First of all, with regard to the questions of shared culpability and priority, his delegation noted that the draft definition virtually ignored the fact that conflicts between States often arose from a complex chain of events for which the parties were jointly responsible. Only the reference to "other relevant circumstances" in article 2 appeared to reflect that aspect of the reality. It was important, in fact, to avoid considering that determination of the first use of force was essential evidence of an offence. In the view of his delegation, articles 2 and 3 of the draft definition did not mean that there could be no aggression (and therefore no international responsibility by an *a contrario sensu* application of article 5, second paragraph) without the first use of force being established. His remarks were in no way intended to minimize the importance of the first use of force as *prima facie* evidence of an act of aggression. As to the legal effect of *prima facie* evidence, his delegation thought that that qualification was useful because by shifting the burden of proof it facilitated the task of the Security Council, if, of course, the Council considered it necessary to consider the question of culpability at all. It should, however, be pointed out that *prima facie* evidence did not lead an independent life allowing for the implicit determination of the existence of an act of aggression in the event of the Security Council not reaching a disculpatory decision. There could be no act of aggression unless its existence had been explicitly determined by a positive pronouncement on the part of the Security Council. Article 39 of the Charter left no room for doubt on that score. His delegation felt certain that such would be the opinion of the International Court of Justice if the Security Council were to request an advisory opinion on that point.

4. With regard to the question of armed force, his delegation agreed with the Special Committee's decision to restrict the notion of aggression to the use of armed force. That reduced the "discordance" between the choice of the word "aggression" used in Article 39 of the Charter and that of the term "armed attack" in Article 51. There were many illegal ways of using force, prohibited generally in Article 2, paragraph 4, of the Charter, which did not constitute aggression, morally or historically, if they did not involve the use of armed force. In the early stages of the Special Committee's work, reference had often been made to moral, economic or political forms of coercion. The Special Committee would probably never have been able to discharge its mandate if it had not avoided those pitfalls. Two remarks must, however, be made. First,

article 5, second paragraph, of the draft definition concerning international responsibility could not again be interpreted *a contrario sensu* to mean that no responsibility could arise from the use of non-armed force. His delegation believed, on the contrary, that the responsibility of a State could very well arise from the illegitimate use of non-armed force. On the other hand, it would be essential to allow for evolution of the understanding of the terms "armed" or "weapons" in articles 2 and 3 to take account of technological progress, the development of the political acuity of Governments and, it was to be hoped, the results of the efforts towards total disarmament. Too restrictive an interpretation of the terms "armed" and "weapons" could result in the behaviour of a State exercising its right of self-defence under Article 51 of the Charter being considered delinquent while other States, using para-military methods to exert overwhelming pressure, avoided being branded as aggressors. It was therefore important to allow the Security Council a certain flexibility in applying the definition.

5. The question of support to peoples forcibly deprived of the right to self-determination, freedom and independence, which was dealt with in article 7 of the draft definition, was viewed by his delegation with feelings of both sympathy and caution. It was certainly good to reaffirm those rights, although such a provision might from the legal point of view appear to be unnecessary in a text which had already, in the preamble, reaffirmed the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), and, in article 6, specified the relationship between the definition and the Charter. On the other hand, it was important to guard against interpreting the affirmation of the right of the peoples concerned to receive support as a legitimization of armed support. The provisions of the Charter providing for the settlement of international disputes by peaceful means allowed of no exceptions other than that provided for in Article 51 of the Charter or action decided on by the Security Council. It was, moreover, important to emphasize that article 7 referred to "particularly peoples under colonial and racist régimes or other forms of alien domination". One could thus state that other peoples forcibly deprived of the right to self-determination, e.g., peoples which did not enjoy democratic government, deserved support, but not that they deserved armed support.

6. The outcome of the work of the Special Committee on the Question of Defining Aggression gave grounds for hope that work on the draft Code of Offences against the Peace and Security of Mankind and the establishment of an international criminal jurisdiction would be resumed.

7. Mr. LEE (Canada) said that the problem of aggression lay close to the heart of the purposes of the United Nations. In fact, two of the reasons for the establishment of the United Nations had been to prevent and to contain aggression, and it could be said that the definition now before the Sixth Committee represented a step towards that goal. However, a definition by its very nature, introduced elements of imperfection in the approach to the solution of the problem of aggression since it could not fail to leave out factors which should have been included, while including some which it should probably have left out. While it did not solve the problem, a definition had, however, the merit of reducing it to manageable proportions and making it more susceptible of solution. At the same time, a definition sharpened the focus on the issues involved and illustrated their gravity.

8. The definition proposed by the Special Committee represented a delicate balance; it was a carefully worked out combination of a number of factors. It could truly be said that each of its articles was the result of compromise among many disparate and sometimes conflicting positions. It remained to be seen whether that definition, which was not perfect, would prove workable. It would certainly, in the view of his delegation, have considerable moral authority, but only time would determine its utility, particularly as a guide to the Security Council. The definition represented positive progress on the road to the progressive development of international law, which was one of the purposes of the United Nations as well as one of the objectives of Canadian foreign policy. Without wishing to make law an end in itself, his delegation nevertheless felt that it should be supported when it contained really valid rules which promote the development of harmonious relations among States, as seemed to be the case with the draft definition.

9. His delegation was satisfied with the basic definition of aggression contained in article 1. Although that article did not specifically refer to cases of indirect aggression, his delegation considered that that aspect of the problem was dealt with satisfactorily elsewhere in the definition. It also wished to stress the significance of the explanatory note to article 1, which made it clear that the concept of "state" was not an essential element of the definition of aggression, thereby recognizing one of the realities of international life while avoiding a restriction on the scope of the definition so as not to hamper its applicability.

10. Article 2 represented a compromise which had been carefully worked out following considerable difficulties regarding the inclusion of the criterion of aggressive intent. That compromise, which his delegation regarded as workable, retained the notion of the use of armed force as the essential element to be considered by the Security Council in determining that an act of aggression had been committed. However, by making armed force *prima facie* evidence of aggression, article 2 left the field of inquiry open to the other aspects of each particular case. That was further emphasized by the use of the term "other relevant circumstances". In a great number of cases the use of armed force could not be the only criterion to be identified, and aggressive intent, in particular, should be taken into consideration. His delegation attached considerable importance to intent, which it regarded as one of the necessary constituent elements of the wrongful act. Although it was difficult to prove that element, it could in many cases be one of the most important factors to be considered by the Security Council. His delegation interpreted article 2 to mean that the use of armed force raised a rebuttable presumption of aggression; it was an important but not exclusive determinant. The existence of aggressive intent could be significant as one of the other "relevant circumstances" which could either rebut or support that presumption. His delegation was therefore pleased that the concept

of aggressive intent had been retained in the wording of article 2.

11. With regard to article 3, the acts of aggression listed in subparagraphs *(a)* to *(g)* were illustrative rather than exhaustive; it would have been unnecessary, impractical and perhaps impossible to have it otherwise. Furthermore, it should be noted that article 3 was subject to the provisions of the previous article, and that reading the two articles in conjunction made it obvious that there was a two-stage process, governed by article 2 and supplemented by article 3. It could be envisaged that the proceedings of the Security Council would be the following: the Council would first examine the act in question in the light of the list of acts of aggression given as an example. If the act fell within one of the five categories mentioned therein, the Council's deliberations would be substantially simplified. Whether that was the case or not, however, the act would still constitute only *prima facie* evidence of aggression, by virtue of article 2. The Council could broaden the scope of its inquiry to the "other relevant circumstances", in order to arrive at a final determination as to whether an act of aggression had been committed. It could thus be concluded that the list in article 3 was designed only to be an aid in determining the character of an act, and that function should answer much of the criticism voiced with regard to that article in the Special Committee, especially if it was borne in mind that the list was subordinated to the provisions of article 2. The words "qualify as an act of aggression" had been critized as being ambiguous. It should be remembered, however, that the examples given were illustrative, and that the elements which were determinant in establishing whether an act of aggression had been committed were to be found in article 2. That did not mean, however, that his delegation considered subparagraphs *(a)* to *(g)* superfluous, for the Special Committee had thus provided concrete elements which could be of great assistance to the Security Council.

12. With regard to subparagraph *(d)*, his delegation noted that it might be interpreted sufficiently widely to include enforcement measures taken by a coastal State within an economic or fishing zone or perhaps even within the limits of its territorial sea, even if those measures related to fisheries or pollution control. His delegation wished to place on record its understanding that nothing in that definition, and in particular subparagraph 3 *(d)*, should be construed as prejudicing or diminishing the authority of a coastal State to exercise its rights in maritime zones within the limits of its national jurisdiction.

13. Lastly, it should be noted that subparagraphs *(f)* and *(g)* described situations which had not traditionally been thought of as acts of aggression, at least when that concept was equated with acts of war. Subparagraph *(f)* addressed itself to the situation where one State allowed its territory to be used by another State to commit an act of aggression against a third State. His delegation hoped that that criterion would be applied with caution, for it should be remembered that the knowledge and control of a State regarding the improper use of its territory might vary considerably, and that that State might suffer more than the third State as a result of the act in question. His delegation was glad that the Special Committee had included subparagraph *(g)* in the definition, thus indicating its acceptance of the thesis that the distinction between direct and indirect aggression was artificial. The determining factor should be the degree of force used rather than the means or modalities by which that force was expressed. In his delegation's view, that subparagraph represented an attempt to outlaw one aspect of the serious problem of terrorism which starkly confronted the international community. It was true that terroristic acts might be of such magnitude as to be as harmful as other acts of aggression.

14. With regard to article 5, the first paragraph was a truism, but the second was of value in that it referred to international law and affirmed the validity of the principles of the Nürnberg Charter and the Declaration on Friendly Relations. The last paragraph was a necessary corollary to the illegality of aggression.

15. Article 7 had been the subject of considerable controversy in the Special Committee. As that article provided that the definition could not in any way prejudice the right to self-determination, freedom and independence, equal emphasis must be given to the proposition that its provisions should be interpreted subject to the United Nations Charter. Canada supported the peoples who were struggling for self-determination and human dignity. It considered, however, that it was not necessary to use violent means to settle such political conflicts. His delegation interpreted the reference to the struggle of those peoples as meaning struggle by peaceful means, and not as a condonation of the use of force contrary to the provisions of the Charter. Furthermore, it considered that the article must not be interpreted as condoning an assault on the territorial integrity of any State or the dismemberment of any State by violent means. The article did, however, have the advantage of stressing that the definition could not be applied in a manner which would detract from the right of peoples under colonial domination to self-determination in accordance with the Charter.

16. Mr. IGUCHI (Japan) said he was glad that the Special Committee, of which his delegation had been a member since 1968, had completed its work. The draft definition was a product of compromise and hence could not claim to be perfect. It nevertheless constituted a well-balanced and reasonably satisfactory synthesis of the wide range of positions expressed by Member States on the question of defining aggression.

17. The problem facing the Sixth Committee was whether it would adopt the definition of aggression at the current session, thus bringing to a successful conclusion an inspiring project which had originated in the days of the League of Nations, or whether it would fail once again in that Herculean task. Everyone should reflect upon the fact that even minor changes in any of the articles could upset the delicate balance which had been attained only after lengthy negotiations and thus destroy a document which had been worked out with great care.

18. His delegation wished to recall that during the debates at previous sessions of the General Assembly and the Special Committee it had already expressed its views on such questions as the principle of priority, aggressive intent, the list of acts of aggression and the legal consequences of aggression, and it reserved the right to intervene at a later stage of the discussion if necessary.

19. In his delegation's view, the definition before the Committee was intended to provide the Security Council with guidance in exercising its competence under Article 39 of the Charter to determine the existence of an act of aggression. Consequently, there was no room for automaticity, since the Security Council must take into account all the relevant circumstances of each case. Moreover, the definition should be read as a whole and in conjunction with the relevant provisions of the Charter and the Declaration on Friendly Relations.

20. In conclusion, his delegation considered that in the case of a question as important as the definition of aggression it was essential to adopt the definition either by consensus or by a unanimous vote.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued)* (A/C.6/L.980, L.982, L.983)

21. The CHAIRMAN announced that Botswana, the Libyan Arab Republic and the Syrian Arab Republic should be added to the list of sponsors of draft resolution A/C.6/L.980.

AGENDA ITEMS 96 AND 97

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties *(continued) **

Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions *(continued) (A/C.6/L.981)**

22. The CHAIRMAN announced that Botswana had become a sponsor of draft resolution A/C.6/L.981.

The meeting rose at 1.15 p.m.

* Resumed from the 1468th meeting.

1474th meeting

Friday, 11 October 1974, at 3.40 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1474

In the absence of the Chairman, Mr. Broms (Finland), Vice-Chairman, took the Chair.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. JEMIYO (Nigeria) expressed appreciation of the valuable work of the Special Committee on the Question of Defining Aggression, resulting in the adoption of the draft definition of aggression as it appeared in paragraph 22 of document A/9619 and Corr.1. The application of that definition would lead to the effective maintenance of international peace.

2. Articles 3 and 4 of the definition, viewed in the light of Article 39 of the Charter, were helpful in that article 3 served to provide guidelines to the Security Council whose task was to determine the existence of any act of aggression, while article 4 left the Council free to determine other forms of aggression. Article 3 would also guide the activities of States in their international relations, serving as a reminder of their obligations under Article 2, paragraph 4, of the Charter.

3. He commended article 5 because its provisions established that an aggressor would not be allowed to reap the benefits of the illegal acts committed. Another merit of the definition was the fact that it took cognizance in article 6 of the provisions of the Charter, for example, Article 51, concerning cases in which the use of force was lawful. Moreover, his delegation welcomed the provisions of article 7 reaffirming the rights of peoples under alien domination to seek liberation, in accordance with the principles of the Charter and those of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex).

4. The report under discussion should receive the unanimous support of the Committee.

5. Mr. PEREZ DE CUELLAR (Peru) said that his delegation had consistently supported the resolutions extending the mandate of the Special Committee since its inception under General Assembly resolution 2330 (XXII) because it had always been aware of the importance of defining aggression and because it believed that the law must serve justice in order to promote and consolidate peace.

6. Aggression had originally been understood as an act contrary to the norms of universal ethics but not, owing to the absence of a norm of international law prohibiting aggression, as an internationally unlawful act. Now that the

need for a definition of aggression for the purposes of international law had been recognized, it was essential to decide what such a definition should consist of. His delegation felt that a definition of aggression should, above all, serve exclusively the cause of peace.

7. The growing importance of the increasingly close economic, political and cultural relations between States and the interdependence of their interests meant that interference in each other's economic, political or cultural affairs were now susceptible of being characterized as acts of aggression. It would seem from the definition that the Special Committee had, for methodological reasons, not studied all aspects of the question of aggression as laid down in paragraph 3 of resolution 2330 (XXII) but had confined itself to considering armed aggression and had ignored the form of aggression which was most common at the present time, namely, economic aggression. It was not enough that article 4 of the definition established that the list of acts of aggression given in article 3 was not exhaustive. The definition of aggression had to be broadened to include such forms as economic or political coercion or harassment, which meant that the definition, particularly article 2, should be thoroughly revised. The developing countries were the main but not the only victims of those insidious forms of aggression.

8. His delegation was particularly concerned at the drafting of article 3 *(d)* because it disregarded current developments in the law of the sea and the full recognition of the right and responsibility of a coastal State to protect the resources and preserve the marine environment of a broad zone off its coasts. There were cases where the coastal State would be obliged to take measures to prevent illegal acts, and those measures might of necessity include the use of force. Under the provisions of article 3 *(d)*, such measures might be characterized as an attack, for no distinction was made between measures carried out on the high seas, in the territorial sea, or even in the internal sea of a coastal State. Consequently, a coastal State might be condemned as an aggressor for applying the law to an area under its national jurisdiction. His delegation did not wish to believe that that had been the intention of those who had drafted the definition but the explanatory notes and the records confirmed its misgivings.

9. The intention seemed to be to make the actions of the coastal State conform to international law, but considering that the law of the sea was currently in the process of revision, it was difficult to know what international law was meant. The way in which article 3 *(d)* was drafted meant that an outdated concept of international law would be included in the definition. Despite assurances given to his delegation in informal consultations that there was no intention to impair the recognized rights of a coastal State, he would prefer that an explicit reference to that effect should be included in the definition, and would consider any suggestions for amending article 3 *(d)*.

10. His delegation had heard much of the delicate balance achieved in the draft definition and every delegation had appealed to the others to confine themselves to entering reservations where there were no fundamental objections. His delegation had therefore refrained from raising objections to many parts of the draft definition which were not completely satisfactory, but it could not pass over in silence a provision the adoption of which might endanger a national interest. Although it appreciated the delicate balance reached by the Special Committee, his delegation stressed that the aim was to find a definition acceptable to all States. Even if, as had been said, it had taken 50 years of effort to produce the draft definition before the Committee, it would be better to conclude that its work was not complete than to impose an unsatisfactory definition on the international community. It was for the Committee to decide whether the Special Committee had in fact fulfilled its mandate.

11. Mr. NYAMDO (Mongolia) welcomed the draft definition of aggression which the Special Committee had elaborated after seven years' hard work. Commenting on the text of the draft, he stressed the importance of the references in the preamble to the Charter of the United Nations, in particular the Charter provisions concerning the maintenance of international peace and security. He drew special attention to the sixth to ninth preambular paragraphs. Article 1 amplified the provisions of Article 2, paragraph 4, of the Charter. He noted that, as his delegation had wished, the phrase "however exerted", which was in the consolidated text of the reports of the contact groups and of the drafting group established by the Special Committee in 1973[1] had been deleted. As the result of a compromise the word "sovereignty" had been retained, although it did not appear in the above-mentioned Article of the Charter. However, his delegation did not object to article 1, because it recognized its significance for the progressive development and codification of present-day international law. Article 2 was a result of a compromise between divergent views as to the relative importance of priority and aggressive intent. The principle of priority was a most important objective criterion for the definition of aggression, but the article also gave the Security Council the discretionary right to determine, in the light of relevant circumstances in each specific case, whether or not an act of aggression had been committed. It was important to note that under the Charter only the Security Council had that right. Articles 3 and 4 were, on the whole, satisfactory. With regard to article 5, he did not see why the words "war of aggression" had been used instead of the term "aggression", which appeared everywhere else in the draft. It was indisputable that any act of aggression was a crime against peace entailing international responsibility.

12. Article 6 made it clear that a case of action taken to restore international peace and security in accordance with the Charter of the United Nations would be a case in which the use of force was lawful. Under Article 51 of the Charter, a State was entitled to exercise its inherent right of self-defence only if an armed attack occurred against it. Article 7 of the draft recognized another case in which the use of force was lawful, namely, where dependent peoples were struggling to exercise their inalienable right to self-determination. Article 8 was of particular importance since the effectiveness of the definition would depend greatly on its interpretation and application.

13. He stressed the importance of the draft definition, which represented a major victory for the peace-loving

1 See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex II, appendix A.

forces of the world. He hoped that the Sixth Committee would approve the text by consensus without modification and he supported the Special Committee's recommendation that the General Assembly should adopt the draft definition.

14. Mr. ORREGO (Chile) said that the draft definition of aggression was a major step forward for the progressive development of international law. However, it would have been preferable if the definition had not been confined to armed aggression, since economic and ideological aggression were increasingly used to coerce the developing countries. His Government hoped that the other aspects of aggression could be discussed in the General Assembly.

15. The inadmissibility of intervention in the domestic or foreign affairs of a State had been established by General Assembly resolution 2131 (XX). That had been an important step forward in that it had made armed intervention an act of aggression, while legally differentiating it from armed attack. But there were many other forms of intervention of concern to the developing countries which could constitute acts of aggression, particularly when systematically employed. His delegation therefore welcomed the note in paragraph 16, subparagraph (2), of the report, although he felt it would have been useful for the sentence in quotation marks to have been included in the text of the definition.

16. Nothing in the preambular paragraphs or in article 6 of the draft definition affected the scope of the Charter or the functions and powers of the organs of the United Nations. The definition did not automatically rule as to which acts were acts of aggression. In conformity with Article 39 of the Charter, it was left to the Security Council to make that decision. The definition would serve as a guide for the Security Council in its decision, since it embodied legal criteria from which no organ could arbitrarily depart. In that respect, the draft definition was a positive contribution to the progressive development of international law.

17. One important point concerning article 2 was that its provisions did not mean that a State could be considered an aggressor as long as the Security Council had not reached a specific determination on the matter. In making that determination, the Council would take into consideration *prima facie* evidence of priority and other relevant circumstances. If that were not the case, a case might arise in which the State labelled an aggressor on the basis of *prima facie* evidence of priority would continue to be regarded as such indefinitely. That was clearly not the intention of article 2, since it would be tantamount to reducing the powers of the Security Council and was not in accordance with the provisions of the Charter.

18. Just as the draft definition did not affect the scope of the Charter or the functions and powers of United Nations organs, neither did it prejudice the competence of the General Assembly with relation to the maintenance of international peace and security, nor the competence of the regional bodies nor the right to individual or collective self-defence. None the less, he would have preferred that an express reference to Articles 51 and 53 of the Charter be included in the definition. The principle of priority, on which article 2 was based, was only the starting point for defining aggression, which was why the Security Council must take other relevant circumstances into account, including the seriousness of the acts or their consequences. The definition arrived at was appropriate, particularly in so far as it left open the possibility of taking into account the element of intent. From the time that a war of aggression had been characterized as a crime against international peace, giving rise to criminal responsibility, it became necessary to weigh the element of intent in conformity with generally recognized principles of penal law.

19. His delegation was gratified that the list of acts of aggression given in article 3 included indirect means of aggression. It would also have been desirable to include types of aggression that did not constitute armed attack, as had been done in the Inter-American Treaty on Reciprocal Assistance. However, he welcomed the safeguard provided in article 4 whereby the Security Council was free to decide what other acts constituted aggression. Furthermore, his delegation supported the guarantee provided by article 7 for the rights of people suffering some form of alien domination.

20. He was concerned about the wording of article 3 *(d)*, since the inclusion of an attack against marine and air fleets had not originated in any of the draft definitions submitted by member countries to the Special Committee. His delegation wished it clearly established that neither that paragraph nor any other paragraph of the draft definition could be interpreted as impairing the right of coastal States to apply national legislation or other pertinent regulations within the maritime zones under their jurisdiction. In that respect, he fully supported the remarks of the representatives of Ecuador and Indonesia as they appeared in the report of the Special Committee, and the statement made earlier by the representative of Peru.

21. Mr. NJENGA (Kenya) expressed gratitude to the Special Committee for completing its task at its seventh session and submitting to the General Assembly a consensus text, which he hoped would be generally acceptable to all delegations. His delegation had already indicated its support for the draft definition in the General Assembly (2257th plenary meeting) and would like to take the occasion to comment on certain provisions of the draft which were ambiguous.

22. In article 1, his delegation saw no need for the phrase "or in any other manner inconsistent with the Charter of the United Nations". The instances in which the Charter permitted the use of force were clearly spelt out. The inclusion of that phrase might open a loop-hole for States committing aggression to argue that their use of armed force was consistent with the Charter. Since the Special Committee had decided to deal only with armed aggression, leaving out economic and other forms of aggression, article 1 should make that point clear by referring to "armed aggression" at the beginning of the article.

23. His delegation found the language of article 2 acceptable, since it put the issue of priority in the proper perspective. The words "in contravention of the Charter", however, were open to the same criticism as the words "inconsistent with the Charter", on which he had commented in connexion with article 1. Article 2 quite rightly

made no reference to the motive or purpose for using force. However noble the motives of the State which first used armed force against another, it had committed aggression and was to be condemned. The presumption of aggression provided for in article 2 should continue to operate until the State which first used force on another was exonerated by the Security Council. If the Council was prevented from taking a decision or stymied through the exercise of the veto, the State subjected to aggression was entitled to take measures to eliminate the effects of the aggression. That was the only interpretation of article 2 which was rational, given the present realities in the Security Council.

24. The acts listed in article 3 represented the most serious instances of aggression but were not necessarily the only acts that could constitute aggression. The systematic sabotage of a country's economy, for example, constituted an act of aggression as pernicious as if armed forces had been used. Like the representative of Canada, his delegation had serious reservations with regard to the provision in article 3 *(d)*. The language used there referring to an attack on marine and air fleets was too broad and could be interpreted as prohibiting a State from exercising its jurisdiction in marine areas. Such an interpretation would be unreasonable; however, to avoid any future controversy in that regard, he suggested that a formal statement should be agreed upon and incorporated in the final report adopting the definition to the effect that nothing in the definition, and in particular article 3, could in any way prejudice the right of coastal States to take measures to enforce their national legislation in maritime zones within the limits of national jurisdiction. The generally recognized right of hot pursuit should also be excluded from the application of article 3. His delegation was in agreement with subparagraph *(f)*, which prohibited the use of a State's territory by another State to commit aggression against a third State. However, the action of a State, in allowing its territory to be so misused must amount to active collusion with the aggressor State. It would be unreasonable to extend that paragraph to such an instance as routine permission of overflight to military aircraft which proceeded to attack a third State. Nor should the article be extended to a situation where the consent of a State was obtained through coercion or other pressures. It should be noted that subparagraph *(g)* had no relevance whatsoever to the right of a State to give support to peoples struggling against colonialism, foreign domination or racist oppression. That right was recognized in the Declaration on Friendly Relations and was explicitly safeguarded in article 7 of the draft definition. Oppressed peoples were entitled to use all means at their disposal in self-defence against such acts of continuing aggression as colonialism, foreign domination, racist oppression and *apartheid*. Recent events in Africa, culminating in the victory of the liberation movements in Guinea-Bissau, Angola and Mozambique, had vindicated the necessity of armed struggle against oppressors. The African States made no secret of their assistance to liberation fighters and would continue to assist them by all means at their disposal until Africa was totally liberated.

25. He expressed concern at the wording of the second paragraph of article 5, which should have stated that aggression itself was a crime against international peace. There was no justification for waiting until aggression became war before it could be labelled as a crime.

26. Mr. BESSOU (France) expressed satisfaction that the Special Committee had finally reached a consensus on the draft definition of aggression. His delegation had supported that consensus and hoped that the General Assembly would adopt it by consensus, refraining from making any changes or amendments which might upset the delicate balance of the text. Despite its ambiguities and short-comings, the text represented the most that could be achieved if it was to be generally acceptable. The value of the draft definition did not reside solely in the fact that it gave guidelines to the Security Council for action under Article 39 of the Charter; the draft went further and clarified in some measure the right of self-defence against armed attack provided by Article 51 of the Charter. To that extent, the existence of a definition of aggression was an effective means of deterring potential aggressors.

27. Article 1 satisfactorily defined and limited the scope of the definition *ratione materiae* and *ratione personae.*

28. Article 2 gave pride of place to the concept of priority, which his delegation had always supported. The first use of force raised a presumption of aggression, which could only be rebutted through the Security Council, acting in accordance with the powers conferred upon it in the second part of the article. The retention of the expression "in contravention of the Charter" was regrettable since an aggressor might claim that he was acting in accordance with his own interpretation of the Charter. The reference to the Charter in article 2 should be understood as being addressed solely to the Security Council and not to the aggressor State. The second part of article 2, concerning the powers of the Security Council, was also necessary in that it tempered the somewhat peremptory affirmation at the beginning of the article.

29. Article 3 *(g)* referred to the sending of armed bands. Until they had crossed the frontier of another State, no act of aggression had occurred; the mere fact of organizing or preparing armed bands did not of itself constitute an act of aggression.

30. He had no comments on article 4 save that it was indeed essential to state clearly that the enumeration in article 3 was not exhaustive.

31. His delegation had always believed that the study of the legal consequences of aggression mentioned in article 5 was not necessary for the definition. The text which the Special Committee had finally worked out was, however, acceptable to the extent that it merely noted the present status of international law without prejudging its development.

32. Article 6 served a useful purpose in stressing that the Charter was the only legal basis for the draft definition. The latter might acquire the legal status of a General Assembly resolution but it could not modify the Charter in any way.

33. Article 7 was a safeguarding clause, essentially political in nature. As drafted, it seemed somewhat alien to the text of the definition, since it was not concerned with aggression as defined in article 1, i.e. between sovereign States.

34. On the whole, the positive aspects of the draft definition outweighed the inevitable short-comings.

Accordingly, his delegation was prepared to accept it and join in a consensus for its adoption.

35. Mr. RAKOTOSON (Madagascar) paid a tribute to the Special Committee for having finally succeeded in formulating an agreed definition of aggression. The international community could rejoice that the results sought over a period of 50 years had finally been attained. Madagascar had been a member of the Special Committee and had always contributed actively to its work. Madagascar, as an Indian Ocean country, was delighted that the international community now had a code of conduct which could make a major contribution to the realization of the primary goal of the Charter of the United Nations, namely the maintenance of peace.

36. He noted that the preamble of the draft definition incorporated two basic principles of the Charter, namely the peaceful settlement of disputes and the inviolability of the territory of States. Article 1, which included the general definition, stated that the definition dealt exclusively with armed aggression. The Special Committee had wished to confine itself to the letter of the Charter, which referred only to armed aggression, particularly in Article 51, concerning the legitimate use of force. His delegation wished to draw attention to the fact that there existed in the contemporary world new forms of force no less aggressive than armed force, namely certain economic and ideological acts. It was perhaps because the Charter had been born in the aftermath of war that it had concentrated on armed force only. However, the formula contained in article 2 appeared sufficiently flexible to make possible its extension to forms of aggression other than acts of armed force. Article 2 stressed the principle of priority as one of the conditions of aggression, while authorizing the Security Council to take into consideration all relevant circumstances. The aggressor was not necessarily the party which unleashed a conflict, and the victim of a first attack might actually be the party responsible. The term "relevant circumstances" might be interpreted to mean a provocative act of sufficient gravity to justify an act of aggression and might include, for example, acts of an economic nature, such as a maritime blockade, or of a psychological nature, for example, racist propaganda.

37. Article 3 listed the most typical and most serious acts of aggression. The list was not exhaustive, of course, and the Security Council, under the Charter, had a general power of evaluation to determine the existence of an act of aggression. His delegation had stressed the importance of that power of the Security Council on many occasions. With regard to article 3 *(d)*, his delegation shared the views expressed by certain other delegations concerning the effects of its application, for example, in the case of a fishing fleet operating in the maritime zone under the national jurisdiction of another country. The term "attack" seemed imprecise and might be used against a coastal State applying sanctions against a violator in implementation of its own national maritime legislation. The definition should not prejudice a State's right to take steps to ensure respect of its own maritime rights. Accordingly, Madagascar, as a coastal State, supported the reservations expressed by certain other delegations.

38. Article 5, first paragraph, set forth the major principle of non-intervention in the internal affairs of States, while the second paragraph qualified a war of aggression as a crime against international peace. His delegation felt that the United Nations should accelerate its examination of State responsibility and the establishment of an international criminal jurisdiction. The third paragraph of the same article set forth the primary principle that no aggressor should be allowed to benefit from the use of force.

39. His delegation attached the greatest importance to article 7, which recognized the legitimacy of the noble struggle of many countries of the third world for self-determination and independence. The use of force in that struggle could not constitute aggression, since a colonized country was the victim of permanent aggression by the colonizing State. The term "struggle" in that context should be interpreted as meaning the use by colonialist-dominated States of all means at their disposal. The inclusion of article 7 was extremely opportune in order to avoid confusion between what did and what did not constitute aggression. In that connexion, he drew attention to the third world countries' active contribution to United Nations deliberations; they had brought a breath of fresh air to the United Nations and had contributed to a better understanding of relations among States and the codification and progressive development of international law. That contribution could not fail to help in bringing about a more equitable international legal order and thus promoting the cause of peace.

40. His delegation welcomed the Special Committee's adoption of the draft definition. It was of course not perfect—no human product was—but it did constitute a positive contribution and represented the result of the remarkable spirit of conciliation within the Special Committee. The draft definition was more than a codification text. His delegation would like to believe that it would form a code of conduct for sovereign States in their relations and strengthen the resolution of all States to follow the path of peace. The text would achieve its real goal when the United Nations no longer needed to cite it. His delegation found the draft definition acceptable and believed that it should be recommended to the General Assembly for adoption.

41. Mr. SETTE CÂMARA (Brazil) said that the difficulties of defining aggression were abundantly illustrated by the painstaking and prolonged efforts of the international community to reach agreement on that problem, which could be traced back to the speculations of the classic writers on international law on the distinction between the *bellum justum* and unlawful wars. The first attempt to organize the international community on a juridical basis, namely the Covenant of the League of Nations, had been founded on the idea of the condemnation of aggressive wars. Notwithstanding, the Covenant had not included material criteria for the definition of the aggressor. The task of determining the existence of an act of aggression had been entrusted to the Council of the League. That had been an *a posteriori* approach to the problem, and the United Nations had inherited the same empirical method through the machinery of Article 39 of the Charter.

42. The Sixth Committee could not but rejoice that the Special Committee had succeeded in negotiating a consensus solution, after 24 years of strenuous efforts in different

United Nations organs, during the course of which the deadlock between the proponents of a general and comprehensive definition and the proponents of a casuistic catalogue of acts of aggression and seemed insurmountable. The roots of that binomial discrepancy were very old and went back to the general formula of the Protocol for the Pacific Settlement of International Disputes signed at Geneva in 1924,[2] on the one hand, and the Litvinov-Politis enumerative definition of the Conference on Disarmament at Geneva in 1933,[3] on the other.

43. He recalled that at the San Francisco Conference two delegations had tried to introduce a definition of aggression into the Charter, the Philippines[4] being in favour of the adoption of an enumerative definition, following the lines of the Litvinov-Politis formula, but with the addition of the concept of subversion of the internal order, and Bolivia[5] proposing a definition based on the casuistic criterion, introducing at the same time the idea of a sort of guarantee by the permanent members of the Security Council against the commission of any act of aggression by any Member of the Organization. The long history of the efforts of the United Nations to define aggression dated from the adoption of resolution 378 (V) up to the present. After so many years of inconclusive and frustrating work, his delegation noted with the utmost satisfaction that the Special Committee had now been able to complete its task by submitting for the consideration of the current General Assembly a final draft definition of aggression. He paid a tribute to the Special Committee for that achievement.

44. Although not a member of the Special Committee, Brazil had followed the activities of that body with great interest. Brazil had consistently condemned the use of force in international relations and had ever upheld the principle of recourse to peaceful means for the settlement of disputes. Its diplomatic history bore testimony to its faithful adherence to arbitration and direct negotiations for the demarcation of its boundaries and the settlement of controversies arising therefrom. Brazil had always upheld one of the most lauded tenets of Latin American international practice, namely repudiation of wars of conquest, which had been banned by its Constitutions. Likewise, his country had never recognized the use of armed force as validating any encroachment upon the sovereignty, territorial integrity or political independence of a State.

45. Since the signing of the Briand-Kellog Pact[6] in 1928, international law had abolished from State practice the right to use force as a legitimate instrument of national policy. Unfortunately, that formal condemnation had not protected mankind from the scourge of another world-wide confrontation, nor had it curbed the outbreak of several armed conflicts in the post-war years. Even during the life-span of the United Nations, localized conflicts had erupted from time to time, constituting occasions on which the Security Council had been called upon by States, under Article 39 of the Charter, to "determine the existence of any threat to the peace, breach of the peace, or act of aggression". His delegation firmly believed that one of the merits of the definition adopted by the Special Committee was that it provided the Security Council with elements that would facilitate its work, thus helping it to decide promptly the measures to be taken in order to restore peace. That, together with the undeniable deterrent effect upon potential aggressors that would be exerted by the definition of aggression, constituted a considerable improvement in the Charter machinery for the maintenance of international peace and security.

46. His delegation approached the current text with the respect merited by a consensus arrived at after so many years of difficult and protracted negotiations. It praised the agreement obtained and believed that everything should be done in order not to upset the balance of its provisions. His delegation had no reservations concerning the preamble. The multifarious aspects of the background of the problem of defining aggression were faithfully reflected therein. It was particularly gratified to note that the territorial approach, which had been at the basis of the Litvinov-Politis formula, was incorporated in the sixth and seventh preambular paragraphs and that the deterrent aspects of the definition were referred to in the eighth preambular paragraph. At the same time, the preamble recognized the primary responsibility of the Security Council in determining the existence of aggression. The definition was intended to be an instrument of assistance to the Council for the accomplishment of its mandate and in no way limited the scope of its action.

47. Turning to the text of the articles of the draft, his delegation welcomed its comprehensiveness and its careful and well-balanced formulation. The bridge between the general definition and the casuistic definition had been constructed thanks to the combination of the provisions of article 1 and article 3. The broad terms of the definition in article 1 constituted an attempt to blend the territorial concept with a more flexible component, namely that of political independence. The saving provision of the final part of that article aligned the definition with the scope, principles and objectives of the United Nations Charter. Although couched in general terms, the definition in article 1 was far more specific than that contained in the Geneva Protocol of 1924.

48. Article 2 rested on sound ground when it established a presumption of aggression against the first State which used armed force. It had, however, been wise to include an express reservation concerning the complete freedom of the Security Council to accept such a presumption or not, according to relevant circumstances. In practical terms, however, the presumption that the aggressor was the first party to use armed force was of doubtful value, since it was usual in armed conflicts for all parties involved to exchange reciprocal accusations of being the first to resort to force.

49. Article 3 listed several acts coming under the head of aggression, including both the direct and the indirect use of force. The list was not exhaustive. Quite properly, article 4 conferred upon the Security Council the freedom to

2 League of Nations, document C.606.M.211.1924.IX.

3 For the background of this enumerative definition see *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 54, document A/2211, para. 277.

4 See *Documents of the United Nations Conference on International Organization*, G/14/(k) (vol. III, p. 535).

5 *Ibid.*, G/14(r).

6 General Treaty for Renunciation of War as an Instrument of National Policy, signed at Paris, 21 August 1928 (see League of Nations, *Treaty Series*, vol. XCIV, No. 2137, p. 57).

determine that other acts constituted aggression. There again, the full autonomy of the Security Council in a matter that fell primarily within its competence was duly recognized.

50. The reference, in article 3 *(d)* to "marine and air fleets" could, in his delegation's view, in no way prejudice or limit the exercise of sovereign rights by coastal States within the areas of their national jurisdiction, and, in that connexion, his delegation fully supported the comments and reservations made by various delegations both in the Sixth Committee and in the Special Committee. His delegation reserved its right to intervene again on that point, should it prove necessary.

51. His delegation was also in agreement with the provisions of article 5. Since an act of aggression, even if restricted to a given area, was likely to spark off a major confrontation of unchecked consequences, it was necessary to stress that no considerations of whatever nature could justify an act of aggression. As a consequence of its unlawful character, an act of aggression did not produce effects in the international legal order, which could not recognize any territorial acquisition or special advantage resulting from aggression.

52. Article 51 of the Charter stipulated the inherent right of Members to individual or collective self-defence, and his delegation had consistently supported the saving clause in article 6 of the draft, to the effect that the definition of aggression did not interfere with the lawful use of force, as provided for in the Charter. Finally, his delegation endorsed the provisions of article 7, which safeguarded the inalienable right to self-determination, freedom and independence, for which all peoples had the right to struggle, in accordance with the principles of the Charter and in conformity with the Declaration on Friendly Relations.

53. Mr. ZULETA (Colombia) paid a tribute to the Special Committee upon the occasion of the successful completion of its work. His delegation had always believed that the most serious violation of international law, namely the unlawful use of armed force, called for a clear definition, as precise as possible, in order to give true meaning to the existing machinery for collective security.

54. Although not perfect, the definition prepared by the Special Committee established a just balance between different trends, thus reflecting a spirit of co-operation and flexibility that augured well for the future of the United Nations. While a legal definition could not in itself resolve a problem that was as old as mankind, it could constitute a manifestation of the will of the international community to ensure the maintenance of international peace and security and to use the most appropriate legal means to that end.

55. The basic meaning of the term "aggression", as defined in article 1, referred to the use of armed force by a State or group of States against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. However, that definition, interpreted in the light of article 6, did not cover those cases in which the use of force was lawful in order to defend the inviolability, territorial integrity, sovereignty or political independence of a State.

56. Article 2, which stated that the first use of armed force by a State in contravention of the Charter constituted *prima facie* evidence of an act of aggression, nevertheless empowered the Security Council to determine in each particular instance whether other relevant circumstances imparted different legal consequences to that first use of force. In that connexion, he drew attention to the fact that his delegation had, since 1945, had serious doubts about the effectiveness of certain provisions of the Charter, in particular those relating to the functioning of the Security Council. Those doubts had become accentuated with time, because it was becoming daily more obvious that the foreign policy of the main centres of world power was tending towards the resolution by the Powers concerned of the most serious conflicts arising from acts of aggression, thus reducing the role of certain organs of the United Nations to putting an *ex post facto* blessing on the results. That in no way affected his country's unswerving adherence to the Preamble and every one of the 111 Articles of the Charter, which it had committed itself to implement at San Francisco, including Article 109.

57. The list contained in article 3 was not exhaustive and was confined to an enumeration of those cases of armed aggression, which, in the experience of States, had occurred most frequently in international relations. As had been pointed out for centuries by legal theorists, it was a simple task for jurists to agree that the violation of a fundamental norm of international life should be prosecuted and punished, but the imagination of legislators was not equal to foreseeing every one of the different methods that might be used to exert violent action against the inalienable rights of a State.

58. He drew particular attention to article 3 *(d)*, which referred to "An attack by the armed forces of a State on the . . . marine and air fleets of another State". That provision should be interpreted, in accordance with article 8, in the context of the other provisions of the definition. His delegation believed that the provision he had cited could in no event prevent the legitimate exercise of a State's jurisdictional functions relating to the defence, safeguarding or preservation of its sea or air space in conformity with its constitutional norms and the rules of international law.

59. Colombia attached particular importance to the principle set forth in the last paragraph of article 5, which stated that no territorial acquisition or special advantage resulting from aggression was to be recognized as lawful, and his delegation interpreted the term "special advantage" as covering cases such as the exploitation of natural resources or the undue use of the labour forces of a territory occupied as a result of armed aggression.

60. His delegation endorsed the view that, in accordance with articles 1 and 6 of the definition, cases arising from the application of Articles 51, 52 and 53 of the Charter could constitute a legal use of force. In other words, nothing in the Charter could prejudice the competence of regional agencies concerned with collective security, referred to in Article 52, to determine the existence of an act of aggression, nor would the use of force by a regional agency for collective security, in accordance with Article 51, constitute an act of aggression, either under the Charter

or under the terms of the definition as set forth in the text recommended by the Special Committee.

61. His delegation reserved the right to speak again in the unlikely event that amendments to the Special Committee's draft definition were submitted. However, he hoped that the General Assembly, in the spirit which had prevailed in the current debate, would maintain the balanced agreement which had been reached and would unanimously adopt the eight articles, which, if adopted as they stood, would become a binding norm of accepted law, recognized by the international community as a whole.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued)* (A/C.6/L.980, L.982, L.983, L.985)

AGENDA ITEMS 96 AND 97

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties *(continued)*

Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions *(continued)* (A/C.6/L.981)

62. The CHAIRMAN drew attention to two additional papers concerning agenda item 88: document A/C.6/L.983, the note on the possible allocation of the draft article to two committees of the whole, a document which the Committee at its 1469th meeting had requested the Secretariat to prepare; and document A/C.6/L.985, the statement of the administrative and financial applications of the two alternatives for the organization of the Conference on the Representation of States in Their Relations with International Organizations. Since the documentation on item 88 was complete, he requested the sponsors of draft resolution A/C.6/L.980 to hold informal consultations with a view to taking action on the item. He reminded the Committee that there was a single draft resolution, in document A/C.6/L.981, on items 96 and 97.

63. Nigeria had joined the sponsors of draft resolutions A/C.6/L.980 and L.981.

The meeting rose at 5.50 p.m.

1475th meeting

Monday, 14 October 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1475 and Corr.1

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. CEAUSU (Romania) noted with satisfaction that the Special Committee on the Question of Defining Aggression after seven years of arduous work, had submitted a draft definition of aggression to the General Assembly, (see A/9619 and Corr.1, para. 22). Being deeply comitted to the principles of the United Nations Charter, Romania advocated the settlement of all disputes by means of negotiation and worked for the complete elimination of the use or threat of force, as well as the prevention and suppression of all acts of aggression. Aggression was the most dangerous form of the use of force, particularly in the modern world where any military conflict could easily assume world-wide proportions, and in view of the existence of weapons of mass destruction. President Ceauşescu had pledged that Romania would do its utmost to eliminate war and to promote a climate of fruitful co-operation among all nations. Romania had always taken a great interest in the definition of aggression and considered it an essential element in the legal framework of the system of State security established by the Charter. Romania was particularly interested in the definition of aggression because its foreign policy was based on respect for the principles of national independence and sovereignty, equal rights, non-interference in the internal affairs of other States and avoidance of the threat or use of force.

2. Romania had been a member of the Special Committee and had taken an active part in its work. His delegation had been mainly concerned with drafting a definition that was as complete and precise as possible and devoid of any loop-holes which might encourage the use of force or enable aggressors to justify their acts. His delegation was pleased to note that its concerns were reflected in the draft definition. Without commenting on all the provisions of the draft definition, he wished to draw attention to certain points which Romania found particularly important.

3. In the preambular part of the draft definition, the Special Committee recommended that the General Assembly reaffirm the essential provisions of the Charter, the principles of international law and those laid down in other United Nations instruments on which the definition was based. Of particular importance were the provisions in the sixth, seventh, eighth and ninth preambular paragraphs. The fundamental purpose of the definition was to safeguard the rights and lawful interests of the victim of aggression and to assist it in defending itself against the aggressor. Every case

of aggression constituted at the same time a case of self-defence, which was a lawful use of force. The definition of aggression thus contributed to clarification of the fight of self-defence in response to armed aggression, as enunciated in Article 51 of the Charter.

4. Article 1 defined aggression as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. In the explanatory note to the article it was specified that aggression could be committed by a State or by a group of States acting collectively.

5. According to article 2, a State first using armed force against another State was committing an act of aggression. The principle of priority was thus used as a criterion for distinguishing an act of aggression from an act involving the use of force in the exercise of the right of self-defence. In order to be regarded as lawful, acts of self-defence must be preceded by acts of aggression. The provisions of article 2 did not require the victim to take into consideration, in order to exercise its right to self-defence, the intentions, purposes or motives of the aggressor. The same article provided for the possibility that the Security Council might exculpate the State which had first used armed force. In order to do so, however, the Security Council had to reach a decision, taken in accordance with the rules established by the Charter. If the Council was unable to adopt such a decision, the presumption of aggression remained, with all its legal and political consequences. Regarding the "other relevant circumstances" referred to in article 2, it had been maintained that the Security Council should take into account the intention and motives of the aggressor, thus enabling it to reduce the responsibility of the aggressor or to exonerate it altogether. In his delegation's view, aggression was an objective crime. The subjective element of aggression, such as intention and motives, should be taken into consideration only as elements aggravating the crime. The text of article 2 did not enable the Security Council to exonerate the State which had first used force or to reverse the roles of the aggressor and the victim of aggression.

6. As set forth in annex I of the report of the Special Committee on its last session (A/9619 and Corr.1) his delegation had objected to the inclusion of the words "in contravention of the Charter" in article 2 on the grounds that it was unjust to require the victim of aggression to prove that the aggressor had violated the Charter. The burden of proving that the first use of armed force was in accordance with the Charter rested with the aggressor, and only the Security Council had the power to determine whether the act in question had been lawful or unlawful under the Charter.

7. Article 2 should also be interpreted in the light of the first paragraph of article 5, which prevented an aggressor from justifying its acts by invoking circumstances relating to the internal or external policy of the victim.

8. With regard to article 3 *(b)*, the Special Committee had agreed that the expression "any weapons" included nuclear and other weapons of mass destruction (*ibid.*, para. 20, subpara. 1). Clearly, the use of weapons of mass destruction constituted an act of aggression of the most serious kind. Article 3 also qualified as a separate act of aggression the action of a State in allowing its territory, which it had placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State. However, the acts enumerated in article 3 could not be qualified as aggression if they were committed in response to an armed attack first carried out by another State.

9. In article 5 the Special Committee had reaffirmed two fundamental principles, namely that a war of aggression was a crime against international peace and that aggression gave rise to international responsibility. Article 5, last paragraph, derived from the general principle of international law concerning the inadmissibility of territorial acquisitions resulting from the threat or use of force.

10. In article 7 the Special Committee reaffirmed the right of peoples to self-determination, freedom and independence, as well as their right to struggle to that end and to seek and receive support. That was an important provision which prevented any interpretation of the definition as affecting the sacred right of all peoples to resist oppression or foreign domination.

11. The definition was not a panacea and could not be a substitute for the efforts of each State to build peace on the solid foundation of friendly co-operation. It laid down standards of conduct which every State must observe. Although far from perfect, the definition was a useful and necessary supplement to the provisions of the Charter concerning the prohibition of the use of force in international relations. His delegation urged the adoption of the definition in the form of a declaration by the General Assembly. It could thus serve as a guide to all United Nations organs, including the Security Council, in the maintenance of international peace and security. However, it was also addressed to States, since it concerned their conduct. It was to be hoped that States would maintain friendly relations, thus obviating the need to invoke the definition. His delegation reitereated its belief that the adoption of the draft definition of aggression would help to strengthen the role of the United Nations in maintaining international peace and security, since it would provide the Organization with a political and legal instrument for preventing and eliminating threats to peace and acts of aggression. At the same time, the definition would be helpful in safeguarding the fundamental rights of States, particularly the legitimate right of self-defence against any attack upon national sovereignty and independence.

12. He hoped that the Sixth Committee and the General Assembly would adopt the draft definition by consensus.

13. Mr. AN Chih-yuan (China) said that his delegation had stated its position, and the principles underlying it, in the Sixth Committee at the previous session of the General Assembly (1442nd meeting). It now wished to comment on the draft definition of aggression submitted by the Special Committee. Since the resumption of discussions on the definition of aggression in the United Nations and with the developments in the world situation, the principles and some of the specific provisions of the definition had been hotly discussed in the Special Committee. Bearing in mind the basic principle of safeguarding the sovereignty, indepen-

dence and right to self-determination of States, the numerous third-world countries represented on the Committee had proposed a number of specific provisions directed against the current crimes of aggression and had carried on struggles with the super-Powers. Their just proposals were reflected to some degree in the Special Committee's draft. Article 7, for instance, which protected the right to self-determination of peoples, reflected the demands of the Asian, African and Latin American peoples for a stand against imperialist, colonialist and Zionist aggression; such a provision was entirely necessary. The oppressed peoples had the right to use every means, up to and including armed struggle, to win their national liberation and independence and to safeguard the sovereignty of their States. China had always sympathized with and supported the positive efforts of the third-world countries. Unfortunately, as a result of the obstruction and sabotage of the two super-Powers, the work of the Special Committee had dragged on without any decision over a long period. For the same reason, the draft definition raised difficult problems and suffered from serious deficiencies.

14. First, the draft confined aggression to acts of armed aggression alone and made no mention of other forms of aggression, such as territorial annexation and expansion, political interference and subversion, and economic control and plunder. Since the Second World War, many Asian, African and Latin American countries had attained political independence through long and heroic struggles, but the imperialists were not reconciled to their defeat. In addition to continued direct armed invasion and military intervention in some of those independent countries, they had stepped up their activities of political subversion and economic plunder. The two super-Powers in particular were plundering the resources of other countries everywhere, infringing their economic rights and interests, controlling their economic lifelines, trampling on their sovereignty and interfering in their internal affairs. Such activities had been the living reality of international life in recent years and were important manifestations of the policies of aggression and expansion pursued by the imperialists, particularly the super-Powers, since the Second World War. If the definition did not cover those forms of aggression, it would in fact exclude the numerous crimes of aggression being perpetrated by the super-Powers. It was worth pondering whether such a definition would do anything to serve the interests of the numerous small and medium-sized countries.

15. Secondly, as to the content of the draft, the meaning of certain provisions was vague and there were many loop-holes in interpretation, both with regard to the criteria for determining acts of aggression and with regard to the enumeration of instances of aggression. As many representatives had rightly pointed out, article 3 *(d)* was too loosely worded in so far as an attack on marine fleets was concerned. In its present ambiguous form, it might be used by the super-Powers to slander a coastal State acting in defence of its sovereignty by labelling its action an act of aggression. Coastal States had the right to take action against fleets illegally entering their national waters in order to protect their national economic rights and interests and their marine resources. China supported the just position taken up by certain States according to which the draft definition must in no way prejudice the exercise of such rights by the coastal States.

16. The draft definition contained quite a number of similar provisions, which were liable to be used by the aggressor to whitewash its acts and to stigmatize the just struggle against aggression as itself an act of aggression. As it stood, the definition would enable the super-Powers to take advantage of their position as permanent members of the Security Council to justify their acts of aggression and, by abusing their veto power, to prevent the Security Council from adopting any resolution condemning the aggressor and supporting the victim. In 1968, the year in which the United Nations had resumed its discussion of the question of defining aggression, the super-Power which had proposed the resumption of the discussion had committed a flagrant act of aggression when it had dispatched a large number of its troops to occupy the territory of one of its allies. A draft resolution condemning that brazen act of aggression as a crime and protecting the rights of the victim had been submitted to the Security Council. Despite the overwhelming majority of votes in its favour, the draft had been vetoed by the super-Power. Other such cases were not lacking in the history of the United Nations. Since an aggressor could veto any draft resolution of the Security Council stating that it had committed an act of aggression, it was difficult to see how the definition could have the effect of deterring a potential aggressor, simplifying the implementation of measures to suppress acts of aggression and protecting the rights and interests of the victim, as provided in the preamble of the draft definition. If nothing was to be done to punish the aggressor, how could there be any question of condemning a war of aggression as a crime against international peace and fixing the international responsibility of the aggressor? Was not such a definition too weak to deal with crimes of aggression?

17. In view of the serious defects of the draft, it was not difficult to understand why the super-Power which was engaged in frantic expansion everywhere was so enthusiastic about defining aggression, while energetically boasting that its so-called peace initiative had achieved important successes. It hoped to use the definition to dub itself a standard-bearer in the struggle against aggression. But the facts were inescapable. Such wishful thinking and stupid ostrich-like methods could not deceive many people. Since the aggressor was bent on aggression and expansion, it would eventually reveal itself in its own true colours, which more and more countries were learning to distinguish. It was already clear to many that "social-imperialism" was nothing more than aggression.

18. The Chinese Government and people had always supported the countries and peoples subjected to aggression, oppression and enslavement in their just struggle to win their national liberation and to safeguard their sovereignty and independence, and it had firmly opposed the super-Powers' policies of aggression, expansion and war. History showed that no aggressor had ever come to a good end. So long as the victims of aggression and oppression maintained their vigilance and persevered in their courageous struggle, they would certainly frustrate the imperialists, and particularly the aggression and intrigues of the super-Powers, and win victories with the support and assistance of the justice-loving countries and peoples

throughout the world. China hoped that the United Nations would do its part to advance the just cause of condemning and preventing all forms of aggression and supporting the struggles against aggression. The Chinese Government and people would, as always, stand firmly on the side of the third world countries and peoples and of all those subjected to the aggression and bullying of the super-Powers. China would fight shoulder to shoulder with them to defend their national independence and State sovereignty; it would oppose all wars of aggression and promote the cause of human progress.

19. Mr. SIAGE (Syrian Arab Republic) said that his delegation had had the honour of taking part in the work of the Special Committee from the beginning. The achievement of a definition of aggression was an important step forward in the codification of international penal law. Furthermore, any definition of aggression should serve the cause of peace based on justice and promote the implementation of the Charter and of international law.

20. His delegation regarded article 1 as an improvement on the version put forward at the previous session by the Special Committee[1] to which his delegation had objected. His delegation had always wished to delete the words *"prima facie"* from article 2, because the use of force was always the work of an aggressor and the Charter had no provisions allowing any State to use force, with the exceptions provided for in Chapter VII. The use of armed force was therefore automatically a breach of the Charter and constituted an act of aggression, not *prima facie* evidence of aggression. His delegation believed that article 3 *(a)* was very important because it stated that the occupation of the territory of a given state was an act of aggression; consequently the victim State had the right to resort to the right of self-defence as laid down in Article 51 of the Charter. He shared the concern of other delegations, such as that of Peru expressed at the preceding meeting, concerning article 3 *(d)*, which might be construed as infringing upon the right of States to preserve natural resources and impairing their sovereignty over territorial waters. There was a lack of balance in article 3 *(g)*, since serious acts of aggression committed by States should not be placed on an equal footing with acts committed by bands of mercenaries, for example. Such less important acts might be defined as breaches of the peace as provided for in Article 39 of the Charter. His delegation was gratified that article 5 qualified aggression as a crime against international peace and as giving rise to international responsibility. With regard to article 7, it was his delegation's understanding that on the basis of earlier General Assembly resolutions such as 2649 (XXV) and 3070 (XXVIII), the use of armed force was legal in the case of peoples struggling to free themselves from alien domination. He reaffirmed the comments and reservations made by the Syrian delegation in the Special Committee and reproduced in annex I of the report of that Committee. His country, as a victim of aggression and foreign occupation, esteemed and supported to the utmost extent the endeavours of the international community to formulate a definition of aggression.

21. Mr. QUENTIN-BAXTER (New Zealand) welcomed the helpful explanations given by those delegations which had been represented in the Special Committee. He appreciated their appeals to the Sixth Committee not to interfere with the balance of the draft definition, but if that document were to become the property of all Members of the United Nations, it must be carefully and critically explored. It must be ensured that the equilibrium established by the definition was stable and not achieved by merely papering over differences. Over the years it had become clear that there were two kinds of law, "hard-edged" law, which was capable of application in disputes between States with reasonable certainty as to results, and "soft-edged" law, which was essentially directory and applied by political organs with due regard to political considerations. It was the latter kind of law which formed the basis for the draft definition.

22. One source of concern regarding the draft definition had been the fear that it would provide only a simple rule that he who struck the first blow must of necessity be the guilty party. But disputes between States tended to have deep origins and cause and effect were not so easily established. Therefore, he welcomed the fact that those who had drafted the definition had tried to offset the *prima facie* construction by the balance of provisions, and particularly by the last subparagraph of article 3.

23. Another difficulty was that in applying "soft-edged" law it was necessary to make a judgement not only of the facts, but also of what was likely to be fruitful in that particular situation. The draft definition thus very properly left the Security Council wide discretion to decide whether an act was serious enough to be judged an act of aggression under the terms of the definition. Of course, no political organ could replace a legal determination. It could not be admitted that no aggression had occurred unless the Security Council said that it had, because some members of the Security Council might have non-legal reasons, valid or invalid, for the decisions they reached on the Council's judgement. Therefore, behind "soft-edged" law must lie the objective determination of who was at fault, which derived from "hard-edged" law. Even if the machinery for making such a determination did not yet exist, in the current inchoate world order, it must at least be recognized that facts did not await the determination of the Security Council.

24. Another limitation of the definition lay in the explanatory note to article 1, which implied that it had not already been agreed where State boundaries were or what political entities existed, despite the fact that in practice, judgements on those matters would determine the application of the definition. The explanatory note might imply that where particular entities existed, recognized or unrecognized, they had certain rights and obligations; or the almost conflicting concept that to establish the rights and obligations of an entity, it must be shown that it existed. However, such limitations did not justify the view that the definition of aggression should not have been attempted.

25. He supported those who had recalled that in a certain sense the definition had originated in one rule enunciated by the International Court of Justice in the Corfu Channel case,[2] namely that between independent States responsi-

[1] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex II, appendix A.

[2] See *Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4.*

bility for territorial sovereignty was an essential foundation of international relations. The Court had gone on to say that in the era of the United Nations, where the principle of legal equality between States was reinforced by the existence of a world organization, that principle had gained in importance. It was appropriate, therefore, that respect for the territorial sovereignty and integrity of States was the guiding legal principle of the draft definition of aggression. That was an added reason to support the statement by the representative of Kenya, among others, concerning the need for an explicit agreement that article 3 *(d)* did indeed conform to general law and did operate consistently with the notion that the sovereignty and sovereign rights of States or that which was in law appurtenant to their territorial sovereignty must be maintained, and that the definition in no way affected the balance of law in such situations as those referred to by the representative of Kenya at the 1474th meeting.

26. The definition of aggression would not in most cases, if in any, enable the Security Council more easily to make a determination in an involved political situation but it might deepen the sense that the Security Council was acting not on a mere criterion of expedience but on the basis of principles of law supported by all States Members of the United Nations. The definition could not by itself develop the "hard-edged" law to which States could appeal in perfect confidence whenever they believed that a legal right had been violated, but because it proceeded on principles consistent with the development of objective legal standards it might very well give new encouragement and impetus to such developments. It might thus indeed serve a valuable purpose.

Letter dated 7 October 1974 from the Chairman of the Second Committee to the President of the General Assembly concerning chapter VI, section A.6, of the report of the Economic and Social Council (A/9603, A/C.6/431)

27. The CHAIRMAN drew attention to document A/C.6/431, containing a letter addressed by the Chairman of the Second Committee to the Chairman of the Sixth Committee through the President of the General Assembly. The letter related to a draft agreement between the United Nations and the World Intellectual Property Organization (WIPO), under which WIPO would become a specialized agency of the United Nations. The Economic and Social Council had considered the draft agreement and recommended to the General Assembly (see resolution 1890 (LVII)) that it should approve the text at its twenty-ninth session. The Chairman of the Second Committee noted in his letter that the General Assembly had expressed the view that chapter VI, section A.6, of the report of the Economic and Social Council might be of interest to the Sixth Committee, and he stated that the Second Committee would appreciate receiving the views of the Sixth Committee on the text of the draft agreement from the point of view of drafting.

28. The Committee might wish to know how the agreement had been drafted. At its 1873rd meeting, held on 24 July 1973, the Economic and Social Council had decided that it was desirable that WIPO should be brought into relationship with the United Nations and that the Council should enter into negotiations with it for that purpose. The Council had also decided that its Committee on Negotiations with Intergovernmental Agencies would be composed, for the purposes of those negotiations, of representatives of Algeria, Barbados, Brazil, Chile, France, Hungary, Japan, Kenya, and Malaysia, under the chairmanship of Mr. Rabetafika (Madagascar), Vice-President of the Council. The Committee had been asked, *inter alia,* to examine a draft agreement proposed by WIPO. The Committee had met in 1973 and again at the beginning of 1974, and had then drafted an agreement which, it had felt, the United Nations might adopt as a suitable basis for negotiations leading to an agreement for bringing WIPO into relationship with the United Nations. The draft had been communicated to the Director-General of WIPO and through him to WIPO's Negotiating Committee. A joint negotiating session between the Council Committee on Negotiations with Intergovernmental Agencies and the Negotiating Committee of WIPO had been held in May 1974 at United Nations Headquarters. The present draft agreement had been finalized at that session (see A/9603, annex IV).

29. In the United Nations, the draft agreement had been considered in July 1974 by the Policy and Programme Co-ordination Committee of the Council. On 31 July 1974, the Council had recommended to the General Assembly that it should approve the draft agreement at its twenty-ninth session. The report of the Economic and Social Council contained in section A.6 an account of the consideration of the text in the Council, and also the views expressed by delegations regarding some of its provisions.

30. The General Assembly of WIPO had approved the draft agreement at an extraordinary session, held from 24 to 27 September 1974. The draft provided that the agreement would come into force on approval by the General Assembly of WIPO and the General Assembly of the United Nations.

31. The Sixth Committee was now invited to consider the text of the draft agreement from the point of view of drafting. The best procedure might be to establish a small drafting group to consider the drafting and report to the Committee. Following the usual practice of the Sixth Committee, it would be advisable for the drafting group to be appointed in consultation with the different regional groups. He trusted that that procedure would be agreeable to the Committee.

32. Mr. ROSENNE (Israel) said that there seemed to be a conflict between the recommendation to the General Assembly and the Second Committee's suggestion that the Sixth Committee should consider the text from the point of view of drafting. When the Sixth Committee had acceded to similar requests in the past, it had discovered that it could not consider drafting without discussing questions of substance. In the present case, the draft proposed by WIPO followed a fixed formula that had been worked out through the Sixth Committee in 1946 and 1947. There was therefore no real question of drafting; it was a matter of substance, i.e., of whether or not the General Assembly agreed that WIPO should become a specialized agency on the terms proposed in its draft agreement.

33. The CHAIRMAN said that those points could be discussed in the drafting group itself. What the Sixth Committee now had to decide was whether it wished to set up such a group, which would also be called a working group. In the absence of any objections, he would take it that the Committee did so wish.

It was so decided.

34. The CHAIRMAN invited the regional groups to hold consultations on the membership of the working group and report to him.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 ***(continued)*** **(A/C.6/L.980)**

35. The CHAIRMAN suggested that the sponsors of draft resolution A/C.6/L.980 might wish to consult the sponsors of resolution 3072 (XXVIII) on the same subject that had been adopted by the General Assembly in 1973, which were not all among the sponsors of the present draft resolution. The original sponsors of the 1973 resolution had been Algeria, Egypt, India, Ireland, Mexico, Turkey, Uruguay and Yugoslavia, and they had later been joined by Australia and Yemen.

AGENDA ITEMS 96 AND 97

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties ***(continued)*** **(A/C.6/L.981)**

Question of issuing special invitations to States which are not members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions ***(continued)*** **(A/C.6/L.981)**

36. The CHAIRMAN announced that Mali wished to be added to the list of sponsors of draft resolution A/C.6/L.981.

The meeting rose at 5 p.m.

1476th meeting

Tuesday, 15 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1476

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. ALEMAN (Ecuador) paid a tribute, through the Chairman, to Yugoslavia, which had always been in the vanguard of the struggle of the third world and non-aligned countries to claim their rights.

2. As a member of the Special Committee on the Question of Defining Aggression, Ecuador had contributed to its work so that the hopes of the international community might become a reality, if only in the form of a document serving as a guide to the Security Council in determining whether or not an act could be characterized as an act of aggression. The members of the Security Council who had taken part in the elaboration of the draft definition (see A/9619 and Corr.1, para. 22) had expressly said that the text, if adopted, would have the value of a General Assembly recommendation for use by the Security Council.

3. His delegation, despite the reservation it had entered concerning article 3 *(d)*, which provided that "An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State" constituted an act of aggression (see A/9619 and Corr.1, annex I), had joined in the consensus by which the Special Committee had adopted the draft definition. The draft did not cover any cases other than those traditionally recognized as acts of direct aggression, namely, those characterized by the use of armed force by a State. That was why article 1 specified that aggression was the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, and there was no doubt that the territory of a State included the maritime zones under its sovereignty and jurisdiction. Article 3 developed the concept put forward in the two preceding articles and gave a list of acts which qualified as acts of aggression. All the acts listed involved the use of armed force against the sovereignty, territorial integrity or political independence of another State. Subparagraph *(d)*, however, with its ambiguous reference to the possibility of an attack by the armed forces of a State on the marine and air fleets of another State, introduced an element which was totally foreign to the characteristics of the draft definition. It was one thing to invade or bombard the territory of a State, to blockade its ports and coasts or to attack its land, sea or air forces, thereby violating its sovereignty and integrity, and quite another to attack the marine and air fleets of a State, in which case the basic criterion for the description of the preceding cases–namely, violation of the sovereignty and territorial integrity of a State–disappeared as if by magic. A State whose sovereignty and jurisdiction were violated by unlawful acts committed by the ships of another State was fully justified in taking the requisite measures to bring such

violation to an end and in applying its laws relating to the defence of its national security or natural resources and the protection of the marine environment. In view of the ambiguous wording of article 3 *(d)* it seemed that no precise distinction was made between two diametrically opposed situations: a deliberate and unprovoked mass attack on the armed forces, including the sea forces, of a coastal State outside the maritime zones under its sovereignty and jurisdiction–a situation which might qualify as an act of aggression–and unlawful entry of non-military vessels of a State into space under the sovereignty or jurisdiction of another State. In the latter case, a coastal State had the right to prevent and punish any unlawful activity by the vessels in question. The use by such a State of its armed forces against vessels guilty of an infringement was a completely lawful action, as were other actions taken by a coastal State to protect its sovereignty and safeguard its interests and its natural resources in the zones under its jurisdiction. Without that distinction, there was a risk that the victim might be dubbed the aggressor. That was why his delegation had been obliged to enter a reservation, thereby fulfilling a fundamental duty of solidarity and loyalty towards all countries which wished to defend and preserve their natural resources.

4. In paragraph 22 of its report the Special Committee recommended to the General Assembly the adoption of the draft definition which, however, some members of the Committee recognized could be improved. The draft was less than perfect–like any human endeavour. His delegation was ready to hold an exchange of views on a formula which, if included in the draft definition, would resolve the problems raised so that the work of the Special Committee would lead to a definition acceptable to all.

5. Mr. VAN BRUSSELEN (Belgium) said that, since the establishment of the Special Committee on the Question of Defining Aggression, his delegation had always had reservations about the value of the task undertaken. It had never seen any real need to define a concept covering an act or acts that had been committed ever since man appeared on earth. But, as the situation had changed, it was now possible to list a series of acts and circumstances concerning which the organizations responsible for the maintenance or the restoration of peace in the world could and must take the requisite measures.

6. Many representatives had stressed that the draft definition was less than perfect and was open to diverse interpretations. That lack of precision stemmed from the fact that, since the concept itself was not clear, it had not been possible to embody it in a subtle definition based on a set of objective criteria. At the beginning of the debate on the definition of aggression (1471st meeting) the Chairman of the Special Committee had pointed out that the draft definition covered only those cases where a State used armed force against another State, since the Special Committee had quite properly wanted to place its draft definition within the framework of the Charter of the United Nations. Moreover, it was the responsibility of the Members of the United Nations to give priority consideration to those acts which, within the framework of inter-State relations, were the most reprehensible. The Special Committee had therefore rightly excluded from its discussions certain types of act sometimes referred to as ideological aggression or economic aggression, which were vaguer concepts than armed aggression, even though they were reprehensible in themselves or violated the established principles of international law. It was the changes in inter-State relations, the prevailing climate of détente, better mutual understanding and the existence of universally accepted instruments–such as the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations–that had made possible the successful outcome of the work of the Special Committee. If the General Assembly adopted the draft definition, it would then be regarded as part of positive law.

7. By and large, therefore, his delegation welcomed the formulation of the text under discussion, which joined those already available to the Security Council for the exercise of the powers conferred on it by the Charter. It was rather strange that, in a world where States were becoming increasingly interdependent in many ways, those same States still had the most absolute power to decide for themselves whether and when they would take up arms against one or more other States. His delegation hoped that the new text would help to restrict that absolute power.

8. The draft definition constituted a set of principles to which the Security Council could refer in the exercise of its powers, but it in no way limited its powers and prerogatives, and the Council alone could determine whether an act of aggression had been committed. The Special Committee had in any case been careful to safeguard the discretionary powers of the Council, particularly by providing in article 3 that "Any of the following acts . . . shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression".

9. A closer analysis of the draft definition showed that article 2 was of the utmost importance, since it embodied the principle of primacy without completely neglecting the concept of aggressive intent. Under the terms of that article, the Security Council must take into account every aspect of the situation before reaching a conclusion, and not merely the fact that a presumption of aggression existed once a State was the first to use force. But the fact that the first use of armed force by a State constituted *prima facie* evidence of an act of aggression did not mean that aggression was committed only in that case.

10. His delegation regarded article 3 as offering a list of typical acts of aggression. Subparagraph *(d)* had given rise to several comments, and he noted that some delegations seemed to fear that certain acts, committed by States in the exercise of their sovereignty, might be considered acts of aggression. While understanding those delegations' concern, his delegation did not really share their misgivings, since, in drafting that subparagraph, the Special Committee had specified that it should not be interpreted in that way. Moreover, it was difficult to see how acts performed by a State in the exercise of its sovereign rights and without violating the Charter could be considered acts of aggression. His delegation did not, therefore, think it necessary to disturb the delicate balance of the definition by adding explanatory notes, or by replacing some of its provisions with texts which might prevent a consensus.

11. With regard to article 7, his delegation shared the view that there was nothing in the definition to suggest that its application could hinder the exercise by peoples under colonial domination of their right to self-determination in accordance with the Charter of the United Nations. However, the Belgian Government had always maintained that the use of violence as a means of settling political conflicts or disputes was inadmissible. Sanctioning the use of violence as part of the exercise of the right to self-determination would run directly counter to that principle. Accordingly, his delegation did not think that article 7 could sanction recourse to force in situations other than those stated in the Charter.

12. Both the Chairman and the Rapporteur of the Special Committee had stressed the fragility of the balance achieved in the draft definition and had emphasized that every word used in the text was the outcome of long and difficult negotiations. It was with some hesitation that Belgium had considered associating itself with those countries that were in favour of adopting the draft. Its present view was that it was necessary for the General Assembly to adopt the text, if possible by consensus. Belgium could not, however, maintain that position if the text adopted by the Special Committee was to be subject to substantive amendments, statements or explanatory notes that would probably only make it more confused. His delegation reserved the right to speak again on the question, if necessary.

13. Mr. GÖRNER (German Democratic Republic) said that the submission to the twenty-ninth session of the General Assembly of a draft definition of aggression, which had been adopted by the Special Committee by consensus, was a visible sign of the progress of international détente. As early as 1933 the Soviet Union had proposed the conclusion of a convention regarding the definition of aggression. In that connexion, he was glad to stress the initiative role played by the Soviet Union throughout the process of elaborating a definition of aggression agreed in terms of the Special Committee, who had always shown the goodwill, flexibility, and readiness for co-operation and compromise essential to the success of the work of the Special Committee.

14. The draft definition prepared by the Special Committee was in full conformity with the Charter of the United Nations and the other generally recognized norms of international law. The text centred on the decisive criteria for determining an act of aggression, and it was an apt means for strengthening the role of the United Nations, and in particular of the Security Council, in the maintenance and strengthening of international peace and security. Unanimous adoption of the draft definition by the General Assembly would indeed serve the purposes set forth in the preamble: to deter a potential aggressor, to simplify the determination of acts of aggression and the implementation of measures to suppress them and to facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim. His delegation held the view that the draft adopted by the Special Committee constituted a well-balanced compromise and took account of the legitimate interests of all States. It would certainly have preferred another wording on certain points, but it believed that, under the circumstances, the Special Committee had achieved the maximum result.

15. The definition of aggression drafted by the Special Committee was a strict application of the basic provisions of the Charter, according to which the Security Council was the only United Nations organ empowered to determine the existence of acts of aggression. That was the essential prerequisite for ensuring that the question would be considered in the light of all the circumstances of each particular case and that in each case the true aggressor would be identified. It would also help to prevent the legitimate use of force for the purpose of self-defence, in accordance with the Charter, from being characterized as an act of aggression. His delegation noted with particular satisfaction that the definition of aggression reaffirmed the right of peoples under colonial or racist rule or other forms of alien domination to struggle for self-determination, freedom and independence and to seek and receive support to that end. As colonial rule, *apartheid* and other forms of alien suppression constituted a permanent aggression against the oppressed peoples, resistance against those forms of external use of force and suppression was an act of self-defence. Any assistance, political or material, to those struggling for independence and self-determination was therefore in full conformity with the Charter and other documents of the United Nations, including the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960.

16. In the interest of deterring potential aggressors, his delegation deemed it essential that the definition should also contain provisions relating to the legal consequences of aggression. Any act of aggression was a crime against world peace and gave rise to international responsibility. The provisions of article 5 of the definition must be interpreted in strict conformity with the principles laid down in the Agreement for the establishment of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on 8 August 1945 and confirmed in General Assembly resolution 95 (I) of 11 December 1946. If aggression was characterized as an international crime, it followed that changes of the situation unlawfully brought about by the aggressor were null and void. That applied to territorial acquisitions, but also to other advantages secured by aggression. The duty of States not to recognize territorial acquisitions or other advantages resulting from aggression—laid down in article 5, third paragraph—was a welcome complement to the right to self-determination, enabling the victim of the aggression to eliminate any advantages the aggressor had secured illegally. The provisions of article 5 relating to the legal consequences of aggression was also apt to facilitate and promote the work of the International Law Commission on the codification of international responsibility.

17. Some delegations had expressed doubts with regard to article 3 *(d)* of the draft definition. However, a reading of article 6 would seem to dispel those doubts, as it stated that the definition could in no way modify the scope of the Charter. Moreover, his delegation feared that any change in the Special Committee's draft would simply mean reopening the whole text, thus postponing indefinitely the

formulation of a definition of aggression accepted by the international community.

18. In his address on the occasion of the twenty-fifth anniversary of the founding of the German Democratic Republic, the First Secretary of the Central Committee of the Socialist Unity Party of Germany, Mr. Hönecker, had stressed that it was now essential to stabilize the results achieved in the safeguarding of peace and that much remained to be done to make the process of détente durable. The unanimous adoption at the twenty-ninth session of the General Assembly of the draft definition of aggression submitted by the Special Committee would undoubtedly be a constructive contribution towards making the process of détente irreversible. His delegation therefore approved the draft definition and supported the Special Committee's recommendation that the General Assembly should adopt it.

19. Mr. BAROODY (Saudi Arabia) said that man should always try to control his instincts, particularly his aggressive instinct, and should therefore have a moral code reflecting the efforts that had been made for many years to eliminate aggression between States. The text of the draft definition proposed by the Special Committee was basically satisfactory, although it could be criticized for some omissions due, of course, not to oversight but rather to the nature of things.

20. Although aggression, even flagrant aggression, was quite common, its meaning should be clarified. Aggression could after all be provoked, and it then had to be decided if the party that had provoked it, whether an individual or a State, could claim to be an innocent victim. Moreover, in any State, whatever its political system, only a few men held real power and took the final decisions. It was they who commanded the armies and were often the real aggressors.

21. Some speakers had referred to a form of economic aggression expressed in boycotts and embargoes. But such acts could not be regarded as aggression in the true sense, because they were really only a means of applying pressure, even though they might lead to aggression.

22. The Special Committee had also dealt with another form of aggression, which might be described as aggression by invitation. There had been cases in many States of a clique of individuals inviting other Powers to supply them with arms and help them to wage war against their neighbours.

23. Those few examples indicated that the open aggression of old had been replaced by more subtle forms of aggression which could well have been mentioned in the draft definition of aggression in order to inform public opinion that traditional aggression had become too obvious and was giving way in the contemporary world to clandestine aggression. The colonialism of the past, gunboat diplomacy and territorial conquest had now been replaced by neo-colonialism and neo-aggression. All States suffered from that and all States practised it; all were to blame.

24. Spying by specialized services was, of course, as old as man's coming together in organized communities. In the contemporary world, it was flourishing in the form of the intelligence services of modern Powers, involving them in clandestine aggression. It was the old policy of the Trojan horse. But the difference was that the Trojan horse could now appear in many different forms. The intelligence services of all countries now had considerable funds at their disposal, of which only a small part was used to gather intelligence, most of the funds being used to finance the activities of *agents provocateurs* who encouraged subversion and worked to overthrow foreign Governments.

25. Clearly no definition of aggression could be exhaustive, and in any case too much medicine could kill the patient. It was nevertheless desirable that the definition of aggression adopted by the General Assembly should contain at least one paragraph informing the world community of the scope of neo-aggression.

The meeting rose at 12.30 p.m.

1477th meeting

Tuesday, 15 October 1974, at 4.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1477

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. MAHMUD (Pakistan) congratulated the Special Committee on the Question of Defining Aggression on the successful accomplishment of its monumental task and expressed appreciation for the balanced and constructive draft it had prepared (see A/9619 and Corr.1, para. 22). He recalled that at the twelfth session, Mr. Bhutto, who was now the Prime Minister of Pakistan, had clearly spelled out in the Sixth Committee (522nd meeting) his country's interest in defining aggression. It was gratifying to note that the views Mr. Bhutto had expressed 17 years ago were reflected, to a large extent, in the draft definition.

2. Commenting on the text, he agreed with those who had described article 2 as the key article of the draft definition. His delegation welcomed the principle of priority embodied

therein. The first use of armed force by any State would raise the presumption of aggression unless such action was taken under Article 51 of the Charter or in exercise of the right to self-determination, as envisaged in article 7 of the draft definition. If the Security Council did not specifically determine otherwise, the presumption of aggression would remain. While the list of acts of aggression enumerated in article 3 was not exhaustive, he welcomed the reference to indirect methods of aggression such as, *inter alia,* the sending of armed bands. Article 3 *(d)* did not, in his delegation's view, detract from the coastal State's legitimate right to capture and detain any foreign vessel or aircraft engaged in unlawful activities within the oceanic areas under that State's national jurisdiction.

3. The first paragraph of article 5 laid down the important principle that the internal policies of States could not serve as a justification for aggression. The third paragraph of that article should be amended so as to prohibit the acquisition of territory by the use of force in any form, not merely by aggression.

4. Article 6 contained an important reference to the Charter, but a specific mention of Article 51 of the Charter relating to the right of self-defence would add to the clarity of that provision.

5. Article 7 was a valuable part of the draft definition. Of course, the right to self-determination must be exercised in accordance with the Charter. That right could be legitimately exercised in those cases which were covered by relevant decisions of the United Nations, but the article should not be construed as calling in question the territorial integrity of sovereign States.

6. Besides armed attacks, interventions and the use of armed force, the concept of aggression also included economic pressures to influence the conduct of other States. Economic pressures might be resorted to when armed aggression was deemed inadvisable. His delegation therefore suggested that the economic constituents of aggression should be clearly spelled out. After its adoption the definition of aggression would form an authoritative legal basis to assist the Security Council in the discharge of its responsibilities. It should, however, not provide an excuse for delaying response by the Council in cases of breaches of the peace and outbreak of conflicts.

7. Mr. RESHETNYAK (Ukrainian Soviet Socialist Republic) said that his delegation attached great importance to the successful completion of the work on the definition of aggression, which had gone on for many years. In the minds of Ukrainians the concept of aggression was closely associated with the German Fascist attack on their homeland during the Second World War. In view of the great suffering and the many lives lost as a result of that aggression, it was understandable that the Ukrainian SSR was deeply concerned with the problems of safeguarding peace throughout the world and preventing aggression. The elaboration of a generally acceptable definition of aggression was an important means of strengthening peace and security. The members of the Special Committee and its Chairman were to be congratulated for the successful accomplishment of their task, which had been facilitated by international détente, the growing recognition of the inadmissibility of aggression and the persistent efforts of all peace-loving forces. For more than 50 years the Soviet Union had sought a solution to the problem of wars of aggression. In that connexion, he recalled the draft definition of aggression proposed by the Soviet Union in 1933 and many subsequent initiatives on that issue. Other socialist countries and the non-aligned countries had also made a significant contribution to the definition of aggression.

8. As was noted in the preamble, the definition ought to have the effect of deterring a potential aggressor and would simplify the determination of acts of aggression and the implementation of measures to suppress them. Thus it would contribute to the achievement of the fundamental purpose of the United Nations, the maintenance and strengthening of international peace and security. The definition would give valuable guidance to the Security Council in taking action with respect to acts of aggression.

9. Being the result of a compromise, the definition was not completely satisfactory to everyone, and his delegation would have preferred to formulate several provisions somewhat differently. However, the draft did set forth balanced, objective criteria for defining aggression and was generally acceptable to all States. It should be stressed that even the slightest alteration of the present text would disrupt the balance of the definition and vitiate the results of many years' work. He urged delegations to refrain from suggesting amendments and to adopt the draft definition as expeditiously as possible.

10. His delegation was gratified that the preamble reaffirmed the determination of peoples to put an end to wars of aggression and recalled the duty of States to settle their international disputes by peaceful means and not to use armed force to deprive peoples of their right to self-determination, freedom and independence. The preamble further reaffirmed that the territory of a State should not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter. It was important to note that the main elements in the definition of aggression derived from the provisions of the Charter.

11. The definition, and in particular article 2, was based on the fact that under the Charter the Security Council was the only organ of the United Nations which had the power to determine the existence of acts of aggression, breaches of the peace or threats to the peace. It was for the Security Council to decide whether an act of aggression had been committed, taking all circumstances into account in each case, including the purposes and intentions of the States concerned. Serious guarantees were provided to prevent qualifying as acts of aggression actions by States that were taken in accordance with the Charter of the United Nations, under which States were permitted to use armed force in certain cases. In particular, the Charter provided for the right of peoples to wage armed struggle for independence and against colonial oppression, racism and occupation. The Ukrainian SSR, which had always supported peoples struggling for self-determination, freedom and independence, was pleased to note that provisions to that effect had been incorporated in the draft definition.

12. One of the important elements of the definition was the recognition that aggression was a crime against international peace and that aggression gave rise to international responsibility. The distinction made in the draft between "a war of aggression" and "aggression" was not justified. Any act of aggression constituted a threat to the peace and international security. Accordingly, any act of aggression should give rise to international responsibility. Aggression was a most serious crime against international peace and the aggressor must be punished for its acts.

13. He hoped that the Sixth Committee would adopt the draft definition unanimously.

14. Mr. OMAR (Libyan Arab Republic) congratulated the Special Committee on reaching a consensus with regard to the draft definition of aggression but expressed disappointment that, after all the attention that had been devoted to the subject, the international community had failed to lay down a comprehensive definition of all forms of aggression. The definition dealt only with the use of armed force, but other forms of aggression, including economic pressure, military threats, racial discrimination and alien domination, were of equal urgency and required examination. A major drawback of the definition was, thus, its limited scope. The provisions of article 4 did not, in his delegation's view, remedy that deficiency. As history had amply confirmed, the permanent members of the Security Council were not averse to using their veto power for political reasons. It was to be expected that any act of aggression committed by one of the permanent members or one of its allies would not be recognized as such by the Security Council. For all its defects, however, the draft definition represented an important step forward, and it was to be hoped that the international community would ultimately agree on a more comprehensive definition.

15. Commenting on specific provisions of the draft, he noted that article 3 *(d)* should not affect the sovereign rights of States with regard to marine areas within the limits of their national jurisdiction. In addition, the provision of assistance to national liberation movements did not fall within the scope of article 3 *(f)*. Article 7 was fully consistent with previous decisions of the General Assembly recognizing the right of peoples struggling against alien domination, colonialism or racial discrimination to use all means at their disposal, including armed struggle. It was further stipulated that such peoples had the right to seek and receive support in their struggle. Any assistance they were given could not be qualified as aggression.

16. Mr. STEEL (United Kingdom) said that the preliminary views he had expressed at the end of the Special Committee's last session, which were to be found in the Special Committee's report (see A/9619 and Corr.1, pp. 31 and 32), could be taken as the considered current views of his delegation. He wished to make some general remarks putting the definition in perspective, incidentally taking up some points of detail.

17. As to the nature and function of the definition, it was guidance offered by the General Assembly to the Security Council, for the Council to bear in mind in determining the existence of any act of aggression under Article 39 of the Charter. That was made quite clear by, *inter alia*, the second, fourth and tenth preambular paragraphs and by articles 2 and 4. The General Assembly could not fetter the discretion of the Security Council in deciding whether an act of aggression had been committed in any given case. The Security Council would pay heed to the General Assembly's guidance, but under the Charter it must be free to form its own opinion. For that reason, the General Assembly could not make the definition binding on the Security Council, nor could the Council itself do so.

18. Turning to the substance of the definition, he pointed out that it was a complex and intricate structure and that no part of it could be read in isolation from the rest, as was underlined in article 8 Nevertheless, the core of the definition was really article 1; the other articles were essentially an explanation or elaboration of that article. Disregarding the explanatory note to article 1, which, although important, was not germane to the present discussion, it could be seen that article 1 was a working-out of the thought embodied in Article 2, paragraph 4, of the Charter. Article 1 defined aggression in terms of the use of such force as was prohibited by that paragraph, which was concerned with armed force, used as specified in that Article, which basically constituted aggression. That was the essence of the definition. If that was kept in mind, many of the criticisms of the definition on the grounds of its failure to cover certain forms of objectionable pressure by one State on another would be seen to have missed the point.

19. There was another respect also in which the limits of the definition must not be overlooked. It was a definition of aggression, which, although vitally relevant to the question of self-defence, was not in itself a definition of the right of self-defence. Therefore, the well-known differences of opinion as to the nature and extent of the inherent right of self-defence preserved by Article 51 of the Charter had not been resolved by that definition.

20. As previous speakers had pointed out, there were conceptual links between article 1 and article 2, and between article 2 and article 3. That conceptual structure was a significant feature of the definition and it reflected the structure of the process which the Security Council employed in determining whether an act of aggression had been committed. The Council was not a court of law and it did not act like one. It did not proceed on the basis of mechanical presumptions but very rightly examined all the relevant circumstances of the case before it; evaluated them on a pragmatic basis, and then decided whether or not a finding of aggression was justified. In reaching its conclusion, the Council was partly making a finding of fact, partly making a moral judgement, and partly making a decision based on considerations of expediency, expediency not being understood in any derogatory sense. The relevant circumstances taken into account by the Security Council naturally included the question of priority in the use of force. The answer to that question of who first used force was obviously a very important factor but it was not a conclusive factor, even on a *prima facie* view. The other circumstances of the case, which included but were not limited to the presence or absence of aggressive intent, must also be taken into account. In considering how the Council would apply the definition, a point which must be borne in mind was that the Council never had regarded—and he hoped never would regard—the abstract ascertainment of

guilt and attribution of legal responsibility as its major concern. That might be useful in certain cases, but what the Security Council rightly concentrated on in the discharge of its responsibility for the maintenance of international peace and security was the task of finding measures to defuse the situations that came before it and to resolve the disputes that might have given rise to them.

21. He and other speakers had already commented on the structural connexion between articles 1, 2 and 3 of the definition. As had already been pointed out, it was clear from the opening words of article 3 that the acts enumerated were intended as illustrations and that it was still for the Security Council to decide, in the manner indicated in article 2, whether or not a finding of aggression was justified in any particular case. As to the acts enumerated in article 3, he had nothing to add to the statement he had made at the end of the Special Committee's session but he wished to comment on article 3 *(d)*, which was causing concern to many delegations. While understanding that concern, he ventured to hope that a detached examination of the text would convince those delegations that it was not really justified. There was nothing in article 3 *(d)* which would prejudice the outcome of the current debate in another forum on the extent and content of a coastal State's jurisdiction over its adjacent waters. Article 3 *(d)* had no bearing on the conclusion on that matter that was being reached elsewhere; neither did it impugn any action taken by a coastal State in accordance with international law for the legitimate enforcement of its authority. As one previous speaker had said, any interpretation of article 3 *(d)* which gave it the effect of impugning such action would be far-fetched and unreasonable and would not be justified by common sense. If that was so, as he was sure it was, the safe and sensible course would be to leave that provision alone and not to try to refute an argument which all agreed to be manifestly untenable. To try to amplify that paragraph or to insert a saving clause in it would certainly raise more difficulties than it solved. He doubted whether it was possible to draft a saving clause which could be confined to the problem of maritime jurisdiction and the rights of coastal States, and if that was so it would be difficult to know where to stop. Moreover, there was a risk that such a clause might be taken to imply that any vessel or aircraft which ventured within the jurisdiction of another State might be subjected to any degree of force—even an armed attack—that that State might choose to inflict on it in the exercise of its own authority, which was certainly not the Special Committee's intention. That did not apply to individual foreigners in the territory of another State and he could not see why it should apply to vessels and aircraft.

22. The problem was not insoluble and could be resolved by careful, though necessarily complicated, drafting, but that would make the Committee's task more difficult, and it might not be possible to obtain agreement on a new text at such a late stage. Furthermore, if a qualification was to be inserted in article 3 *(d)*, there might be a demand for qualifications also to be included in the other articles of the definition, which would destroy the whole structure. He urged those delegations which had expressed concern to consider whether it might not be advisable merely to stand on their statements in the Committee and on the response which these had elicited and otherwise let well enough alone.

23. His delegation had been doubtful as to the propriety of including in the draft definition a provision dealing with some of the legal consequences of aggression, but it now agreed that that might serve a useful purpose, although the definition would still be complete without it. His delegation had no quarrel with the formulation of article 5. The first paragraph was a truism. The second paragraph, in its present form, now reflected the current state of international law and made no attempt to commit the Assembly on certain important controversial questions. The views of the United Kingdom Government on those questions had often been stated and had not changed. He had only one thing to add to what he had said in the Special Committee on that point, namely that it would be a mistake to treat that paragraph as a sort of mystic text, pregnant with hidden meanings. It meant exactly what it said, no more and no less.

24. His delegation had also had considerable doubts about the wisdom of including a provision along the lines of what was now article 7. It was not strictly relevant to a definition of aggression, which was, as the definition made clear, a wrong committed by one State against another State. However, while its doubts had not been entirely dispelled, his delegation had eventually been persuaded that the provision might be useful as part of a compromise that was acceptable in other respects. In his delegation's view, article 7 did not do anything more than emphasize the propriety of the legitimate exercise of the right of peoples to self-determination, freedom and independence and of action taken by peoples who had been forcibly deprived of that right to resist such deprivation, including seeking and receiving support from others. His delegation did not regard that article as constituting an endorsement of the use of force.

25. Although his delegation had not originally attached much importance to article 8, which had seemed quite unremarkable, it now strongly welcomed the fact that the Special Committee had seen fit to include a provision emphasizing the essential interrelationship between all the provisions of the definition, which was a very delicate and balanced compromise. Almost every single phrase had been scrutinized in relation to the whole text, and a change to any part would now entail the renegotiation of all the rest. The definition was not perfect, but it seemed to be as fair a compromise as the Assembly was ever likely to obtain. Accordingly, his delegation was apprehensive of the harm that would be done by any attempt to amend the text and thus to destroy the compromise that had been reached. It was only right that those delegations which had reservations should put them on record, but he hoped that they would stop short of trying to amend the text.

26. There could be no tinkering with the definition without a substantial renegotiation of it. That could clearly not be done in the Sixth Committee, and although the Special Committee might be reconvened, he felt that that would be a major disaster. The psychological and political climate that had enabled the Special Committee to reach agreement earlier in 1974 was unlikely to reappear, and if the present delicate and hard-won compromise was once thrown away, there was little hope of replacing it for many years to come. Although the absence of a definition of

aggression could hardly be called a major handicap to the Security Council, the frustration of the efforts to achieve a definition would be harmful to the reputation of the Sixth Committee and its associated bodies as bodies which played a constructive role in the furtherance through the United Nations of international peace and security. His delegation therefore recommended that, when all delegations had expressed their views and recorded their reservations and interpretations, the draft resolution containing the definition should be transmitted to the General Assembly for adoption without amendment and by consensus.

27. Mr. GÜNEY (Turkey) said his delegation was gratified that the Special Committee had adopted the draft definition of aggression by consensus in a spirit of compromise made possible by the prevailing political détente. His delegation had been a member of the Special Committee from the outset and had participated actively in its work, with a view to achieving a generally acceptable definition that conformed to the Charter and would serve to promote peace. His delegation's views on the question of defining aggression had been expressed in the statements made at previous sessions of the Special Committee and the Sixth Committee, but he wished to make a few comments on the definition currently before the Sixth Committee. That definition, although not perfect, was simple and balanced. The preamble reaffirmed the basic provisions of the Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which involved, *inter alia,* the principle that States should fulfil in good faith the obligations assumed by them by virtue of generally recognized principles and rules of international law, as well as by virtue of international agreements. Article 1 contained a general definition, but his delegation would have preferred that the words "however exerted" had been maintained as they appeared in the consolidated text of the contact groups and the drafting group established by the Special Committee,[1] thus including a reference to indirect forms of aggression in that article. However, his delegation welcomed the reference to indirect aggression in article 3 *(g).* Article 2 struck a delicate balance between priority and aggressive intent, and was thus acceptable to his delegation. Article 3 *(g)* was particularly important, since it mentioned forms of indirect aggression which were currently becoming so serious as to be placed on the same footing as conventional direct aggression. Article 4 preserved the power of the Security Council to decide that other acts, in addition to those mentioned in other articles, constituted acts of aggression according to the Charter. The first paragraph of article 5 excluded any possibility of justifying aggression, while the second and third paragraphs covered the legal consequences of aggression. Article 6, which referred to the provision of the Charter concerning the lawful use of force, had enabled the Special Committee to overcome many difficulties relating to the right of self-defence. He expressed unconditional support for article 7 because his delegation was in the forefront of those which favoured the right of peoples to self-determination on the basis of the Charter and the Declaration on Friendly Relations. The purpose of the article was to provide a guarantee to States which would not possibly be considered aggressors when they offered support to peoples struggling for their self-determination, freedom and independence, such as was derived from the Charter in conformity with the Declaration on Friendly Relations. Article 8, borrowed from that same Declaration, would facilitate the application of the definition and would prevent subjective or unilateral interpretations.

28. Clearly, since it was the result of a compromise, the definition could not give satisfaction to all, but it would serve as a guideline for the international organs responsible for the maintenance of international peace and security. His delegation supported the draft definition of aggression as it stood.

29. Mr. PETRELLA (Argentina) said that since the definition had been adopted by consensus, it would have a major impact on the future development of international law and would influence the conduct of States. However, it would not replace the principle of good faith and the other ethical bases of international relations, without which it would be of little use. His delegation realized that the definition achieved a delicate balance and supported it as drafted.

30. Several delegations had expressed concern because the definition did not deal with forms of aggression other than armed aggression, particularly economic pressure. However, the concept of economic aggression was not new. The delegation of Bolivia had proposed such a formulation in 1953[2] and article 16 of the Charter of the Organization of American States had embodied that idea at an earlier stage. Moreover, complaints concerning economic aggression had been submitted to the Security Council. He appreciated the difficulties of characterizing economic aggression but everyone knew that it was one of the most common forms of aggression in current use, because it was less obvious and less expensive than armed aggression. Therefore, although he was gratified that article 4 established that the list of acts in article 3 was not exhaustive, it might have been appropriate to include the concept of economic aggression in article 1. It was to be hoped that the question of economic aggression would be reconsidered in the same constructive spirit as had prevailed in the study of armed aggression.

31. It was his delegation's understanding that the powers attributed to the Security Council under article 2 did not prejudice the subsidiary powers which had in practice been developed for other United Nations bodies, and did not impair the right of self-defence. His delegation attached particular importance to article 7, since the right of peoples to self-determination had been established by the General Assembly. His delegation was sympathetic to the statements made by several earlier speakers concerning article 3 *(d)* and hoped that the concern expressed would be properly reflected in the definition.

32. At the current stage of international relations, aggression did not seem to be one of the concepts that could be confined within the limits of a legal definition, since it involved political and military factors which made it more than a problem of legal technicalities which could be solved by a codifying body. For that reason, the definition must

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1 See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19,* annex II, appendix A.

2 *Ibid., Ninth Session, Supplement No. 11,* annex, sect. V.

be viewed in the broader context of effective disarmament by those who held power. A war of armed aggression was perhaps becoming an obsolete political instrument, but the existence of a definition did not mean that aggression in its various forms would cease to be a reality. A further effort would be needed to attain that end, and it was therefore important not to abandon the definition at the current initial stage.

33. Mr. FUENTES IBAÑEZ (Bolivia) said that the Special Committee had taken a major step forward by framing a definition of aggression in terms of a set of ideas delimiting the legal concept which would henceforth form the basis for characterizing an alleged act of aggression.

34. The drafters of the definition had doubtless intended to produce a set of articles which would supplement the Charter, thus providing a generally accepted set of guidelines for the Security Council in determining which acts constituted acts of aggression. The text was somewhat vague, but he agreed with those who thought it best not to amend it, since its very vagueness or ambiguity might be the basis for its balance. The preamble was repetitive, but there was no harm in reaffirming known concepts. Article 1 embodied the conventional form of aggression, but did not mention intimidation or coercion, economic pressure or the blackmail exercised by powerful countries or countries possessing natural resources of primary necessity. The ideal would be to define aggression as the use of any form of violence by one State against the sovereignty, territorial integrity, self-determination or political or economic independence of another State or States. Clear intent would obviate in part the need for *prima facie* evidence, which would be difficult to establish after the event. At some future revision of article 3, it should be remembered that any definition reflected concepts which prevailed at a given moment, without guaranteeing that they would stand for all time. One of the outstanding qualities of the Charter was that the principles underlying its legal structure had remained relevant, thus preventing it from becoming obsolete.

35. His Government was sure that the problems of land-locked countries such as Bolivia would find a just solution because of the growing awareness in the American community that their development had been hampered by the barriers placed on their free access to the sea, which was still the most practical means of carrying on international trade, and, today, one of the world's major resources. The moderate tone of the definition explained why no reference had been included to such aggression as a possible blockade against the overseas trade of land-locked countries by transit coastal States. Such a blockade might not fall within the conventional concept of armed aggression, but its economic and other effects would be such that it must be regarded as an act of aggression against the sovereignty, security and development of the land-locked countries.

36. Another limitation of the definition was that it did not include the crime of assassination of a sovereign or head of State at the instigation of another State or States. That form of aggression should be included among matters for discussion in the future. Of course, his delegation understood the difficulty of giving a more detailed list of forms of aggression, but it was to be hoped that the list given would be amplified as appropriate by the Security Council, as provided for in article 4 of the definition, either on the Council's own initiative or on the recommendation of the General Assembly. Article 6 supplemented the preceding articles by relating the application of the definition to the Charter. In that connexion, he noted that earlier speakers had rightly suggested the need for a number of amendments to the Charter.

37. His delegation whole-heartedly supported the draft definition of aggression.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued) (A/C.6/L.980)**

38. The CHAIRMAN announced that Lesotho had become a sponsor of draft resolution A/C.6/L.980.

The meeting rose at 6 p.m.

* Resumed from the 1475th meeting.

1478th meeting

Wednesday, 16 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1478

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. KHAN (Bangladesh) said that the draft submitted by the Special Committee on the Question of Defining Aggression (see A/9619 and Corr.1, para. 22) was based on compromise and was not supposed to be flawless. The scope of the Special Committee's work had been to define aggression within the framework of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter

of the United Nations. The text presented to the Sixth Committee propounded no new principles but adhered to those contained in the Charter and in the Declaration.

2. The first preambular paragraph recalled the fundamental purpose of the United Nations, echoing the words of Article 1 of the Charter, and the second preambular paragraph referred to Article 39 of that document according to which the Security Council was to determine the existence of acts of aggression. The following preambular paragraph emphasized the responsibility and obligation of Member States under the Charter to settle their international disputes by peaceful means. The fourth preambular paragraph stated that the definition in no way affected the provisions of the Charter with respect to the functions and powers of the organs of the United Nations. The fifth preambular paragraph confined the definition of aggression to the illegal use of force and emphasized the need to define aggression by recalling the possible threat of a world conflict. The sixth preambular paragraph reaffirmed the right of all peoples to equality and self-determination as declared in the Charter and in the Declaration on Friendly Relations. The seventh and eighth preambular paragraphs also reaffirmed certain principles declared by the Charter and reaffirmed by the Declaration. Finally, the ninth preambular paragraph stated the purpose of the definition.

3. The text of the actual draft definition accorded with the principles of the Charter and was in fact founded on it. Thus article 1 was based on Article 2, paragraph 4, of the Charter and confined itself to aggression by the use of armed force. While his delegation did not underestimate the usefulness of a definition of economic or other forms of aggression—which his country, moreover, had to face—it nevertheless felt that it would be wise not to try to define such acts within the framework of the present draft. He expressed satisfaction at the fact that the text did not impair the right of self-defence against an act of aggression recognized by Article 51 of the Charter. Article 2 emphasized the responsibility of a State for the first use of armed force, and should act as a deterrent. Article 3 enumerated the acts which constituted aggression and article 4 stated that the enumeration was not exhaustive. In the view of his delegation, article 3 *(d)* in no way diminished the powers of coastal States to exercise their sovereign authority in maritime zones within the limits of their jurisdiction; it might nevertheless be advisable to add an explanatory note to the paragraph. Article 5 reflected the principles laid down in Article 5 of the Charter and in the Nürnberg Charter and reaffirmed more recently in the Declaration on Friendly Relations. Article 7 reaffirmed the right to self-determination, to which Bangladesh, having had to struggle for its independence, attached great importance. The right of all peoples to self-determination had been set forth in the Charter and had been reaffirmed in the Declaration on Friendly Relations.

4. In view of the links between the draft definition on the one hand, and the Charter and the Declaration on the other, it was essential that the text should include a provision such as article 7. That article, read with the other provisions as required by article 8, protected the rights of all peoples struggling for independence or self-determination and threatened with suppression by force by any other State. The acts enumerated in article 3, if committed against any people who were engaged in the struggle for self-determination or had already attained statehood, would also constitute acts of aggression entailing the consequences spelled out in article 5. Moreover, article 7 in no way affected the right of peoples struggling for self-determination to receive support from any other State in accordance with the principles of the Charter and the Declaration. Although not entirely satisfied with the wording of article 7, his delegation nevertheless considered it to be a logical formulation of the principle of self-determination.

5. The draft definition could be accepted as a reasonable compromise. His delegation hoped that, once adopted, the text would prove to be a valuable aid in determining acts of aggression.

6. Mr. YASSEEN (Iraq) mentioned the jurists who had distinguished themselves during the lengthy work of the Special Committee on the Question of Defining Aggression. As it was the result of a compromise the draft text could not satisfy everyone entirely, but it seemed, nevertheless, to be the best that could be achieved.

7. The method followed in setting forth the definition was the right one: a general rule was laid down and subsequently supplemented by specific examples in a casuistic approach. Such a method was especially to be recommended in that field, for specific examples brought to mind the idea of aggression without constituting an exhaustive list, thus leaving the bodies responsible for determining whether or not aggression had been committed to make their free assessment. It also made it possible to take account of the circumstances relating to each specific case. The example cited at the end of article 2, insufficient gravity of an act, was particularly satisfying.

8. The text of the draft definition also made it possible to raise the problem of involuntary acts. In fact, aggression could be only voluntary but an involuntary act might sometimes seem like aggression. Balance was preserved in the text, however, for article 5, first paragraph, restricted that possibility by stating that no consideration of whatever nature, whether political, economic, military, or otherwise, might serve as a justification for aggression. With that sentence, the drafters emphasized that the motives for the act, as distinct from the perpetrator's intention, could not be taken into consideration.

9. The draft definition also set forth certain consequences of aggression and in a way established the status of aggression. Article 5 stated first of all that aggression gave rise to international responsibility. It could be stated, without infringing upon the work of the International Law Commission, that there was an international obligation not to commit aggression. Therefore, committing aggression was tantamount to violating that international obligation and therefore rendered the perpetrator guilty of an internationally wrongful act which, according to the draft being prepared by the Commission on that question (see A/9610, chap. III, sect. B) gave rise to international responsibility. The draft definition of the Special Committee also provided that the consequences, results or advantages of an act of aggression could not be lawful or recognized under international law. The draft quite rightly pointed out categorically

that the international community must present a solid front in the face of aggression.

10. He expressed satisfaction at the reservation concerning peoples under colonial and racist régimes or other forms of alien domination. The provisions of article 7 placed the draft definition in line with the state of progressive development of United Nations law based on the Charter.

11. Article 8 of the draft was based on a general rule of interpretation the value of which was not disputed. It might indeed be better to include it in the instrument in order to emphasize that the text was a single act whose various components must be construed in the light of the others. However, on that point he believed there was an inaccuracy in the terminology used. Article 8 stated: "In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions." It would appear to be more correct to say that each provision should be construed in the light of other provisions but in its own particular context. Each provision had its own context, and the text as a whole also had its own context. It would have been wise to have based the wording of that article on the Vienna Convention on the Law of Treaties.[1]

12. Article 3 of the draft might seem inadequate in certain respects and it would have been preferable to provide certain clarifications concerning subparagraph *(d)*, which should in no way affect the actions that States might take to ensure observance of the rules which they might impose in certain maritime spaces under their jurisdiction and, with all the more reason, in their inland waters. Similarly, it would have been advisable to extend the concept of blockade to the unjustified denial of access to and from the sea to land-locked countries.

13. The definition had every likelihood of being adopted by the General Assembly and it was therefore necessary to assess its value and scope. The purpose of any definition was to clarify the meaning of a term or a rule. It was therefore a work of interpretation, which was a necessary phase in the implementation of every rule. The drafters of the Charter had used the term "aggression", which presupposed that they had used it in a particular sense. The concept of aggression had therefore already existed in international law and in the Charter, and the definition of aggression was merely the completion of a declaratory work and did not create law. The purpose of the exercise was to settle the meaning of the term in order to eliminate any difference in its interpretation.

14. As the definition was merely the interpretation of an expression used in the Charter, it could not be considered to be either more or less important than that text. If the General Assembly adopted the Special Committee's draft and promulgated that definition of aggression, it would be agreeing that the text explained the exact meaning given to the word in the Charter; it would therefore follow that that definition must be binding on all States and even on the Security Council, which derived its powers from the Charter and could not fail to be bound by it. The definition of aggression would take the form of a General Assembly resolution and as such would, of course, have only the force of a recommendation. However, its substance would be the very stuff of the Charter, which States were bound to respect. The role assigned to the Security Council was to determine the existence of aggression and not to create the concept. The determination of aggression by the Security Council had only declaratory force. The definition to be adopted might therefore be considered mandatory for the United Nations and its organs. Furthermore, the continuing observance and application of the text by the United Nations and its organs would in the long run endow the definition with the value of an international custom. The definition adopted by the General Assembly would enlighten world opinion, which could thereafter keep careful watch over the activities of certain Powers and the way in which they discharged their responsibilities as members—or even permanent members—of the Security Council. The definition, being pre-established, might have the effect, if not of eliminating, at least of reducing abuses and arbitrariness in the determination of aggression and thus of protecting States required to make a decision on the subject from weakness.

15. Mr. BRACKLO (Federal Republic of Germany) said he was gratified at the adoption by consensus of the draft definition and paid a tribute to all those who had contributed to that result in the Special Committee. His Government, in view of its policy of renunciation of force and of support for détente, considered the prohibition of force laid down in Article 2, paragraph 4, of the Charter not as an abstract formula but as the guiding principle of politics. Military conflicts could currently assume world-wide proportions and easily lead to complete disaster. It was a relief to see that the Special Committee had reached agreement on a definition of aggression, the most dangerous form of the use of force among States, and to be able to hope that agreement could be reached in the General Assembly also.

16. The definition to be adopted by the General Assembly as a recommendation to the Security Council would constitute above all an instrument to be used by the Council. It should help the latter to determine the existence of any act of aggression and to decide what measures should be taken to restore peace. The definition of one of the key terms of the Charter, which would be backed by all the authority of the General Assembly, would also serve as a criterion for Governments, nations, politicians, officials and soldiers to distinguish between the right and wrong use of armed force. Above all, States would take it as a guideline in determining their rights with regard to self-defence as conferred by Article 51 of the Charter.

17. The text drafted by the Special Committee met the needs of the Security Council and of States. His delegation was nonetheless aware of the short-comings and ambiguities of the document. It had been necessary to reconcile different, sometimes diametrically opposed views, and to draft a definition in conformity with the Charter while avoiding the impression of complementing it.

18. The authors of the definition had succeeded in drafting a sufficiently precise document, which left the

[1] See *United Nations Conference on the Law of Treaties, 1968 and 1969, Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

powers of the Security Council unaffected. In accordance with the fourth preambular paragraph and article 6, the definition in no way modified the provisions of the Charter or the powers of United Nations organs. Article 2 made it sufficiently clear that neither the powers nor the procedure of the Security Council were affected by the definition.

19. The somewhat involved wording of article 7 was the result of lengthy negotiations. The questions of support granted to peoples forcibly deprived of their right to self-determination, freedom and independence was a very controversial one, since it involved the right to self-determination and the principle of the prohibition of the use of force. His Government welcomed the fact that the definition referred to the right of self-determination: it advocated the implementation of that right in all parts of the world, and sought by its efforts to bring about a state of peace in Europe in which the German nation could regain its unity through the self-determination process. However, his Government did not think that the right of oppressed peoples to receive support could legitimize armed support. Except for the specific cases described in Article 51 of the Charter and action taken by the Security Council itself or on its behalf, there was nothing to justify the use of force.

20. In sum, his delegation agreed to the draft definition. A text of its kind was bound to give rise to different interpretations; that was why it was essential that it be interpreted in good faith and with a sense of fairness. The spirit of compromise which had prevailed during its formulation seemed to suggest that the international community would apply the definition in the right way. The delicate balance of the text should not be upset by introducing amendments. The definition should be adopted by consensus, in order not to undermine its importance.

21. Mr. ALVES MARTINS (Portugal) supported the draft definition, which represented a substantial advance in the field of international law and raised the hope that further steps would be taken towards the strengthening and codification of international law.

22. His delegation nevertheless wished to point out that, in its view, article 7 merely reaffirmed the right of peoples to self-determination, freedom and independence. It was clear that the purpose of the definition was to strengthen the principle stated in the third preambular paragraph, namely that of the settlement of all disputes by peaceful means. It would therefore be contrary to the spirit and the letter of the text to consider it as encouraging the solution of disputes by armed force, since article 5, first paragraph, provided that no consideration of whatever nature could justify aggression. Article 7 referred back to article 3 as a whole, and if its only aim was not to reaffirm the right of peoples to self-determination, freedom and independence, it would in fact legalize, for the solution of certain disputes, those very means which the definition defined as constituting illicit aggression. However difficult the solution of international problems might be, it was always necessary to try to make the rule of law prevail.

23. Despite those considerations, his delegation supported the draft definition in the same spirit of goodwill as those who had elaborated it.

24. Mr. COLES (Australia) stressed the importance of the draft definition, which was the result of prolonged efforts. Of course, the text was not perfect; but it was almost a miracle that it had been drafted, in view of the multitude and complexity of the problems involved. It was world détente which had made the definition possible. It therefore seemed that, even in the most politically difficult areas, patience and perseverance could contribute to the progressive development of international law. In that respect, it was heartening to note that the Special Committee had finally reached a consensus, despite the pessimism that some had expressed at the outset. The result had been achieved largely through the efforts of the current Chairman of the Special Committee and of those who had preceded him in that office.

25. A consensus had been reached only after nearly nine months of work spaced over seven years. No other subject had ever been so exhaustively studied for so many years in the United Nations. The work of the Special Committee might have seemed senseless, but it had always had a well-defined purpose. The definition as drafted was the result of a carefully considered analysis of all the relevant elements of aggression. Although some questions were still unanswered, it was not because they had not been taken into consideration, but because there had not been time to deal with them. There was still much work to be done on the subject of the unlawful use of force; the definition was only a beginning.

26. All those who had taken part in the work of the Special Committee were aware of the fragility of the consensus reached with the utmost effort. It was right and proper that the Sixth Committee should study the definition and that States which had not participated directly in its elaboration should express an opinion.

27. A number of delegations had already said that it might prove necessary to make minor amendments to article 3 *(d)*. The general consensus, however, should be preserved and his delegation would support, if necessary, the constitution of a small representative group of interested States to negotiate, after the conclusion of the general debate, a solution acceptable to all. The draft definition was the result of compromise and sacrifices on the part of almost all the countries which had taken part in its elaboration, and it would be a tragedy if, at the last moment, the General Assembly were unable to adopt it.

28. Turning to the actual text of the draft definition, he said it was clear from the preamble that the text as a whole would serve as a guideline to the Security Council in determining whether an act of aggression had been committed. Moreover, the preamble established that nothing in the definition should be interpreted as affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations, in particular the discretionary power of the Security Council in relation to the maintenance of international peace and security. However, the definition would serve to remind the Security Council that, in certain cases of flagrant and serious violation of Article 2, paragraph 4, of the Charter, a finding of aggression might be necessary if the rule of law was to be upheld. Aggression was considered, in the fifth preambular paragraph, the most serious

and dangerous form of the illegal use of force. That provision supplemented article 2.

29. Article 2 of the definition had been worked out after prolonged and difficult discussions. Under the terms of that provision, the first use of force by a State in contravention of the Charter constituted *prima facie* evidence of an act of aggression. Therefore, it was not made the automatic criterion for establishing who was the aggressor. A number of delegations had rightly drawn attention to the fact that it was sometimes difficult to determine, not only who had first had recourse to armed force, but also who was really responsible for the outbreak of violence. The question of who struck the first blow might be a highly important one, and the answer to it would in most cases determine who was the aggressor. There must be no interpretation of article 2 which would be inconsistent with Article 2, paragraph 4, of the Charter, which stated quite explicitly that States "shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". One of the purposes of the United Nations was to maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. The question of the purpose behind the use of force might also be relevant. That was borne out by the wording of article 1 of the definition, which was based largely on Article 2, paragraph 4, of the Charter, which in turn must not be interpreted as an unqualified and absolute prohibition of the use of force. Furthermore, article 2 of the definition recognized that acts of armed force must be of sufficient gravity to constitute acts of aggression. Otherwise, such acts could not justify massive and unreasonable retaliation which would be more in the nature of an act of aggression than of a genuine act of self-defence.

30. With regard to article 3, there was a risk that subparagraph *(d)* might be invoked against coastal States which sought to protect their own legitimate rights in areas under their sovereignty or jurisdiction. The definition could not, of course, be interpreted in any way which would violate the fundamental rule of international law that a State was entitled to uphold its authority in areas under its domestic jurisdiction. However, it would be desirable, either in the definition itself or by an authoritative interpretation by the General Assembly, to put the validity and relevance of that norm beyond all doubt.

31. He stressed the importance of article 8, which made it clear that in their interpretation and application, the provisions of the definition were interrelated.

32. He reiterated his support for the draft definition, subject to reservations concerning the adequacy of the provisions with regard to domestic jurisdiction. It was to be hoped that the draft definition would be adopted by a consensus of all of the Member States of the United Nations.

33. Mr. IKOUÉBÉ (Congo) said that the draft definition was the result of considerable effort to achieve one of the fundamental purposes of the Charter, namely, to maintain international peace and security. Whatever the merits of the draft definition, it was a pity that the Special Committee had felt compelled to restrict itself to defining armed aggression, leaving aside other forms of coercion which were a threat to international peace and to the territorial integrity and independence of States and were just as dangerous. While it was true that aggression was the most serious and the most dangerous form of the unlawful use of force, it had to be recognized that the young nations of the third world were daily being threatened by sabotage, boycotts and other measures which affected both their political and their economic independence. What made the Special Committee's choice even harder to understand was the fact that various international conferences had recently pointed out that recognition and strict application of the principle of the sovereignty of States over their natural resources constituted an important step towards establishing an international order free of any threat to international peace and security. Failure to respect that principle was therefore a form of aggression.

34. The draft definition would constitute a legal arsenal for the Security Council. Under article 4 of the draft definition, the Security Council was given the right to define as acts of aggression acts other than those mentioned in article 3. His delegation, which reserved the right to restate its position when the time came to consider the important item on the review of the Charter, wished to point out that much effort would doubtless be necessary in the Security Council if solutions satisfactory to the entire international community were to be achieved in view of the fact that the Council counted among its members some of the greatest perpetrators of aggression and States which supported the aggressor countries.

35. It was not easy to reach a generally acceptable compromise on so delicate a question as the definition of aggression. That explained why the draft definition contained gaps and lengthy and obscure statements. Such was the case with article 7, a saving clause which referred back to article 3 and which seemed to his delegation to have been drafted in deliberately confused terms. It was surprising to hear some delegations say that article 7 could not be interpreted as justifying the use of armed force by oppressed peoples, whereas various United Nations instruments recognized recourse to violence as one of the means which could be used to recover freedom and independence. The oppressed peoples could not content themselves with peaceful means of action when such means proved to be ineffective against an enemy that did not hesitate to resort to violence. Furthermore, it would be desirable for article 7 to provide unequivocally that a State which furnished armed or other support to movements fighting for the freedom of their country was not committing an act of aggression, since the international community recognized the right of those peoples to seek and receive support.

36. The draft definition was an important contribution to the codification of international law, but much still remained to be done. It was therefore not without hesitation that his delegation gave its support to the draft definition.

37. Mr. USTOR (Hungary) said that his delegation wholeheartedly subscribed to the conviction expressed by the Special Committee in the ninth preambular paragraph of the proposed text, namely, that "the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim". He congratulated the members of the Special Committee, whose report and draft definition constituted a landmark in the history of the United Nations, and pointed out that the report, like the previous ones, gave an insight into the development of ideas within the Special Committee. The members of the Committee had fought a long battle to reach a definition, and had been successful. It was therefore of the utmost importance that the recommendation of the Special Committee should be adopted by consensus by the Sixth Committee and the General Assembly.

38. Contrary to some views expressed in the Sixth Committee, his delegation was gratified that the definition did not embrace economic or ideological aggression. His delegation condemned such forms of the use of force, but it was necessary to deal first with the gravest danger, that of the use of armed force.

39. Article 1 of the draft was a perfect example of a definition, proceeding from the general to the specific, and stating that only that use of force by a State qualified as an aggression which was directed against the sovereignty, territorial integrity or political independence of another State, or which was in any other manner inconsistent with the Charter of the United Nations. As a result, not all forms of the use of force constituted aggression under the terms of the definition. That analysis should dispel the fears of those who believed that an ordinary police action within the limits of a State could be defined as aggression. Besides, article 6 of the definition expressly stated that the use of force was lawful in certain cases.

40. The Special Committee was especially to be commended on article 2, which set out the fundamental principle of priority, while leaving for the Security Council a wide measure of discretion to judge every case on its own merits in the light of all relevant circumstances.

41. With regard to article 3, his delegation wished to point out that subparagraph *(g)* could not be interpreted as casting a doubt on the legitimacy of armed struggles for national liberation and of resistance movements, for article 7 recognized that the struggle of peoples for self-determination, independence and liberation from colonial oppression was not included in the notion of aggression but was considered a lawful form of the use of force.

42. Article 5 stated the obvious when declaring that aggression gave rise to international responsibility. All acts of aggression were crimes against international peace, with all the consequences that fact entailed under the Nürnberg principles. Some delegations had said that the definition as a whole, being the result of a difficult compromise, was not sufficiently precise, but it should be recalled that it was not in the nature of any law to provide mathematically certain solutions of a problem, since uncertainty could not be eliminated from law so long as the possible conjunctions of fact remained infinitely various. That was precisely the case with the use of force and with aggression.

43. The successful conclusion of work on the topic not only meant that the authors of the definition, particularly the representatives of the Soviet Union, had been rewarded for their unrelenting efforts, but also proved that even the problems of the greatest complexity could be solved if there was a firm common will to that effect. One of the main elements of the success, besides the more favourable international climate, was the contribution of the developing countries to the definition of aggression. It was obviously in the interest of the less powerful States to make the principles of the Charter prevail and to put an end in international relations to the use of force and, in the first place, to armed aggression.

44. His delegation reiterated its support for the adoption of the recommendation of the Special Committee and expressed the hope that the General Assembly would adopt a draft resolution appealing to all States to refrain from aggression in their relations and requesting the Security Council to take note of the definition as a guideline for itself and to include it in a resolution having binding force.

45. Mr. JAIPAL (India) congratulated the Special Committee and its Chairman and Rapporteur on the formulation of a draft definition of aggression, a task which had once been regarded as almost impossible, or undesirable and unnecessary. The text before the Committee was a simple and well-balanced one and could serve as a broad guideline for the Security Council and the Members of the United Nations. The question of defining aggression had been engaging the attention of the world community for over 40 years, in the course of which many acts of aggression had been committed. There were still many cases of aggression where the aggressors were beyond the scope of United Nations action or where the United Nations itself had proved to be impotent. Even though a definition of aggression might not immediately remedy such an unsatisfactory situation, it still served a purpose, and it was therefore a matter of some satisfaction to be standing on the threshold of international agreement on a common definition of aggression. That must indeed be a source of satisfaction to the Soviet Union, which had been taking the initiative since 1933 in seeking a solution to the problem.

46. It had been at the instance of the non-aligned countries that the General Assembly had repeatedly called upon all States to support the efforts of the Special Committee. In fact, up to the present time there had been no definition of aggression other than in Article 2, paragraph 4, of the Charter, and the Security Council had had unlimited discretion to decide whether or not there had been aggression. Furthermore, the advantages of enumerating basic principles as guidance for determining aggression far outweighed the difficulties involved in drawing up an exhaustive list of prohibited acts. The proposed definition did not, of course, offer a magic formula for the maintenance of world peace, but it would have the effect of deterring potential aggressors.

47. The draft definition favoured the classical notion of aggression to the extent that it was concerned primarily with the use of armed force, although article 3 *(g)* referred to what had come to be known as "indirect aggression". His delegation had always held the view that the definition of aggression should be as comprehensive as possible in present circumstances, and particularly in the light of modern techniques of coercion. It would therefore have preferred a definition of aggression encompassing not only direct military operations, but also interventionary and subversive operations, including economic pressures against another State. Article 1 of the draft definition placed undue emphasis on the use of armed force to the exclusion of other aspects of coercion. Aggression should be defined as objectively as possible without any regard for the intentions of the aggressor. In its present formulation, article 2 could be used to advantage by a potential aggressor. Furthermore, his delegation failed to see why the first use of armed force should be given only the status of *prima facie* evidence of an act of aggression. On the other hand, article 4 duly recognized that the Security Council had power under Article 39 of the Charter to take into account all forms of coercive action which might be brought under the general heading of aggression. Some delegations had drawn attention to the ambiguous nature of article 3 *(d)*, but it was the view of his delegation that that provision would not prejudice in any way the right of a coastal State to take measures of self-protection or enforcement within the limits of its national jurisdiction. His delegation hoped that the Committee could reach an understanding in that sense with regard to the interpretation of article 3 *(d)*.

48. Article 5 drew an artificial distinction between an act of aggression and aggression itself. Such a distinction had no basis in international law. The draft definition should have contained a forthright declaration that aggression constituted a crime against international peace, giving rise to responsibility under international law. His delegation attached special importance to the principle enumerated in article 5 that no territorial acquisition or special advantage resulting from aggression should be recognized as lawful. In that connexion, the Special Committee had adopted an explanatory note (see A/9619 and Corr.1, para. 20, sub-para. 4) stating that article 5 should not be construed so as to prejudice principles of international law relating to the inadmissibility of territorial acquisition resulting from the threat or use of force. His delegation also welcomed the fact that the Special Committee reaffirmed in the seventh preambular paragraph to its recommendation that the territory of a State was inviolable and could not be the object, even temporarily, of military occupation or other measures of force.

49. His delegation also welcomed the provisions of article 7 of the draft definition, concerning the struggle of peoples for self-determination, freedom and independence.

50. While aware of the inadequacies of the draft definition, his delegation appreciated the fact that it was a delicately balanced compromise reached after many years of work. It would therefore lend its support to the adoption of the draft definition by consensus in the hope that the definition would strengthen the role of the United Nations in maintaining international peace and security and in promoting the progressive development of international law.

51. Mr. KURUKULASURIYA (Sri Lanka) recalled General Assembly resolution 599 (VI), the fourth preambular paragraph of which reflected the view that "although the existence of the crime of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it". In his opinion, that had been the object of the efforts to define aggression. The Special Committee, recognizing the difficulties inherent in attempting to work out a definition which would have encompassed aggression in all its forms, had deliberately confined its efforts to the formulation of a definition of armed aggression.

52. If the document under review had been just another call for self-restraint or another effort towards ensuring peace and security, no one would hesitate to support it. But the Sixth Committee was called upon to deal with a definition which did not appear to conform to the essential meaning of that term in a legal context, as containing the whole thing and the sole thing. That was perhaps the core of the problem, and in that connexion he associated himself with the comments made by the representatives of Iraq and the Federal Republic of Germany.

53. The members of the Sixth Committee recognized the existence of forms of aggression other than armed aggression—economic aggression, ideological aggression and, as the representative of Saudi Arabia (1476th meeting) had called it, neo-aggression. The definition referred only to armed aggression and should have said so expressly. However, his delegation was not unmindful of the fact that the definition was the result of a compromise, and it had no intention of upsetting the balance achieved by the Special Committee, which should be congratulated on bringing its deliberations to a triumphant conclusion with the adoption by consensus of the definition of aggression contained in its report.

54. The definition of aggression would consolidate the mechanism of collective security which turned not only on the prohibition of the use of force but also on the right of self-defence and the powers of the Security Council. The definition would also contribute to the progressive development of international law and would be a point of reference for public opinion in judging the conduct of States, and it would discourage potential aggressors. Finally, the definition would give valuable guidance to the Security Council in performing its functions under Article 39 of the Charter without in any way fettering its absolute discretion to determine whether a threat to the peace, breach of the peace or act of aggression had been committed.

55. In any event, a definition of aggression must satisfy two essential conditions. In the first place it must enjoy the support of the great majority of States, if not all States; and secondly, the definition must be precise enough to create a presumption of responsibility while preventing the definition itself from being used to justify aggression against the

sovereignty, territorial integrity or political independence of another State.

56. With regard to the presumption of aggression contained in article 2 of the draft, his delegation considered that, since the definition was primarily intended to guide the Security Council in the exercise of its functions and to discourage would-be aggressors, it would have served those ends more effectively if it had characterized the first use of armed force in contravention of the Charter as an act of aggression. The definition in its present form must not serve as a legal basis for a State to make an armed attack on another State on the pretext of what the former might call an act of provocation. That was particularly relevant to small developing countries such as Sri Lanka which needed a climate of peace and security if they were to channel resources into their national development programmes.

57. His delegation would have no objection to article 3 *(d)* so long as it was not interpreted as restricting the right of States to protect their sovereignty, territorial integrity and political independence and to apply their national legislation in all areas under their jurisdiction.

58. His delegation was particularly gratified by the inclusion in article 7 of provisions concerning the struggle of peoples for self-determination, freedom and independence.

59. Finally, his delegation supported the draft definition, despite its inherent ambiguities, in the hope that its adoption would have the effect of deterring potential aggressors and strengthening the climate of peace and security in the world.

The meeting rose at 1 p.m.

1479th meeting

Friday, 18 October 1974, at 10.55 a.m.

Chairman: Mr. Milan ŚAHOVIĆ (Yugoslavia).

A/C.6/SR.1479

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. PETRIĆ (Yugoslavia) welcomed the success of the Special Committee on the Question of Defining Aggression in formulating a draft definition of aggression (see A/9619 and Corr.1, para. 22) after seven years of work. The Yugoslav delegation, which had been a member of the Special Committee, had witnessed the difficulties that it had encountered. Yugoslavia had always been convinced that it was necessary and possible to define aggression, and had made every effort towards that end.

2. As stated in the ninth preambular paragraph of the draft definition, the adoption of a definition of aggression should have the effect of deterring a potential aggressor; it would simplify the determination of acts of aggression and the implementation of measures to suppress them, and would facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim. It would thus help to improve the functioning of United Nations organs entrusted with the maintenance of international peace and security. From the point of view of international law, the definition of aggression marked significant progress in the application of the principle of the prohibition of the use of force in international relations. It would encourage the international community to adopt other legal instruments of a similar character; it would contribute to the efforts aimed at formulating rules concerning international responsibility for aggression or any other use of force in international relations, and to the adoption of a code of offences against the peace and security of mankind.

3. International relations were still marred by acts of aggression and of foreign interference. As long as such acts continued, the international community would have to make every effort to remedy that situation and to ensure the peaceful settlement of international disputes. The definition should enable the Security Council to perform more effectively its duties relating to the maintenance of international peace and security. It should also be an instrument for the protection of small countries, developing countries and non-aligned countries, which were practically the exclusive victims of acts of aggression at the present time. The adoption of the definition by the General Assembly would be an expression of the international community's growing awareness that the use of force in international relations was to be condemned and combated in every instance.

4. Thirty-five countries, representing all regions and all schools of political and legal thought in the world, had participated in the work of the Special Committee. All aspects of armed aggression had been considered. It had naturally been impossible to find a solution that would satisfy all delegations, and concessions had been necessary. For many years, certain differences concerning the most important aspects of the definition had even seemed insurmountable; but that had not prevented the Special Committee from agreeing on a text which reconciled those differences sufficiently for it to be adopted by consensus. Precisely owing to those differences, which had not ceased to exist, it had not been possible to make certain provisions

as precise as would have been desirable, so that they might give rise to different interpretations. For that reason, his delegation had felt it necessary, following the conclusion of the Special Committee's work, to state its views and to give its interpretation of several provisions of the definition (see A/9619 and Corr.1, annex I).

5. Article 2 contained the key provision of the definition, as it indicated the element which was to be considered as decisive in determining the existence of an act of aggression. Article 2 rightly singled out the objective element–the first use of force. According to article 2, however, the first use of force in contravention of the Charter constituted only *prima facie* evidence of an act of aggression. In the view of the Yugoslav delegation, the first use of force should have been qualified as an act of aggression, especially as the same article reserved the right of the Security Council to conclude that a determination that an act of aggression had been committed would not be justified in the light of other relevant circumstances. Like other delegations, the Yugoslav delegation considered that the words "in contravention of the Charter" might encourage States to decide themselves whether their actions were in accordance with the Charter. Such a possibility could not be excluded, since the relevant articles of the Charter were interpreted in different ways, and such interpretations were sometimes even aimed at legalizing the policy of intervention and of interference in the internal affairs of other States. His delegation categorically rejected any interpretation of that kind, which would permit the first use of force by States or regional organizations without the explicit authorization of the competent United Nations organs.

6. The subjective element of aggressive intent was not reflected in the definition, because the great majority of delegations, including his own, had considered that its inclusion would have rendered the determination of an act of aggression more difficult and given rise to abuses. Article 2 could therefore not be interpreted as meaning that intent should be included among the relevant circumstances.

7. His delegation welcomed the inclusion in the definition of the principles stated in article 5, first and third paragraphs, and expounded in the explanatory notes which appeared in the report of the Special Committee. On the other hand, article 5, second paragraph, was not satisfactory. Instead of stating that aggression constituted a crime against international peace, which would be in accordance with other international legal instruments and with the position of the majority of countries, a "war of aggression" was considered as constituting such a crime. That term was no clearer than the term "aggression", and its inclusion in article 5 created a certain amount of ambiguity. Whatever distinction might be drawn between aggression and a war of aggression, his delegation maintained that both constituted crimes against international peace and gave rise to international responsibility.

8. With regard to article 6, it would have been desirable to indicate the cases in which the Charter allowed the use of force, as had been done in the 13-Power draft.[1]

[1] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex I, sect. B.

9. Article 7 was of great importance to Yugoslavia, as well as to the vast majority of countries. The Yugoslav Government had always maintained that nothing should obstruct the right of peoples under colonial or racist régimes or alien domination to fight for their self-determination, freedom and independence. The formulation of article 7 satisfied the Yugoslav delegation almost entirely. It felt, however, that the word "forcibly" was not appropriate, since other means might be used to deprive peoples of their right to self-determination, freedom and independence. In addition, his delegation interpreted the word "struggle" as permitting the peoples in question to struggle by all the means at their disposal, as had been emphasized in many United Nations resolution.

10. In view of the differences of opinion which had emerged in the course of the consideration of the question of defining aggression, and despite the short-comings of the draft definition, the adoption of the draft by the Special Committee represented a success. Viewed as a whole, the text struck a satisfactory balance between legal and political systems in various parts of the world. The international community needed such a definition; no changes should be made in the substance of the draft, in order to preserve the consensus by which it had been adopted. Nevertheless, the definition of aggression should not be considered as definitive. Indeed, it was a definition of armed aggression only. His delegation hoped that the task of formulating a definition of economic and other forms of aggression would be tackled as soon as possible by the United Nations.

11. Mr. ROSSIDES (Cyprus) stressed the importance of the draft definition, which would guide the Security Council in determining the existence of cases of aggression and making recommendations or taking decisions to maintain or restore international peace and security, in accordance with Articles 41 and 42 of the Charter. The use of the term "aggression", which appeared in many treaties, covenants and other international documents, would become meaningful. The draft definition would also open the way to the adoption by the General Assembly of a code of offences against the peace and security of mankind and towards the establishment of an international criminal jurisdiction, in pursuance of the work done in that regard by the International Law Commission. The existence of a universally accepted definition of aggression should have a restraining influence upon potential aggressors. The definition might not be perfect, but it satisfied each of those purposes.

12. The preamble to the draft was a guide to the essence, content and purpose of the definition. The second preambular paragraph emphasized that the definition would facilitate the determination of acts of aggression and would also make possible the adoption of effective measures by the Security Council to suppress aggression and restore international peace and security. The Security Council too often failed to take the necessary measures to implement the recommendations and decisions adopted in accordance with Articles 41 and 42 of the Charter. He recalled that the world had recently witnessed an instance of such failure, when armed aggression had been continued and intensified in defiance of the resolutions and decisions of the Security

Council, even though they had been accepted by all, including the aggressor.

13. Returning to the preamble to the draft definition, he pointed out that it was reaffirmed in the seventh paragraph that the territory of a State should not be violated by being the object, even temporarily, of military occupation or of other measures of force. That provision supplemented and enhanced article 5. Indeed, military occupation resulting from aggression could have even more serious consequences for international peace and security than aggression itself.

14. Article 2 of the draft definition established the liability of the first user of armed force. That article was consistent with all previous efforts to define aggression since the Politis formula in 1933.[2] In 1945, the United States delegation had proposed a similar definition,[3] but the words "shall constitute *prima facie* evidence of an act of aggression" had been added subsequently. That addition was not unwelcome. *Prime facie* evidence was conclusive evidence unless and until it was rebutted by evidence to the contrary. The State which had been the first to launch an armed attack was logically presumed to have intended it. Intent was inherent in the armed attack itself, unless it was conclusively shown that it was due to a mistake or that the act complained of was of so little gravity as not to qualify as an act of aggression. That was borne out by article 2, and his delegation considered that there was no room for differences of opinion on the interpretation of either the meaning of the expression "*prima facie* evidence" or the importance to be attached to intent.

15. His delegation was pleased that article 3 *(g)*, which it had itself proposed to the Special Committee as a compromise, had been retained. Thus, a form of indirect aggression was included in the definition, in so far as such indirect aggression amounted in practice to an armed attack.

16. His delegation had participated in the work of the Special Committee since its inception, as well as in the work of other previous committees. It had all along contributed to the elaboration of the definition, which it considered as a means of strengthening international legal order and security, particularly for small countries. It was remarkable that, in the very year when the definition of aggression had been achieved, Cyprus had been a victim of a type of aggression which fell squarely within that definition. That was a rare example of a violation of the Charter, of customary international law, of the Nürnberg principles, of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and of other principles embodied in the relevant international instruments. The resort to force against Cyprus confirmed that it was urgently necessary to react against such uses of force, which were totally unacceptable in the nuclear age.

17. Mr. VILLAGRAN KRAMER (Guatemala) congratulated the Special Committee on having been able to strike a reasonable balance between the views of the various delegations, and thus to prepare a text that should not be amended. The draft recommended for adoption by the Special Committee should be supported, since it helped to clarify what was meant by aggression. Although it was not a member of the Special Committee, Guatemala had followed its deliberations closely. It was aware that the road followed, not only from the days of the League of Nations but also from the time of San Francisco, had been a long and difficult one.

18. The relevant substantive element in the definition of aggression was the use of armed force by a State. That substantive and objective element therefore constituted the corner-stone of the definition. However, two terms appeared in the draft: "acts of aggression" and "war of aggression". A war of aggression, being qualified as a crime against international peace, gave rise to certain well-known legal and political consequences, while acts of aggression did not constitute an offence of the same order, but a breach of the obligations imposed on States by the Charter and international law. Accordingly, it was not the violation of a rule which was penalized, but the breach of an obligation stipulated in a rule, i.e. in the Charter of the United Nations in the present case, which made acts of aggression as unlawful. Article 5 was so constructed that a State could maintain that a war of aggression was a crime against peace, while an act of aggression was only an unlawful act. Aggression consisted in fact in attacking an asset or property protected in law—the sovereignty, political independence or territorial integrity of a State—or in using armed force in violation of the Charter of the United Nations.

19. The active cause of the aggression was the State. However, his delegation felt that it was clear from paragraph *(a)* of the explanatory note to article 1 that the active cause of the aggression need not necessarily be a Member or non-member State of the United Nations, but could also be a community.

20. Once adopted, the definition would have a declaratory effect for the Security Council and not a law-making effect. But what was to prevent the Security Council from itself adopting the same definition, so that it would acquire binding force?

21. Returning to the question of the scope of the definition, he said it was his feeling that it would serve as a guideline to the Security Council and would have some importance for the regional organizations and the General Assembly itself.

22. While recalling that border incidents did not usually constitute aggression, his delegation considered, with regard to the principle of priority, that it was necessary to know not who had fired first but who had first deliberately sought to use armed force in violation of the provisions of the Charter of the United Nations. The proposed definition provided that the first use of armed force by a State constituted *prima facie* evidence of an act of aggression. It was therefore a presumption *juris et de jure*. The mandate of the Security Council and the legal machinery available to

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[2] See League of Nations, *Conference for the Reduction and Limitation of Armaments, Conference Documents*, vol. II, document Conf.D/C.G.108, annex I, p. 683.

[3] See *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945*, Department of State publication 3080 (Washington, D.C., Government Printing Office, 1949), p. 294.

it would enable it to gather the relevant evidence and to accord the necessary importance to the various factors involved in acts which resulted in aggression. The facts, actions and omissions which led to an act of aggression could be examined from different angles, *inter alia* from the angle of General Assembly resolution 378 (V) concerning duties of States in the event of the outbreak of hostilities, under which, if States in conflict were not prepared to discontinue all military operations and withdraw all their military forces, account would be taken of such conduct in any determination of responsibility for the act of aggression. It was therefore necessary to point out that the principle of priority was one of the main factors permitting identification of the aggressor.

23. Turning to the question of self-defence and what had been called "anticipatory self-defence", he observed that a State threatened by aggression could not be asked patiently to await the first blow before reacting, as was its right. Article 51 of the Charter contained rules on that subject and, since the principle of self-defence was somewhat delicate, it was understandable that it had been difficult to specify the limits of its application in the draft definition.

24. The listing of a whole series of acts constituting acts of aggression in article 3 of the draft did not prevent the Security Council from determining what other types of act constituted aggression, provided that account was taken of the provisions of the Charter. He considered that the wording of article 3 *(d)* might arouse certain doubts, in so far as it provided that an attack by the armed forces of a State on the marine and air fleets of another State constituted an act of aggression. In that connexion, he observed that different terminology had been used for the terms "marine and air fleets" in French, English and Spanish. Reverting to the problem of the act of aggression, he observed that the gravity of the act was one of the constituent elements of aggression, the other being the fact that the act was committed outside the air space or territorial waters of the State. The exercise of territorial sovereignty could not constitute an act of aggression if it was consistent with conventional and customary international law.

25. His delegation had no intention of attempting to dismantle the draft by suggesting that the scope of article 3 *(d)* should be clarified. It wished only to associate itself with those delegations which had commented on that point. It hoped that it would be possible gradually to define all other forms of aggression and to adopt an instrument that would supplement the Charter of the United Nations on the question.

26. Mr. OBADI (Democratic Yemen) stressed that the text proposed by the Special Committee was the result of a compromise which it was important not to jeopardize. Article 1, while presenting a general definition, made no reference to the threat of aggression, which could nevertheless, in certain circumstances, be a threat to peace in contravention of Article 2 of the Charter. According to article 2 of the draft definition, the first use of armed force constituted an act of aggression which could not be justified by anyone, not even by the Security Council, which could only determine whether or not an act of aggression had actually been committed. Article 3 listed a number of acts which could be considered as acts of aggression, and article 4 clarified the competence of the Security Council in determining whether certain acts were acts of aggression under the provisions of the Charter.

27. His delegation wished to emphasize that the provisions of article 3 *(d)* should not deprive a State of the right to preserve its peace, security and resources and to exercise jurisdiction over its territorial sea. Subparagraph *(g)* of the same article should not be interpreted as questioning the legitimate nature of the struggle of peoples against alien domination. The legitimacy of that right was affirmed, moreover, in numerous United Nations resolutions. In article 5, third paragraph, any territorial acquisition of special advantage resulting from aggression was declared unlawful. It should be emphasized that the same consequences could result simply from the threat to use force, which was not described as an act of aggression in the draft definition. Nevertheless, such acts were contrary to the principles proclaimed in the Charter, in the Declaration on Friendly Relations and in many United Nations resolutions. Furthermore, Article 51 of the Charter conferred on States the right of self-defence within their territory, and article 6 of the definition should be interpreted as meaning that peoples who were victims of alien domination had the right to use force in order to put an end to the aggression which was depriving them of the enjoyment of their right to self-determination, freedom and independence. Article 7, which was closely related to article 3, and in particular to subparagraph *(g)* of that article, confirmed that interpretation. The right of peoples struggling for self-determination, freedom and independence was a principle recognized in the Charter and in numerous United Nations resolutions. Those peoples could legitimately use any means available to them, including force. Consequently, the word "struggle" used in article 7 encompassed armed force in its various forms. The text also reminded States Members of the United Nations of their duty to assist those peoples to attain their freedom.

28. His delegation hoped that the General Assembly would adopt the draft definition and that the text would mark another stage in the codification and progressive development of international law, while at the same time strengthening the role of the United Nations in the maintenance of peace and discouraging would-be aggressors. His delegation reserved the right to revert to the question if amendments were submitted to the Committee.

29. Mr. BOULBINA (Algeria) said that, despite their universally recognized virtues, the existing structures of the United Nations, of which the definition of aggression would become a part, still contained serious gaps. Consequently, his delegation would have preferred the Special Committee to submit a complete and precise definition which was not open to differing interpretations and which, having binding force, would have to be followed by the United Nations organs responsible for the maintenance of international peace and security, namely the Security Council and the General Assembly, instead of simply serving as a guideline to them. However, considering that it was the result of a compromise, the definition adopted by consensus in the Special Committee had, among other things, the merit of forcefully asserting the right of peoples to self-determination, freedom and independence and their right to resort to

any means in order to attain that right, including the use of armed force. Furthermore, the dissuasive effect which the text would certainly have should discourage any would-be aggressors.

30. During the last session of the Special Committee, his delegation had decided to join with the other members of the Committee so that a consensus could be achieved. However, subsequent statements made by the representatives of certain Powers, including permanent members of the Security Council, could nullify all the efforts made to arrive at the delicate compromise which the Sixth Committee had before it. In that respect, he stressed that the deletion, from the heading of article 2 proposed by the contact groups and the drafting group of the Special Committee in the consolidated text of their reports,[4] of all reference to the subjective and controversial concept of "aggressive intent" had constituted the necessary counterpart to the many concessions made by the majority of delegations. Clearly, the reintroduction of that element through interpretative statements was in effect tantamount to destroying the compromise. That development led his delegation to wonder about the real scope of the text proposed by the Special Committee.

31. His delegation felt that the words "in contravention of the Charter" should not have been retained in article 2. The deletion of those words would have strengthened that article and would have made it a more absolute condemnation of the unlawful use of armed force. Having been opposed, from the outset, to the inclusion of those words, his delegation deplored the fact that they had been retained not only in article 2, but in the subsequent articles. In the same way, his delegation, together with many others, had supported the view that "the first use of armed force by a State" in itself constituted "an act of aggression" and not simply "*prima facie* evidence of an act of aggression". However, knowing that article 2 constituted the cornerstone of the definition, his delegation had finally decided to accept the existing wording in a spirit of compromise and after lengthy negotiations.

32. It was the view of his delegation that the first proposition of article 2 established a presumption of aggression based, quite rightly, on the fundamental principle of priority. It was therefore "the first use of armed force by a State" which constituted the determining criterion by which the said State could be established as the aggressor. However, in the second proposition of article 2 the Security Council was empowered to reverse that presumption in the light of other relevant circumstances, and possibly to conclude that the qualification arrived at according to the terms of the first proposition was not justified. That interpretation, which had been very widely shared in the Special Committee, would have been made clearer if, instead of using the conjunction "although", the drafters had quite simply used two separate sentences. His delegation wished to stress once again that the expression "relevant circumstances" could in no way cover the subjective and controversial concept of aggressive intent. The deletion of all reference to that concept was one of the basic factors which had made it possible to reach the fragile compromise currently before the Sixth Committee. Any attempt to reintroduce it in any form whatever, including by means of interpretative statements, particularly when they emanated from certain permanent members of the Security Council, would deprive the definition of any substance and would mark a return to an earlier stage in the Special Committee's negotiations. He further emphasized the vague nature of the reference to "sufficient gravity". It would be difficult to determine the limit beyond which an evil act could be considered as serious and within which it would be considered as beneficial.

33. The acts referred to in article 3 *(g)* could in no way prejudice the exercise, by any appropriate means, of the right to self-determination, nor the right of other States to provide support to peoples struggling for their freedom and independence. That interpretation, which was in fact the only one possible, was in no way equivocal if one considered the link established, for the purpose of clarity, between articles 7 and 3.

34. As far as the consequences of aggression were concerned, his delegation welcomed the provisions of article 5, first and third paragraphs. Examination of the French text showed that the words *"comme tels"* referred to the phrase *"aucune acquisition territoriale ni aucun avantage special"* and not to the word *"licites"*.

35. In article 5, second paragraph, the distinction drawn between aggression and a war of aggression was artificial, since a war of aggression was only one means of carrying out aggression. As article 5 dealt with the legal consequences of aggression, it would have been more logical to keep in mind the purpose of the definition and to qualify not only the war of aggression, but aggression itself as a crime against international peace. Furthermore, the wording used in the Special Committee's draft could mean *a contrario sensu* that aggression was not a crime against international peace and could therefore not give rise to international responsibility, which would be absurd and of course unacceptable.

36. Articles 6 and 7 dealt with the cases in which the use of force was lawful. While article 6 referred to the provisions of the Charter and concerned principally the machinery provided by Articles 39 and 51 of the Charter, article 7 stressed the legitimacy of the exercise of the right to self-determination, freedom and independence and set out the conditions for the enjoyment of that right. It recognized the right of peoples deprived of that right to struggle to achieve it using all necessary means including armed force. With that principle established, article 7 went on to set out the corollary that any State had the right, or even the duty, to provide support of all kinds to ensure the exercise of that right.

37. The definition of aggression constituted an important link in the process of the codification of international law. The draft text submitted by the Special Committee was certainly not perfect, and many delegations had deplored the absence of a definition of other forms of aggression, such as economic aggression. However, it could be considered as a first step and the culmination of half a century of human endeavour. Naturally, the definition would be seen as perfect if the competent bodies were never called upon to apply it.

[4] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex II, appendix A.

38. Mr. ALVAREZ TABIO (Cuba) acknowledged that the definition arrived at by the Special Committee was generally well-balanced and derived from the three drafts which had served as a basis for the Special Committee's work.[5] The draft did not reflect all the views expressed in the Special Committee and in the Sixth Committee, and many controversial points had been omitted, while others had been expressed in an ambiguous way and could be open to contradictory interpretations. However, as a result of its persistent efforts, the Special Committee had arrived at a generally acceptable definition. When the problem of the definition of aggression had been raised at the twenty-second session of the General Assembly, his delegation had welcomed the initiative taken by the Soviet delegation. Cuba could not but support such a generous and useful initiative because, since the triumph of the Cuban revolution, the Cuban people had had to cope with several acts of open or disguised aggression—armed, economic and ideological—simply because they wished to build a better future without foreign interference.

39. At several sessions of the General Assembly, his delegation had stated its position on each of the constituent elements of a general theory of aggression. It had considered it appropriate to concentrate firstly on the definition of armed aggression, without losing sight of other forms of typically neo-colonialist aggression, such as the economic blockade suffered by the Cuban people. It had felt that it was necessary to establish a definition containing both a general description of aggression and a list of typical acts and it was opposed to the dangerous thesis of the "super-legality" of self-defence and the idea according to which regional organizations would be entitled to resort to force. It had drawn attention to the inadmissibility of the thesis of aggressive intent, which, in practice, was tantamount to justifying any act of armed aggression and it had opposed the use of imprecise formulae to define indirect aggression, since such formulae could be a double-edged sword. It had also stated its position on the question of the legitimacy of the use of armed force to defend the inalienable right of peoples to self-determination.

40. Restricting himself to consideration of the most controversial points, he observed first of all that article 6 of the draft stipulated that nothing in the definition should be construed as enlarging or diminishing the scope of the Charter. The provisions of the preamble were satisfactory but his delegation could not agree that it could be argued on the basis of the sixth paragraph that the use of force other than armed force to deprive peoples of the right in question would be legitimate. That interpretation was inadmissible in the light of the Charter, which condemned the threat and use of force in all their forms. It was also evident from the sixth paragraph that it was unlawful to impose the establishment of or maintain military bases in the territory of a country against the wishes of its people, since that would be a violation of its territorial integrity.

41. Turning to the operative part of the draft, he noted that article 2 was without doubt the key article of the definition. Without proof to the contrary, the first use of armed force by a State in contravention of the Charter constituted an act of aggression. Besides, the only case in which the Charter admitted the use of force by a State was that of self-defence, and in that sense it was a question not of aggression properly so called but of a reaction to a prior armed attack. Thus the theory of preventive self-defence could not be justified on the basis of article 2. With respect to the second part of article 2, one might wonder whether the Security Council could, in conformity with the Charter, conclude that the first use of armed force by a State in contravention of the Charter did not constitute an act of aggression. First of all, the Security Council's authority, although discretionary, was not arbitrary. The Security Council therefore could not take into account circumstances which were not within the sphere of applicability of the Charter. Furthermore, his delegation believed that the expression "other relevant circumstances" did not envisage aggressive intent, since the Special Committee had refused to retain, for the purposes of the definition, the notion of aggressive intent and of the purposes pursued. Nor could it be claimed that the expression "relevant circumstances" envisaged intent characterized by motive or purpose: if that were the case, it would have to be concluded that the use of force by one State against another could not qualify as aggression if the first was pursuing a morally justifiable aim. The Security Council would thus have to fathom the mind of the aggressor and make a value judgement on its behaviour. Such an interpretation would be contrary to logic and the rules of the Charter. The Charter excluded any idea of justification on the use of armed force in cases other than self-defence and the exercise of the right to self-determination.

42. His delegation regarded the list of acts set forth in article 3 as satisfactory and believed that subparagraph *(d)*, which had given rise to so much controversy, could not apply to cases in which a State resorted to force when foreign vessels or aircraft engaged in unlawful activities in the waters or air space under its national jurisdiction. His delegation was gratified that all reference to equivocal notions of subversion and terrorism had been eliminated from subparagraph *(g)*. That subparagraph was related to article 7 and no one could question the right of peoples to engage in armed struggle against colonialism, racism or other forms of foreign domination.

43. It regretted that no attention had been drawn to the unlawful nature of the use of force under regional agreements. It also wished to emphasize that the Security Council was empowered only to determine the existence of facts, acts or situations which constituted threats to peace, breaches of the peace or acts of aggression and, consequently, to impose the desired sanctions. It was true that the Security Council, under Article 53 of the Charter, was empowered to have recourse to regional agreements or bodies, but the latter could not apply any coercive measure without the prior authorization of the Security Council.

44. His delegation would vote for the draft definition submitted by the Special Committee, which, despite its faults, would contribute to the consolidation of international peace and security in conformity with the principles of justice and international law expressly laid down in Article 1 of the Charter, the corner-stone of the United Nations system.

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[5] *Ibid.*, annex I.

45. Mr. GHAUSSY (Afghanistan) said that his delegation had always been convinced that a definition of aggression acceptable to the majority of Members of the United Nations would serve the cause of international peace and security.

46. His delegation believed that the definition of aggression must include all means, direct or indirect, of using force, including economic and political constraints, as could be seen from the expression "regardless of a declaration of war" in the introductory part of article 3 of the draft. His delegation believed that such acts as interference by a State with the exercise of the right of free access to and from the sea by land-locked countries, or the blockade of access routes of land-locked countries, led to the same consequences as the blockade of the ports or coasts of a coastal State and that the two situations were therefore identical in nature and in their effects.

47. Article 3 *(c)* referred only to the blockade of a coastal State even though that action could have absolutely identical consequences for a land-locked State. Noting the right of free access which was henceforth to be granted to land-locked countries, his delegation believed that the position of those countries must be given particular attention, as had already been recognized by several international bodies.

48. The blockade of means and routes of access of land-locked countries without a declaration of war was certainly as much an act of aggression as the blockade of ports and coasts of a coastal State under similar conditions, since the economic consequences were identical in both cases. His delegation was aware of the difficulties encountered by the Special Committee during the elaboration of the draft definition and it did not intend to reopen the discussion on the substance of the matter. However, an over-all solution and a consensus must reflect all points of view and be in line with the major interests of Member States.

49. Article 74 of the Charter stipulated that the policy of Member States "must be based on the general principle of good neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters". His delegation hoped that the spirit of that Article of the Charter would be respected in determining the rights of the land-locked countries in the field which was the subject of the Sixth Committee's consideration.

50. Turning to the question of the direct and indirect use of force, he noted that article 3, subparagraphs *(f)* and *(g)*, related to cases of indirect aggression. Similarly, the blockade of the ports and routes of access of land-locked countries constituted indirect aggression and there was an obvious analogy between the cases mentioned in those subparagraphs, and the blockade of land-locked countries, since both were cases of indirect aggression without direct use of force. That, furthermore, was the formula which the representative of Afghanistan in the Sixth Committee (1445th meeting) had proposed during the discussion of the question at the twenty-eighth session of the General Assembly. His delegation had hoped that that suggestion would be taken into consideration by the Special Committee. It noted, however, that the Committee's report did not reflect that idea. Furthermore, it noted that no land-locked country had been a member of the Special Committee's drafting group. Besides, the Special Committee's report dealt purely and simply with the "definition of aggression", which gave the impression that the word "aggression" was understood in the widest sense. In that connexion, his delegation drew the Committee's attention to resolution 2330 (XXII) in which the General Assembly had established the Special Committee and had fixed its terms of reference by instructing it "to consider all aspects of the question so that an adequate definition of aggression may be prepared". Unfortunately, it emerged from the debate on the draft definition that the Special Committee had limited its task to armed aggression. That did not mean that the study of other types of aggression, which were the most frequently used in contemporary times, should not be taken into consideration. Moreover, with reference to article 4, his delegation believed that its provisions should not apply exclusively to the contents of article 5.

51. For the reasons stated, his delegation continued to believe that blocking the means permitting land-locked countries to exercise their right of free access to and from the sea must be qualified as an act of aggression. Since the Special Committee had not taken that point into account in its report, his delegation had originally felt it necessary to propose formally an amendment aimed at adding, at the end of article 3 *(c)*, the following formula: "or the blocking of the means for the exercise of the right of free access to and from the sea by land-locked countries". At the current stage of the Committee's work, his delegation would not formally propose such an amendment. However, since it believed that any definition which did not contain such a provision was incomplete, it could not support the Special Committee's draft. If the text had been put to the vote, his delegation would have abstained for the reasons previously stated and because of the reservations which it still had. His delegation requested that its point of view should be reflected in the report of the Sixth Committee to the General Assembly and in the records of the debates of the Sixth Committee.

The meeting rose at 1.05 p.m.

1480th meeting

Friday, 18 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1480

In the absence of the Chairman, Mr. Gana (Tunisia), Vice-Chairman, took the Chair.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. ROBINSON (Jamaica) said that the draft definition in the report of the Special Committee on the Question of Defining Aggression (see A/9619 and Corr.1, para. 22) had been reached in the Special Committee as a result of a spirit of compromise, and delegations had been asked not to disturb the delicate balance of the compromise text. However, that did not mean that the draft definition should not be subjected to close study.

2. It was important to identify the purpose which a definition of aggression was designed to serve, if confusion was not to arise about the relationship between the concept of aggression and that of self-defence. The assumption that there was a necessary correlation between those two concepts was wrong. The need for a definition of aggression arose from the need to know the proper circumstances in which the machinery for collective security, set out in Chapter VII of the Charter, could be properly set in motion. He drew the following conclusions from an interpretation of that chapter and other sections of the charter: under Article 39, the machinery for collective security could be activated whenever there was a determination by the Security Council of the existence of any threat to the peace, breach of the peace or act of aggression; an act of aggression was therefore only one of the three circumstances in which the machinery could be set in motion; the primary purpose of activating that machinery was to maintain or restore international peace and security, which was one of the fundamental purposes of the United Nations; the primary criterion from testing the justification of taking collective measures was whether a situation constituted a threat to international peace and security and, in making that determination, the Security Council was primarily concerned with a question of fact and not of legal responsibility, which would arise only after the Council had dealt with the fact of the threat to international peace. However, a determination that a situation gave rise to self-defence, from the outset, involved a question of legal responsibility, since it entailed a determination made by the State that delictual conduct on the part of another State affected its essential interests. Therefore a definition of aggression was addressed primarily to the Security Council; while a definition of self-defence would be addressed primarily to individual States. The need for collective measures would be determined by the Security Council, while the question of legal responsibility would arise when tribunals were set up to deal with the matter. Therefore, the draft definition under discussion quite properly concentrated on articles designed to assist the Security Council in determining whether an act did in fact constitute a threat to international peace.

3. The primary criterion for testing the "correctness" of any determination by the Security Council was that the situation constituted a threat to international peace. Since indirect aggression–such as economic aggression–mentioned by earlier speakers, did not involve the use of force, it was arguable that it was less likely to constitute a threat to international peace and was therefore properly excluded from a definition of aggression. However, while it might not be the kind of aggression to warrant the activation of the machinery provided for in Chapter VII of the Charter, its nature might be such as to pose a threat to a State's essential interests, such as political independence, and might involve the right of self-defence. But any State whose independence was threatened by economic aggression would hardly be justified in meeting economic measures with armed force. The criterion applicable to aggression was whether the situation involved a threat to international peace and security, and that applicable to self-defence was whether the situation involved a threat to a State's essential interests. He therefore welcomed article 6 of the definition. Article 2 would be of great assistance to the Security Council; the reference to consideration of all the circumstances was useful, since it ensured that the priority rule would not be applied in a simplistic and automatic way. He likewise welcomed the reference to the gravity of the circumstances, which was a matter of the utmost importance in determining whether an act of aggression had been committed.

4. The list of typical acts in article 3 was merely illustrative, but there was always a danger that unlisted acts might be regarded as untypical. In order to avoid any such misunderstanding, the International Law Commission, for example, had decided against including a list of illustrative examples of the rules of *jus cogens* in its draft articles on the law of treaties of 1966.[1]

5. Article 5, second paragraph, raised the matter of legal responsibility for aggression, which was not within the purview of the Security Council. As a whole, however, the definition was adequate to assist the Security Council in its work. His delegation moreover welcomed article 7, although the wording of that article could be improved by substituting the word "shall" for "could" in the first line.

6. Mr. MAI'GA (Mali) said that the definition of aggression was of particular importance, not only for the development of international law but also for the maintenance of world

[1] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9,* p. 76 (para. (3) of the commentary to article 50).

peace. In deciding to define aggression, the United Nations had sought above all to prevent violations of peace and to eliminate the use or threat of force in relations between States. The definition must therefore be as clear as possible and not give rise to contradictory interpretations which might delay its application by the Security Council.

7. The various definitions of aggression given by legal writers showed that that term encompassed a whole complex of concepts, all of which should be taken into account with a view to maintaining international peace and security. However, the definition concerned only armed aggression. The aim was to discourage a potential aggressor and to safeguard the legitimate rights and interests of any State which was a victim of aggression. The definition therefore filled one of the gaps in the United Nations legal structure concerning international peace and seurity, but it would not be really effective unless it covered all the other concepts of aggression including, in particular, a blockade by armed forces of the ports serving the land-locked countries. He therefore welcomed the reference to blockades in article 3 *(c)*. The establishment of customs tariffs and the prohibition of imports and exports—constituent elements of economic aggression in the broad sense of the term—were expressions of State sovereignty, but the same was not true of a blockade against a land-locked country, which involved the very survival of the country concerned. Consequently, a specific reference to such a blockade should be made in article 3 of the definition to make it conform to Article 2, paragraph 4, and Articles 39 and 74 of the Charter.

8. The discretionary power attributed to the Security Council under article 2 in connexion with the determination of whether an act of aggression had been committed did not bestow upon it any right of interpretation which would not be in conformity with the spirit and letter of the definition. The use of armed force was in itself a violation of the Charter and therefore any possible confusion arising from article 2 could be avoided by deleting the words "in violation of the Charter". Article 3 *(d)*, should include a reference to a State's legal right to attack naval or air units spying for a third State. Subparagraph *(g)* of that article could not be interpreted as impeding the struggle for self-determination. Article 5 seemed to make a distinction between a war of aggression and aggression, but his delegation considered that both were stages of the same process and must be regarded as a crime against international peace giving rise to international responsibility.

9. He hoped that the words of the President of the International Court of Justice on the occasion of the twenty-fifth anniversary of the International Law Commission (2151st plenary meeting) would guide the work of the Committee in arriving at a clear definition of aggression, which was one of the essential elements of the new international order instituted by the General Assembly at its sixth special session (resolution 3201 (S-VI)).

10. Mr. DABIRI (Iran) said that his delegation was particularly gratified at the adoption by the Special Committee of the draft definition of aggression, since it remembered that at the outset some had questioned the usefulness of such a definition. His delegation was pleased to have taken part in the work of the Special Committee.

11. It was clear from the view already expressed that one of the main concerns of delegations was the role of the definition with regard to the powers of the Security Council relating to the maintenance of international peace and security. That question had been the essential theme of the deliberations leading to the establishment of the Special Committee and had, until its last session, been the main obstacle to progress in its work. It was clear from the second and fourth paragraphs of the preamble that article 2 in no way restricted the powers of the Security Council; moreover, article 4 safeguarded those powers by stating that the list of typical cases given in article 3 was not exhaustive.

12. It was also essential to know whether and to what extent the Security Council could ignore the presumption of aggression arising from the principle of priority established in the first part of article 2. In order to reach a conclusion that aggression had not been committed, the Council must, in the light of "other relevant circumstances" have more conclusive evidence than the *prima facie* evidence of the first use of force in violation of the Charter. The definition therefore did not restrict the powers of the Security Council but was designed to guide it in its work.

13. Another concern expressed had been the cases of the legal use of force provided for in the Charter. Article 6 of the draft reaffirmed the right of self-defence, although Article 51 of the Charter was not specifically mentioned, as perhaps it should be in that article and in the second preambular paragraph. Article 7 was particularly significant since it guaranteed the right of peoples under alien domination to struggle for self-determination.

14. His delegation would have liked indirect aggression to have been included in the definition but, aware of the difficulties in the Special Committee concerning the discussion of that problem, it none the less welcomed the text of article 3 *(g)*. However, it was hard to understand the formula used in article 5, second paragraph. His delegation associated itself with the remarks of earlier speakers concerning the limitations of article 3 *(d)* and stressed that it could not be interpreted as impairing the right of a coastal State to exercise sovereignty in the air and sea space under its jurisdiction.

15. The draft definition of aggression, if endorsed by the Committee and confirmed by the General Assembly, would take the form of a resolution. Its moral force derived from the fact that it reaffirmed and clarified some of the fundamental principles of the Charter and was therefore to be regarded as the expression of the will of the international community. The Special Committee had adopted it by consensus and the Sixth Committee should also adopt it by consensus; by so doing, it would once again help to strengthen the role of the United Nations, the maintenance of international peace and security, and the progressive development and codification of an important branch of international law.

16. Mr. M'BODJ (Senegal) said that although his delegation had not been a member of the Special Committee, it had always followed that Committee's work with interest. He was gratified that the draft definition had been adopted by consensus after 50 years of effort. Its adoption

confirmed the sincere desire of all peace-loving nations to eliminate the injustice arising from the use of force with aggressive intent. The current world political détente had doubtless contributed to the consensus.

17. While admitting that the draft definition had some short-comings, his delegation regarded it as based essentially on the Charter and observance of its principles. Article 1 of the draft definition was based on Article 2 of the Charter, particularly paragraph 4 thereof. His delegation was somewhat dissatisfied that the draft definition did not mention economic aggression, from which his country suffered continuously. However, his delegation understood the difficulties of the Special Committee which had led it to omit the concept of economic aggression from the definition. Article 2 had given rise to divergences of opinion in the Special Committee on the problem of priority and aggressive intent and it would be improved if an objective distinction were made between acts of aggression and self-defence. With reference to the interpretation of article 3, his delegation, as a coastal State which relied heavily on its marine resources to improve the standard of living of its people, would support any initiative to supplement subparagraph *(d)* of that article by an explanatory note. His delegation was gratified at the inclusion of article 7, since it recognized the legitimacy of armed struggle by peoples seeking to achieve self-determination, freedom and independence in accordance with the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

18. The international community should strive to make the definition an instrument of international peace and security. As a result of the definition, there would no longer be any loop-holes in international law of which a possible aggressor could take advantage. The definition would therefore enhance the role of the United Nations in the maintenance of international peace and security. Consequently, despite the admitted limitations of the definition, he hoped that the compromise text would be adopted by consensus by all the Members of the United Nations.

19. Miss MPAGI (Uganda) said that her delegation, which had been a member of the Special Committee, wished to stress the extreme importance of the definition of aggression in view of the need to establish reliable safeguards in order to promote peaceful coexistence among all States regardless of their political systems. Great significance should be attached to the further development of the principle of international law requiring States to refrain from the use or threat of war or force in their relations with each other. The definition under discussion provided a suitable basis for such development, since it was closely linked with the Charter of the United Nations and the Declaration on Friendly Relations, as well as various General Assembly resolutions.

20. However, article 2 gave unfettered powers to the Security Council which her Government viewed with suspicion. In view of the composition of the Security Council, its ultimate ruling could not be free from political bias. It was therefore undesirable for the Security Council to be vested with such unfettered power. Article 3 provided guidelines for the Security Council in deciding which State was apparently guilty of aggression, and subparagraph *(g)* of that article gave full support to the right of peoples to struggle for their liberation, self-determination and to fight against *apartheid.* That right was reiterated in article 7 and her delegation fully supported it.

21. The draft as a whole provided an index for the Security Council in the performance of its duties, and she urged the Committee to recommend the General Assembly to adopt the definition.

Mr. Šahović (Yugoslavia) took the Chair.

22. Mr. KUMI (Ghana) expressed satisfaction at the fact that the Committee finally had before it a draft definition of aggression and said that he would support the adoption of the text by consensus. He recalled that the Committee whose report was under consideration was the fourth committee established since 1952 to deal with the thorny question of defining aggression. His delegation had been consistently optimistic about the feasibility of formulating such a definition and was pleased that the Special Committee had lived up to the expectation, trust and confidence his delegation had placed in it. Ghana had participated in all the sessions of the Special Committee.

23. The main objectives of the Special Committee had been to find a way to ensure that force would no longer serve as a method of settling international disputes and to provide a written code of conduct to complement the unwritten one in relations among States. A definition of aggression would, above all, serve as a useful yardstick for the Security Council in the discharge of its responsibility under Article 39 of the Charter.

24. The draft definition adopted by the Special Committee was restricted to armed aggression; however, article 4 was designed to deal with other forms of aggression. The list in article 3 could only be illustrative and nowhere in the text could anyone reasonably infer an intention to diminish the powers and functions of United Nations organs. The text as presented, in the opinion of his delegation, did not do any violence to a finding of other insidious forms of aggression.

25. He did not consider it necessary to comment in detail on the various provisions of the draft definition, since his delegation's view had been stated in both the Special Committee and the Sixth Committee in previous years. However, he did wish to comment briefly on articles 3 *(d)* and 7. The struggle for self-determination, freedom and independence was a legitimate assertion of the inherent right of peoples under colonial rule. Article 7 left no doubt as to the intention of the draft not to exclude the right of such peoples to use all possible means to secure their just and legitimate rights. His delegation therefore did not accept any interpretation of article 7 that might eliminate the use of force in the struggle for independence.

26. It was evident from the debate that some delegations had reservations about article 3 *(d),* especially as it might affect the national jurisdiction of coastal States. In the opinion of his delegation, nothing in article 3 *(d)* or any other paragraph of the draft definition had the effect of

limiting the jurisdiction of coastal States within their national zone. The definition should not, in any event, be construed as prejudging any of the issues before the United Nations Conference on the Law of the Sea.

27. As had already been pointed out by many delegations, every word of the draft definition had been critically examined and negotiated. Any attempt to introduce amendments, even of a stylistic nature, would upset the delicate balance of the text. His delegation hoped that the draft definition would be adopted without change by consensus; at the same time, for purposes of compromise, it should be possible to meet the concern expressed by some delegations in connexion with article 3 *(d)* by adopting any procedural method that would allay their concern.

28. Mr. ADJOYI (Togo) noted with satisfaction that the draft definition before the Sixth Committee seemed to meet with the approval of most delegations. The first four preambular paragraphs of the draft definition showed that the authors had wished to place it within the framework of the Charter. The seventh and eighth paragraphs drew attention to the fundamental principles of positive international law, particularly the principle of territorial inviolability, which in turn was derived from that of territorial sovereignty. In the view of his delegation, therefore, there was no reason to harbour any misgivings regarding the interpretation of any article of the draft definition.

29. In the view of his delegation, article 1 was not incomplete, although several other delegations seemed to think it was. Article 1 defined aggression as a result of the use of armed force and as inconsistent with the Charter of the United Nations. The other concepts of aggression, such as political or ideological aggression, economic aggression and "neo-aggression", could only be considered in so far as they were reflected in acts that were incompatible with the Charter.

30. With regard to article 2 his delegation did not consider the principle of priority to be the sole element of aggression, since the article conferred upon the Security Council discretionary power to consider the constituent elements of aggression; the reference to that power was the most important element of article 2. There might be reason to fear that the veto mechanism might make it difficult to judge objectively a situation involving aggression if an allied State was involved. However, his delegation felt sure that, in view of the changes taking place in the modern world, all States, regardless of size, wished to ensure peace in the world.

31. Article 3, particularly subparagraph *(d)*, had given rise to serious concern among many delegations. It must be remembered that that article also fell within the legal framework of the Charter and of international positive law. Clearly, an armed attack by the land, sea or air forces of a State could only be either an act of aggression or an act of self-defence, or at least a response to provocation. In the view of his delegation, such an attack was legitimate and in conformity with the principle of the sovereign right of a State to attack if its sovereignty had been infringed upon.

32. His delegation's views regarding article 4 were the same as those he had expressed regarding article 2, concerning the competence of the Security Council.

33. Article 6 reflected the spirit in which the draft definition had been drawn up. It provided an element of reassurance and confirmed the place of the Charter within the definition.

34. His delegation was certain that the draft definition of aggression would be effectively applied in keeping with the fundamental principles of the Charter and of international positive law and it therefore hoped that the text would be adopted by consensus.

35. Mr. BAMBA (Upper Volta) said that although his country had not been a member of the Special Committee, it had followed the work of that Committee with great interest. On behalf of his delegation, he wished to thank the Special Committee for its important contribution to the cause of peace. The draft definition of aggression reflected the Charter of the United Nations, on the one hand, and the state of international relations on the other. It took into account the operating mechanism of the Security Council. Thus, article 2 of the draft definition, which set forth the principle of priority, also safeguarded the discretionary powers of the Security Council. Likewise, article 4 provided that the Security Council might qualify as acts of aggression other acts in addition to those enumerated in article 3. The concise manner in which it dealt with international responsibility in the cases of aggression also reflected the current state of international law in that field.

36. He wished to point out that in the view of his delegation, article 3 *(g)* had nothing to do with the legitimacy of any support States might provide to national liberation movements. His delegation hoped that in the near future article 7 would no longer be necessary. In the meantime, it supported the idea it expressed, although it would have preferred more explicit wording.

37. His delegation felt constrained to point out that aggression was no longer restricted to the classical form in which it was presented in the definition. The States represented in the Committee were well aware that there were other forms of aggression, which were unfortunately very common. What difference was there between the blockade of the ports or coasts of a State by the armed forces of another State and the economic blockade that a coastal State might impose on a neighbouring land-locked country?

38. His delegation supported the recommendation to the effect that the draft definition should be adopted by consensus, because it fervently believed that the draft definition represented an important step forward, and that the international community as a whole would pursue its efforts and draw up other guidelines relating to the aspects of aggression that had not been dealt with in the current text.

39. Mr. BARARWEREKANA (Rwanda) said his delegation wished to join others in paying tribute to the members of the Special Committee, which had faithfully complied with the General Assembly's recommendation that it should present a draft definition of aggression during the current session.

40. The draft definition before the Sixth Committee dealt exclusively with one aspect of aggression, namely armed aggression, as the Special Committee had decided not to include in the definition what most delegations had been calling "economic and ideological aggression". However, many delegations, including his own, felt that the draft definition as it stood was in danger of being overtaken by events. His delegation wondered whether the Sixth Committee might not find itself dealing again with the same question in the near future, although under the heading "need to redefine aggression" or "need to review the definition of aggression". His delegation could not fail to mention the fact that the draft definition did not reflect the most common form of aggression in modern times, namely economic aggression. Was the Committee going to turn a deaf ear to the calls for help made by certain Member States, such as Zambia, whose case was still fresh in everyone's mind? His delegation was concerned by the situation of "asphyxia" in which the land-locked countries, including Rwanda, found themselves. That situation, which was already critical as a result of the current economic crisis, would be aggravated if those countries were deprived of their only access to the sea. His delegation agreed with the Bolivian delegation that the independence and sovereignty of their countries would be threatened should the coastal countries blockade or boycott the land-locked countries. His delegation fully shared the views expressed during the previous session by the representative of Afghanistan (1445th meeting) and would have offered to sponsor the Afghan amendment had it been formally submitted.

41. His delegation would always have reservations regarding the draft definition, which was far from being complete and satisfactory because of its unilateral nature. Despite those reservations, the unilateral text still represented a positive achievement and his delegation found it acceptable. The draft definition was particularly worthwhile from the legal standpoint because it referred to the Charter of the United Nations and previous texts.

42. His delegation attached great importance to the question of priority embodied in the draft definition. He noted with satisfaction that the text excluded from the cases of aggression the struggle for self-determination and independence of countries that were still under the colonial yoke; in that respect, article 7 attached the proper importance to the Charter of the United Nations and contributed greatly to the progressive development of international law.

43. Mrs. SLÁMOVÁ (Czechoslovakia) said that the question of defining aggression was unquestionably one of the most important items on the agenda of both the Sixth Committee and the twenty-ninth session of the General Assembly. The significance of a universally acceptable definition of aggression for the maintenance and strengthening of peace and security and also for the attainment of the lofty purposes of the United Nations was obvious. The efforts to work out a definition of aggression and hence of the aggressor had had a long history. At the Conference for the Reduction and Limitation of Armaments convened by the League of Nations in 1932-1933, a draft definition of aggression[2] had been submitted by the Soviet Union but had not been adopted by the conference, mainly because of the opposition of the Western Powers. Czechoslovakia, together with Romania, the Soviet Union, Turkey and Yugoslavia, had concluded the Convention on the Definition of Aggression,[3] based on the draft definition worked out by the Soviet Union, in London on 4 July 1933. That definition had also been included in a number of other regional agreements signed in the 1930s. The Military Tribunal at the Nürnberg trial in 1945 had used that definition of aggression, and it had drawn attention to the gap in international law caused by the absence of a universally accepted definition of aggression. The question of defining aggression was particularly important for Czechoslovakia, which had been one of the first victims of aggression in the Second World War.

44. Everyone was aware of the fate of the three previous special committees of the United Nations which had had the task of working out a definition of aggression, and the results of the work of the Special Committee could therefore be considered successful. It was clear that the text of the definition of aggression adopted by consensus by the Special Committee was a compromise which could not fully satisfy all States. Her delegation agreed with other delegations regarding the short-comings of article 5, which made an artificial distinction between aggression and wars of aggression whereas any type of aggression was in fact a crime against international peace and security. Czechoslovakia, like other countries, was not completely satisfied with the draft definition of aggression. However, the draft definition had been formulated after many years of effort, was an elaborate structure which could collapse if even one of its elements was altered, was in keeping with the basic provisions of contemporary international law and the Charter, took into account the rights of the Security Council and respected the right of oppressed peoples to struggle for national liberation; furthermore, the unanimous adoption of the definition by the General Assembly would have great political, legal and moral significance and a universally acceptable definition of aggression would represent a major contribution to international peace and security. Her delegation therefore fully supported the draft definition which had been worked out by the Special Committee and hoped that it would be acceptable to all delegations.

45. Mr. MONTENEGRO (Nicaragua) said that the draft definition of aggression provided the international community with one more instrument with which to continue its efforts for peace. Far from criticizing the text, his delegation felt that it was better to light a match in the dark than to remain in the darkness; a happy series of circumstances had come about in international relations without which it would have been difficult to reach a consensus. His country had always been in favour of formulating a definition of aggression because it had been a victim of aggression in the past.

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2 See League of Nations, *Documents of the Conference for the Reduction and Limitation of Armaments*, vol. II, Series B, p. 237.

3 For the text, see, *inter alia*, Arthur Upham Pope, *Maxim Litvinoff* (New York, L. B. Fischer Publishing Corporation, 1943), p. 285.

46. The draft definition contained principles enshrined in the Charter and reaffirmed respect for the sovereignty of nations and the prohibition of the use of force. His delegation was happy that no amendments had been submitted that might have made it impossible in the Special Committee to adopt the text by consensus.

47. The draft definition made it clear that aggression was voluntary and deliberate, involving the use of armed forces by one State against another. Article 1 placed the definition in line with the principles of the Charter and article 2 established the principle of priority, and gave the Security Council discretionary powers which were in accordance with the powers bestowed upon the Council by the Charter. His delegation agreed that the struggle of peoples for self-determination, freedom and independence should be excluded from the scope of the definition. His delegation supported the draft definition and would vote for it.

48. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) said that his delegation had always attached great importance to the formulation of a definition of aggression. A quarter of the population of the Byelorussian SSR had died in the Second World War as a result of aggression. His delegation had consistently proceeded from the indisputable fact that the formulation of a universally acceptable definition of aggression would contribute to the increased effectiveness of the United Nations and to the fulfilment of the tasks defined in the Charter. The seventh session of the Special Committee had taken place against the background of an improvement in the political climate in the world and the confirmation in international relations of the principle of peaceful coexistence between States with different social systems. All that had naturally had a favourable effect on the work of the Special Committee.

49. His delegation considered that the draft definition approved by the Special Committee was in principle satisfactory. It was particularly significant that the draft met the requirements of the Charter with respect to the powers of the Security Council. The fifth preambular paragraph was in the interests of all peace-loving peoples. His delegation had no objection to the inclusion of the eighth preambular paragraph. It wished to state that in its understanding article 3 *(g)* could not be interpreted as calling into question the legitimacy of the national liberation struggle of peoples, partisan war and national liberation movements. It approved the text of article 4 since it reflected the provisions of Article 39 of the Charter. With regard to article 5, his delegation favoured the strictest condemnation of aggression and considered that it was correct to term aggression a most dangerous crime. Although the text of article 6 to some extent weakened the definition of the legal consequences of aggression contained in article 5, his delegation could accept article 6 since it had commanded support in the Special Committee. Article 6 was one of the most important articles, and it was essential that it should be included in the text of the definition since otherwise the definition would be incomplete and unacceptable to a number of delegations. His delegation proceeded from the general understanding that the definition of aggression should correspond to the requirements of the United Nations Charter, a basic international legal document which outlined effective collective measures for combating threats to peace and acts of aggression; in the context of such measures, the use of force was lawful. The right provided for by article 7 was lawfully derived from Article 51 of the Charter, and the adoption of article 7 would be a great contribution to the defence of peoples struggling for their freedom, independence, progress and democracy. His delegation had no objection to article 8, since it stressed the interrelationship between all the articles of the draft and did not change their content.

50. His delegation felt that it was essential to approve the text of the draft definition of aggression and to formulate it as a resolution of the General Assembly at its twenty-ninth session. The text reflected to the greatest possible extent the interests of all delegations as expressed in the Special Committee, and it should be given legal form. He was following the example of other delegations in not seeking to point out short-comings in the draft definition—even though some of its provisions were not satisfactory to all—since revision of the draft definition would belittle the spirit of compromise and the great efforts which had been made by the Special Committee for many years despite the difficulties and obstacles encountered.

51. Significant favourable changes were taking place in the international situation, encouraging the hope of deliverance from the horrors and hardships of world war. The cold war period had been succeeded by an era of increasing confirmation in international relations of the principle of the peaceful coexistence of States with different social systems. The first important and specific steps had been taken towards curbing the arms race and reducing the threat of a devastating nuclear war, and favourable prospects were opening up for the reduction of military spending. There was every justification for believing that détente was not a temporary phenomenon but the beginning of a fundamental restructuring of international relations, and the adoption by the General Assembly of the definition of aggression would promote the further strengthening of international peace and security and would be a further contribution to the formulation of the rules of contemporary international law and a great victory for the diplomacy of peace and progress.

52. Mr. ROSENNE (Israel) said that his country had for over 27 years been the victim of constant hostility, belligerence, blockade and armed aggression by Governments which had always considered themselves to be at war with Israel. In recent years, those Governments had also employed a terrorist organization and had not concealed the fact that their aim was to dismantle a State Member of the United Nations and eliminate Israel as an independent nation. He mentioned those facts to indicate as forcefully as he could that, in his delegation's opinion, the Committee's consideration of the question of defining aggression was not an academic or abstract exercise. Israel had no choice but to deal with the subject from a harshly realistic point of view.

53. Thus, there had been no change in his delegation's basic position since the question of defining aggression had first been discussed some 24 years previously. Its position had always been that there would be no value in a definition which did not cover all forms of aggression. Under the Charter of the United Nations, a determination by the Security Council that an act of aggression had been

committed was a constituent element of aggression for all United Nations purposes. Moreover, the Charter did not limit its concept of aggression only to armed aggression. Thus, neither the Charter nor the development of international relations in the current century bore out any postulated equivalence between "armed attack", the expression used in Article 51 of the Charter, and the whole concept of acts of aggression as employed in Chapter VII of the Charter. The term "armed aggression" did not appear in the Charter of the United Nations. Consequently, the limitation of the definition of aggression to armed aggression was in itself an unacceptable distortion of the Charter, and the text before the Committee, with its emphasis on armed aggression, was accordingly only a partial definition of the problem.

54. Secondly, aggression did not have the same place in the Charter of the United Nations as it had had in the Covenant of the League of Nations. The problem faced by the framers of the Charter had been the difficult and concrete one of balancing, in a realistic fashion, the legitimate requirements of national self-defence with the genuine interests of the international community to avert the use of force, and the Security Council had been entrusted with special responsibilities in that regard. In view of statements made during the discussion of the report of the Special Committee, his delegation could not accept the assertion that there was anything inherently improper in any member of the Security Council, whether permanent or not, indicating its position on any proposal before the Council by means of a negative vote. The Charter required a certain number of affirmative votes and attributed specific effects to negative votes in the Security Council. The idea that there could be an abuse of the so-called "veto power" when a permanent member of the Security Council used its right to cast a negative vote on a matter which the majority of the members of the Council favoured was simply inadmissible. It was precisely because of the existence of that power that the control of such matters had been placed in the hands of the Security Council. Such control could protect an innocent victim of aggression and could also be a safety valve for the protection of the United Nations and all its Members against any hasty and emotional reaction of a fortuitous and perhaps shifting numerical majority in the Security Council.

55. Referring specifically to the report of the Special Committee, he noted that, as a result of the consensus procedure followed by the Special Committee and its practice of holding informal meetings in working groups and contact groups, the Committee now had before it a non-reasoned text which was subject to many conflicting and, indeed, irreconcilable interpretations, as was evident from annex I of the Special Committee's report and the discussions which had taken place in the Committee. It was clear that the text did not contain any norm or standards accepted and recognized by the international community as a whole or anything even remotely approaching the basic concept of *jus cogens.* The text did not even rank as an authentic interpretation of the Charter.

56. His delegation was of the opinion that it was most unusual for a supposed definition to contain a lengthy preamble which was almost as long as the text itself. In so far as the preamble reiterated the provisions and principles of the Charter, it was, of course, acceptable, but when it formulated hopes and expectations or value judgements it entered the realm of individual assessment and speculation and must be evaluated accordingly. On that basis, his delegation welcomed the first four paragraphs of the preamble and the last paragraph because they adequately reflected the principles of the Charter.

57. Subject to what he had said regarding the distortion produced by limiting the concept of aggression to armed aggression, he considered that article 1 was an adequate statement of what the words "armed aggression" might mean if they were contained in the Charter. In addition, the explanatory notes were useful. His delegation doubted that anything more would need to be said in order to provide an adequate definition of armed aggression were such a definition necessary.

58. Whatever views might be held concerning the conformity of article 2 with the Charter, its wording was certainly awkward. At all events, it did not permit the use of armed force in cases where the possibilities for the peaceful settlement of disputes had not been exhausted or had been unsuccessful. The contrary view, which had been put forward by one delegation, went a long way towards depriving the text of all meaning.

59. Since article 3 was unnecessary, his delegation presumed that it had been intended simply to provide some illustrations of typical examples of armed aggression. It was, however, unsatisfactory because it did not describe with sufficient clarity all possibilities. It was particularly weak with regard to indirect aggression and terrorism. As had been stated by the Sixth Committee at the preceding session in paragraph 23 of its report on the question of defining aggression,[4] indirect aggression was one of the most dangerous and provocative forms that naked aggression could assume. The omission of proper treatment of indirect aggression from the text under consideration could not be interpreted as licence for any Government or group of persons to seek to further their political aims by using that form of armed intervention, nor could it imply that reaction to such aggression could be a violation of the Charter. The failure of the text to deal properly with indirect aggression was a serious omission which compelled his delegation to formulate specific reservations with regard to the text under consideration. In that connexion, he pointed out that article 4 confirmed his criticism of article 3. His delegation nevertheless welcomed the provision in article 4 that the Security Council could determine that acts other than those enumerated in article 3 constituted aggression under the provisions of the Charter. Like other delegations, his delegation considered that article 5 was irrelevant to a definition of aggression and its presence in the text accordingly required the most specific reservations.

60. Since article 6 was a truism, it could be accepted, although his delegation was of the opinion that it also had no place in a definition of aggression. Article 7 also had little to do with a definition of aggression, but, since it reiterated an underlying principle of the Charter, it could

[4] See *Official Records of the General Assembly, Twenty-eighth Session, Annexes,* agenda item 95, document A/9411.

not justify the non-observance or breaches of engagements undertaken by or on behalf of the peoples to which it referred.

61. Article 8 of the definition did not take the place of the general rules for the interpretation of a text but, rather, stressed the interrelation of its provisions. The basic rule for the interpretation of the text under consideration was that it should be interpreted in good faith.

62. With regard to the status of the definition in the hierarchy of legal formulations, it was intended that the definition should be adopted by means of a General Assembly resolution. The status of such a resolution would be the same as that of any other General Assembly resolution. In that connexion, he referred to the memorandum prepared in 1962 by the Office of Legal Affairs and published in document E/CN.4/L.610, in which it was stated that "A 'declaration' or a 'recommendation' is adopted by resolution of a United Nations organ. As such it cannot be made binding upon Member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation'." The same was true for a definition. In that connexion, he wished to add a further observation, which was based on the analysis of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations made by the Italian jurist, Gaetano Arangio-Ruiz, who, in a recent series of lectures at the Academy of International Law at the Hague entitled *The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations,* has pointed out that any assessment of the text of that Declaration as a whole must be preceded by a "vertical" assessment of the value of each provision.[5] To that end, each provision or organic set of provisions must be compared with the rules of international law which would be relevant if the Declaration did not exist. That was now equally valid with regard to the definition of aggression. He also referred to the opinion of Charles de Visscher, who had stated: "Aggression, in the present state of international relations, is not a concept that can be enclosed in any legal definition whatsoever; the finding that it has occurred in any concrete case involves political and military judgements and a subjective weighing of motives that make this in each instance a strictly individual matter."[6] He wished to stress the point that in each instance aggression was a strictly individual matter.

63. Ever since the discussion of the question of defining aggression had begun in 1950, his delegation had expressed serious reservations with regard both to its utility and to the direction it was taking. Its apprehensions that, since the discussion had begun with an incorrect point of departure, it would inevitably lead to an incomplete and illusory definition of aggression had, unfortunately, been realized. Moreover, as it had developed and was being applied in the current discussion, the consensus procedure did not make it possible for a free exchange of views to take place or for the text resulting from the discussion to be satisfactory or to constitute an accurate reflection of the views of delegations. His delegation regretted that, because it found the draft definition so unsatisfactory, inadequate, incomplete and deceptive, it was unable to participate in the general mood of self-congratulation prevailing at the present session. The United Nations deserved something better if the twenty-ninth session was to go down in history as the session at which the definition of aggression had finally been adopted. Twenty-nine years previously, an exhausted and war-torn world had welcomed the establishment of the United Nations as a renewed effort on the part of statesmen to protect succeeding generations from the scourge of war. Referring to the fundamental principles and purposes of the United Nations, he recalled the sense of relief which the provisions of the Charter had brought to tormented humanity emerging from the greatest nightmare of history. It could not now be honestly claimed that the draft definition of aggression before the Committee did justice to the sacrifices of the people whose sufferings had made the establishment of the United Nations possible. In that connexion, he recalled what his delegation had stated at the twenty-eighth session (1443rd meeting), namely, that what was basically needed was not a definition of aggression and certainly not an incomplete one, but, rather, for all members of the international community to renounce the threat or use of force as an instrument of national policy.

64. Mr. TELLEFSEN (Norway) said that the report of the Special Committee was, in a way, a historic document because, after more than 50 years of strenuous effort, the General Assembly had now before it a consensus text containing a draft definition of the concept of aggression. His delegation, which had been a member of the Special Committee, wished to commend the other members of the Special Committee for their will to co-operate in preparing that draft definition, which it hoped would be regarded as generally acceptable by the representatives of the international community. His Government also hoped that the draft definition would be adopted by the General Assembly in accordance with the recommendation of the Special Committee.

65. His delegation was, of course, aware that the draft definition contained provisions whose interpretation might not be absolutely clear. In that connexion, a number of delegations had referred to article 3 *(d)*. If further clarification of that provision should be required, his delegation would have no difficulty in accepting a procedure such as the one suggested by the representatives of Kenya (1474th meeting) and Canada (1473rd meeting). His delegation had understood that such a procedure could be generally accepted as a consensus solution, thus making it possible for the General Assembly to adopt a resolution which would be a milestone in the history of the United Nations.

66. Mr. ROSENSTOCK (United States of America) expressed his delegation's appreciation for the work done by Mr. Broms and Mr. Saunders in connexion with the report of the Special Committee. He also paid a tribute to the many individuals who had contributed to the success of the Special Committee over the years.

67. Although his delegation had been somewhat sceptical about the utility of defining aggression, it had joined in the

[5] See *Collected Courses of the Hague Academy of International Law,* 1972-III (Leyden, A. W. Sijthoff), vol. 137, p. 523.

[6] Charles de Visscher, *Treaty and Reality in Public International Law,* trans. by P. E. Corbett (Princeton, New Jersey, Princeton University Press, 1968), p. 303.

consensus in the Special Committee. Its detailed views were set forth in annex I to the report and need not be repeated. Like many others, his delegation did not regard the definition as perfect. It contained some unnecessary and infelicitous material, and there were some omissions. That was not surprising, since the product of years of intensive negotiations among large and small States with differing social systems and legal traditions could not fully reflect the desires of each State. The text had the strengths and the weaknesses of a compromise, but, as such, it should be recognized as a hopeful sign of a growing spirit of international co-operation and understanding.

68. The draft definition arrived at by the Special Committee was not abstract, but sought to provide guidance for the understanding of the meaning and function of the term "aggression" as used in Article 39 of the Charter of the United Nations. It did not and should not seek to establish obligations and rights of States, for that was not the function of Article 39 of the Charter. The draft definition of aggression neither added to nor subtracted from the Declaration on Friendly Relations. It took the form of a recommendation by the General Assembly designed to provide guidance for the Security Council in the exercise of its primary responsibility under the Charter to maintain and, where necessary, restore international peace and security. The second, fourth and tenth preambular paragraphs and articles 2 and 4 clearly reflected the intention of the authors to work within the framework of the Charter, which granted discretion to the Security Council. There was nothing that the General Assembly or the Security Council could do under the Charter, as currently drafted, to alter the discretion of the Council. However, since the membership of the Council was drawn from the membership of the Assembly, there was reason to assume that the Council would give due consideration to the recommendation provided by the Assembly.

69. The structure of the draft definition accurately reflected its function and the limits within which the Assembly was obliged to work. Article 1 was a general statement based on Article 2 of the Charter and, like the latter Article, drew no distinction on the basis of the means of armed force used. Moreover, the use of the phrase "as set out in the definition" made it clear that article 1 should not be read in isolation from the other articles and that not all illegal uses of armed force should be regarded as acts of aggression.

70. Article 2 of the draft definition suggested considerations which the Security Council should bear in mind in analysing a particular situation which might be brought before it. The phrase "*prima facie* evidence" was fully consistent with the legal structure of Chapter VII of the Charter, which required that the determination of an act of aggression must result from a positive decision of the Security Council. The Council examined all the relevant facts and circumstances and then sought the most pragmatic means available of dealing with the situation. The draft definition was designed to provide guidance in that process of examination.

71. Article 3 set forth certain examples of the use of force which the Security Council might reasonably consider to qualify as potential acts of aggression. The problems envisaged by some delegations with regard to that article were false problems. For example, common sense made it clear that "Bombardment by the armed forces of a State against the territory of another State" could not be imagined to constitute aggression if it was exercised pursuant to the inherent right of self-defence. Moreover, the provisions of article 3 were stated to be applicable "subject to and in accordance with the provisions of article 2", and article 8 required all the provisions of the draft resolution to be construed as interrelated. Any action which might qualify as an act of aggression must be a use of force in contravention of the Charter. His delegation therefore saw no legal basis for objecting to the inclusion of any of the subparagraphs of article 3 and no greater basis for clarifying subparagraph *(b)* than subparagraph *(a)* or *(c)* or *(d)*, among others. Those subparagraphs did not, of course, purport to spell out in detail all the illicit uses of force which could qualify as acts of aggression. They should be understood as a summary, and reference to such documents as the Declaration on Friendly Relations was particularly helpful in understanding some of them and accepting the summary treatment of the issues in, for example, subparagraphs *(f)* and *(g)*.

72. Article 4 rightly placed emphasis on the inherently incomplete nature of any list of specific acts and reaffirmed the discretion of the Security Council. Articles 5, 6 and 7 were not properly part of the definition of aggression, but rather set forth some of the legal consequences which would flow from a finding of aggression by the Security Council and expressly indicated some of the situations or rights not affected by the first four articles. In article 6 it was pointed out that a definition of the term "aggression", as used in Article 39 of the Charter, created no new rights and did not cut across any existing rights and obligations. Article 6 did not support the restrictive meaning some had sought to place on Article 53 of the Charter. It neither restricted nor expanded the inherent right of self-defence. The Special Committee had wisely recognized that a definition of the inherent right of self-defence was beyond the scope of a definition of aggression. He trusted that no delegation would wish to assert the need to expand the right of self-defence, since any such move would be counterproductive.

73. Article 7 expresly affirmed that the purpose of the draft definition was to define aggression and not the entitlement of all peoples to equal rights and self-determination. Article 7, when read in conjunction with article 6, did not and could not legitimize acts of force which would otherwise be illegal.

74. His delegation believed that the draft definition, which was the product of many years of work, deserved wide acceptance by the General Assembly. In expressing that view, his delegation was mindful of the need not to place too great an emphasis on what had been accomplished. The Security Council must not be tempted to pursue the question of whether aggression had been committed if to do so would delay expeditious action under Chapter VII of the Charter. The definition would do more harm than good if it served to distract the Council or cause any delay in action which the Council might otherwise have taken.

75. His delegation hoped that the guidelines set forth in the definition would contribute to the more effective

functioning of the collective security system of the United Nations and thus to the maintenance of international peace and security. For that reason, it was prepared to continue to form part of the consensus.

76. Mr. GÜNEY (Turkey), speaking in exercise of his right of reply, said that the representative of the Greek community in his statement at the preceding meeting, had completely falsified what was happening in Cyprus. He had even gone to the length of likening to aggression Turkey's intervention in Cyprus as one of the guarantor Powers acting in accordance with the Treaty of Guarantee and the Treaty establishing the Republic of Cyprus. Turkey had been obliged to intervene in order to safeguard the sovereignty, independence and territorial integrity of Cyprus and to ensure the security and legal rights of the Turkish community in Cyprus.

77. The representative of the Greek community in Cyprus had completely ignored the Cyprus coup d'état organized with the help of Greek officers in order to annex the island to Greece. That act of aggression had made Turkey's intervention inevitable. The Greek armed forces had occupied the island for some time previously in flagrant violation of the solemn commitment they had entered into under international agreements. He drew the attention of the Committee to the statements made by the representative of Cyprus and by Archbishop Makarios to the Security Council at its 1779th and 1780th meetings respectively. It was significant that when his own person and power were in danger, Archbishop Makarios had admitted that annexation was sought, although in fact he had always been informed of the Greek threat to the sovereignty, political independence and territorial integrity of the Republic of Cyprus. There was no other example in history of a head of State like Archbishop Makarios, who, since taking power, had actively organized and participated in plots and inhuman acts against one of the communities of his own country, namely the Turkish Cypriot community. No other head of State, instead of working to safeguard the sovereignty, political independence and territorial integrity of his State, had worked as Archbishop Makarios had done to compromise them, destroy the constitutional order and facilitate the annexation of his State by a foreign Power in violation of international instruments.

78. Under the Treaties of Guarantee and Alliance, Turkey was obliged to safeguard the independence, territorial integrity and security of Cyprus, and it had tried to meet that obligation together with the other guarantor Powers. Unfortunately, the efforts to work in harmony had not been successful and Turkey had had to act alone, solely with the intention of fulfilling its obligations under the treaties. Without its intervention, the independence and territorial integrity of Cyprus could not have been maintained. Over the years, only his Government's opposition and the resistance of the Turkish Cypriot community in Cyprus had prevented the Greeks from annexing the island.

79. Mr. YASSEEN (Iraq), speaking in exercise of the right of reply, expressed regret that the representative of Israel had introduced an element extraneous to the present debate, namely the question of Palestine, which would be duly discussed in another forum. The representative of Israel had seen fit to launch a verbal attack on all the Arab States, and a reply must be made to that attack. Speaking in the name of a State that was holding parts of the territories of three other States Members of the United States under military occupation, the representative of Israel was undoubtedly qualified to discuss aggression. Indeed, the General Assembly might have made a mistake in not appointing a representative of Israel to the Special Committee in his capacity as an expert on aggression. Despite the support and protection it received from certain Powers, Israel was obliged to respect international law and comply with the Charter of the United Nations.

80. Mr. ROSENNE (Israel) said that the honour of providing expertise on aggression should properly go to the representative of Iraq, whose Government was one of those which for 27 years had made Israel a victim of armed aggression. The acts of aggression committed against Israel were fully chronicled in the records of the United Nations from 1948 onward. He regretted that the representative of Iraq was disturbed to hear the truth.

81. Mr. ROSSIDES (Cyprus), speaking in exercise of the right of reply, said that the representative of Turkey had spoken on matters which were unrelated to the definition of aggression. If it was necessary to cite a case of aggression, however, the Turkish attack upon Cyprus was one of the most flagrant examples in recent history. While assuring the world that it was engaged in a peaceful operation to restore constitutional order in Cyprus, Turkey had launched a brutal invasion with the aim of partitioning the island. Under the Treaty of Guarantee Turkey was obligated to protect the independence and territorial integrity of Cyprus, but the invading troops had abolished independence and destroyed the island's territorial integrity. The Turkish forces had engaged in wanton plunder and destruction for the sake of destruction.

82. It was odd that the representative of Turkey should have accused him of remaining silent. That was a distortion of reality: the fact of the matter was that he had come immediately to the Security Council and asked for a cease-fire resolution. On numerous occasions he had condemned the Turkish actions in the strongest possible terms. More than 200,000 Greek Cypriots were now refugees, having been expelled from their homes by the invading Turkish forces. Many had been killed in the process. The actions of the Turkish forces constituted no less than a crime against humanity.

83. The representative of Turkey could not deny the fact that more than 200,000 Cypriots had been forced to flee and were not allowed to return to their homes. If they tried, they were shot down on sight. Nor could he deny that shortly before launching an attack on Famagusta the Turkish Government had officially notified the International Committee of the Red Cross that it denounced the Geneva Conventions of 1959 on the protection of war victims. Its withdrawal from those Conventions was tantamount to an admission that it was planning to commit the crimes proscribed in them.

84. An objective report on the tragic consequences of the Turkish invasion had been prepared by the World Council of Churches. That report confirmed that the Turkish forces

were in control of approximately 40 per cent of the island's territory and that there were more than 200,000 displaced Greek Cypriots. The report went on to say that the continued presence of 14,000 Turkish soldiers constituted a serious obstacle to negotiations and that their arrogant and disdainful behaviour had created a pervasive atmosphere of fear.

85. The CHAIRMAN, interrupting the speaker, said that he was prepared to allow the representative of Cyprus to continue his statement but drew attention to the recommendation of the General Committee that statements in exercise of the right of reply should be limited to 10 minutes. In view of the lateness of the hour and the fact that several other delegations wished to speak, he hoped that the representative of Cyprus would agree to postpone the remainder of his statement until the next meeting.

86. Mr. ROSSIDES (Cyprus) agreed to continue his statement at the next meeting.

87. Mr. YASSEEN (Iraq), replying to the comments of the representative of Israel, pointed out that his delegation had been a member of the Special Committee and therefore took pleasure in the fact that the Special Committee had accomplished its work in a manner generally satisfactory to all except for the representative of Israel. The remarks made by the representative of Israel were not pertinent to the item under discussion; the situation in the Middle East would be duly taken up in the other bodies.

88. Mr. ROSENNE (Israel) agreed with the representative of Iraq that it was not the time or place to discuss the situation in the Middle East. However, he had not been discussing that question. His remarks had been confined to the item under discussion, but he had attempted to explain why Israel could not regard the definition of aggression as a mere academic exercise. Apparently the representative of Iraq had not liked Israel's analysis of the draft definition, but that did not constitute sufficient grounds to exercise the right of reply.

89. The CHAIRMAN again drew attention to the lateness of the hour and appealed to those wishing to speak to be as brief as possible.

90. Mr. GÜNEY (Turkey) said it was not true that Turkey had denounced the Geneva Conventions of 1949. Turkey was still a party to those Conventions and that fact could be verified through the depositary authorities. Apart from telling outright lies in an attempt to mislead public opinion, the Greek Cypriot community which Mr. Rossides represented had flagrantly violated international agreements and had disrupted the agreed constitutional system in Cyprus. Instead of repeating the errors of the past, it was to be hoped that the representative of the Greek Cypriot community would turn his attention to the realities of the present with a view to finding a constructive, practical and peaceful solution.

91. Mr. EUSTATHIADES (Greece) reserved his delegation's right to reply to the remarks made by the representative of Turkey.

92. Mr. ROSSIDES (Cyprus) said that the news of Turkey's withdrawal from the Geneva Conventions had been reported in the *Manchester Guardian* on 14 September and in *The New York Times* on 16 October. Those reports had not been challenged by the Turkish Government, and the presumption was that Turkey wished to be free from those Conventions so that it could commit atrocities in Cyprus. He reserved his right to continue his statement in exercise of the right of reply at the next meeting.

93. Mr. GÜNEY (Turkey) said that the representative of the Greek Cypriot community should not place such great faith in newspaper reports. If he wished to ascertain Turkey's status with regard to the Geneva Conventions, he should address himself to the depositary authorities.

94. Mr. YASSEEN (Iraq), replying to the representative of Israel, said that he had not raised the question of the situation in the Middle East. However, the representative of Israel was correct in stating that the delegation of Iraq did not like his analysis of the draft definition. Indeed, the Israeli analysis ran counter to the views expressed by the great majority of delegations. It was only natural that a definition of aggression would not be welcomed by aggressors.

The meeting rose at 7 p.m.

1481st meeting

Monday, 21 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1481 and Corr.1 and 2

Tribute to the Memory of Mr. Shthil Taqa, Minister for Foreign Affairs of Iraq

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Shthil Taqa, Minister for Foreign Affairs of Iraq.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued) (A/C.6/L.980, L.982, L.983, L.985, L.986)**

1. The CHAIRMAN announced that the Ivory Coast and Somalia should be added to the list of sponsors of draft resolution A/C.6/L.980.

2. Mr. HASSOUNA (Egypt) introducing draft resolution A/C.6/L.980 on behalf of its sponsors, said that the Committee had already examined the procedural aspects of the question at the previous session of the General Assembly. At that time it had arrived at a compromise formula which was reflected in the preamble of the draft resolution. After a series of consultations, it had been agreed that the Committee would include, in its report to the General Assembly, a statement on how the Secretary-General should fulfil the task entrusted to him under operative paragraph 1 of the draft resolution.

3. With regard to operative paragraph 2, which conformed with the practice followed in respect of other conferences, and particularly the United Nations Conference on the Law of the Sea, he stated that the sponsors had decided to revise that paragraph so that the wording would be patterned on the formula adopted by that Conference and that the words "in their respective regions" should be added after the words "national liberation movements". He asked the Secretary of the Committee to read out, for the information of members of the Committee, the list of the national liberation movements which had been accorded observer status at the Conference on the Law of the Sea.

4. Mr. RYBAKOV (Secretary of the Committee) said that at the Conference on the Law of the Sea, the representative of Senegal had proposed, on behalf of the Organization of African Unity and the League of Arab States, that the national liberation movements recognized by either of those organizations should be represented at the Conference as observers. The General Committee of the Conference had recommended that rule 62–later rule 63–of the rules of procedure should be amended to read as follows:

> "National liberation movements in their respective regions recognized by the Organization of African Unity or by the League of Arab States may designate representatives to participate as observers, without the right to vote, in the deliberations of the Conference, the Main Committees and, as appropriate, the subsidiary organs."

The Conference had decided by consensus to invite the following national liberation movements as observers: for Angola, the People's Movement for the Liberation of Angola (MPLA) and the National Liberation Front of Angola (FNLA); for Mozambique, the Liberation Front of Mozambique (FRELIMO); for Namibia, the South West African People's Organization (SWAPO); for Rhodesia-Zimbabwe, the Zimbabwe African National Union (ZANU) and the Zimbabwe African People's Union (ZAPU); for South Africa, the African National Congress of South Africa (ANC); for the Comoro Islands, the National Movement for the Liberation of the Comoro Islands (MOLINACO); for the Seychelles Islands, the Seychelles People's United Party (SPUP); for the Somali Coast, the National Front for the Liberation of the Somali Coast (FLCS); for Palestine, the Palestine Liberation Organization (PLO).

5. Subsequently, the representative of Senegal had requested that the Seychelles Democratic Party, which had been inadvertently omitted from the list previously submitted to the Conference, should be added to the list of national liberation movements.

6. Mr. ROSENNE (Israel) recalled that his delegation was firmly opposed to any decision to invite the Palestine Liberation Organization to the Conference proposed in draft resolution A/C.6/L.980. His delegation's position had been set forth in a letter to the Secretary-General (A/9688) and in the statements to the General Assembly by the Israeli Foreign Minister at the 2255th plenary meeting and the representative of Israel at the 2267th plenary meeting. He also recalled that his delegation had opposed the consensus which had been reached at the Conference on the Law of the Sea.

7. Referring to operative paragraph 2 of the draft resolution, he stated that it was his delegation's understanding of the practice hitherto followed, that the invitation did not entitle the organizations mentioned to call for the participation of national liberation movements of countries or territories situated outside their respective regions. His delegation had taken note of the explanation furnished by the representative of Egypt, and the revision of the draft resolution which he had introduced, and requested that that explanation should be reflected in the Committee's

* Resumed from the 1477th meeting.

records. He pointed out that General Assembly resolution 3210 (XXIX) was not relevant to the Conference under discussion and that the Palestine Liberation Organization had no contribution to make to that Conference.

8. Finally, he proposed that a separate vote should be taken on the words "and/or by the League of Arab States" and requested that it should be a recorded vote.

9. The CHAIRMAN pointed out that, according to the rules of procedure of the General Assembly, only two speakers could speak in favour and two against a motion for division. Consequently, he asked the members of the Committee whether they had any objection to its proceeding to vote on the motion for division.

10. Mr. BOULBINA (Algeria) said that he did not regard the motion for division as germane to the matter under discussion and felt that its purpose was to divide the Committee. The guiding principle on which the draft resolution had been based was the principle of universality and the application of that principle implied that all States should be invited to participate in the proposed Conference. It was only a matter of justice and of the sound implementation of that principle to invite the national liberation movements also, as they represented a strong force in the international community and their contribution could only strengthen the basis for the codification of international law. He considered the subtle distinctions that were proposed to be fallacious, and he opposed the motion for division on a draft resolution which was the product of the goodwill shown by almost the entire membership of the Committee.

11. Mr. HASSOUNA (Egypt) added that the motion for division was designed not only to divide the Committee but also to fractionalize the struggle of the national liberation movements recognized by the Organization of African Unity and by the League of Arab States. Their struggle was one and the same struggle, and its objectives were the same. The wording of operative paragraph 2 of the draft resolution was the result of lengthy consultations, and the motion for division would undermine the compromise which the sponsors of the draft resolution had reached. He had no objection to the representative of Israel's persisting in his position and pressing his request, but he pointed out that the majority of members of the Committee did not share the Israeli representative's opinion.

12. Mr. ROSENNE (Israel), speaking on a point of order, observed that one of the sponsors of the draft resolution had opposed his motion, while another had raised no objection; and requested the Chairman to rule whether in those circumstances there existed opposition to his motion for a separate vote.

13. The CHAIRMAN stated that the Committee should proceed to the vote on the motion of Israel.

14. Mr. MAI'GA (Mali) recalled the precedent of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable to Armed Conflicts, which had decided, at the initiative of his own delegation, to invite the national liberation movements to participate in its work. He expressed the hope that the draft resolution under consideration would be adopted by consensus and said that he opposed the motion for division.

15. Mr. ROSSENNE (Israel) insisted that, after the vote on the motion for division, the draft resolution should be put to the vote in the normal way; he expressed opposition to the resolution's being adopted by consensus.

16. Mr. KOLESNIK (Union of Soviet Socialist Republics) requested that the exact text of operative paragraph 2 of draft resolution A/C.6/L.980 should be read out. He proposed that, after the reading, the meeting should be suspended for about 10 minutes.

17. Mr. RYBAKOV (Secretary of the Committee) read out operative paragraph 2 of the draft resolution, as revised, as follows:

> "*Decides* to invite also the national liberation movements in their respective regions recognized by the Organization of African Unity and/or by the League of Arab States to participate in the Conference as observers, in accordance with the practice of the United Nations."

18. The CHAIRMAN proposed that the meeting should be suspended.

The meeting was suspended at 4 p.m. and resumed at 4.10 p.m.

19. The CHAIRMAN said that, before the Committee took a decision on draft resolution A/C.6/L.980, he wished to make it clearly understood that, in accordance with that draft resolution, the United Nations Conference on the Representation of States in Their Relations with International Organizations would be held at Vienna from 4 February to 14 March 1975 with the assumptions set forth in paragraph 1 of the new note on administrative and financial implications submitted by the Secretary-General in document A/C.6/L.986.

20. It had also been noted that, in carrying out the tasks which would be entrusted to the Secretary-General in accordance with the draft resolution under consideration, he would follow the practice of the General Assembly in applying an "all States" clause and that, whenever appropriate, he would request the opinion of the General Assembly before taking the relevant decisions. He said that, if he heard no objection, the statement he had just made would be included in the Committee's report to the General Assembly.

It was so decided.

21. The CHAIRMAN said that the Conference would thus be held at Vienna from 4 February to 14 March 1975 if the Committee and the General Assembly adopted the draft resolution.

22. Mr. SUY (The Legal Counsel) pointed out that, in paragraph 2 of resolution 3072 (XXVIII), the General Assembly had already invited the specialized agencies, the International Atomic Energy Agency and other interested intergovernmental organizations to send observers to the

Conference. In implementing that decision, the Secretary-General would follow established practice and transmit that invitation not only to the specialized agencies and the International Atomic Energy Agency, but also to intergovernmental organizations which expressed an interest in participating in the Conference as observers and to regional organizations given status under General Assembly resolutions, such as the Organization of African Unity, the League of Arab States, the Organization of American States, the European Economic Community and the Council for Mutual Economic Assistance, and to any intergovernmental organization with which the International Law Commission co-operated under article 26 of its Statute, such as the Asian-African Legal Consultative Committee and the European Committee on Legal Co-operation. As the Legal Counsel had pointed out in the twenty-first session, at the 918th meeting of the Sixth Committee on 25 October 1966, it was not the practice of the Secretary-General to invite collective security organizations to attend codification conferences.

At the request of the representative of Israel, a recorded vote was taken on the Israeli motion for division.

In favour: Australia, Austria, Bahrain,[1] Belgium, Bolivia, Canada, Chile, Costa Rica, Denmark, Ethiopia, Finland, Germany (Federal Republic of), Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Sweden, United Kingdom of great Britain and Northern Ireland, United States of America.

Against: Afghanistan, Algeria, Bangladesh, Botswana, Brazil, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Chad, China, Colombia, Congo, Cuba, Cyprus, Czechoslovakia, Dahomey, Ecuador, Egypt, France, German Democratic Republic, Ghana, Guyana, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kenya, Khmer Republic, Kuwait, Lebanon, Lesotho, Liberia, Libyan Arab Republic, Malaysia, Mali, Mexico, Mongolia, Morocco, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Upper Volta, Yugoslavia, Zaire.

Abstaining: Argentina, Burma, El Salvador, Greece, Ivory Coast, Laos, Paraguay, Spain, Uruguay.

The motion for division was rejected by 72 votes to 24, with 9 abstentions.[2]

23. The CHAIRMAN put draft resolution A/C.6/L.980 to the vote.

The draft resolution was adopted by 89 votes to 2, with 13 abstentions.[3]

24. Mr. ROSENNE (Israel) said that it was because the Committee had rejected his request for a separate vote on operative paragraph 2 that he had had to vote against the draft resolution. His delegation nevertheless fully supported the other provisions of the resolution and, in particular, the decision to invite all States. It merely regretted that the Conference had been planned for a period when other legal conferences would be taking place.

25. Mr. ELIAN (Romania), speaking in explanation of vote, said that his delegation had always been in favour of the broadest possible application of the principle of universality. Every State must participate fully in the international co-operation established through the intermediary of the international organizations. His delegation was glad that the "all States" clause would make it possible also to invite the Provisional Revolutionary Government of the Republic of South Viet-Nam. Many States maintained diplomatic relations with that Government and thus recognized its right to represent the interests of the people of South Viet-Nam in foreign relations; as a signatory of the Paris Agreements on Viet-Nam, it had, moreover, officially been granted that right. Its participation in the next Vienna Conference would be in keeping with the interest of all States in establishing a viable legal order and would be in the nature of a contribution by the United Nations to the implementation of the provisions of the Paris Agreements on Viet-Nam.

26. Mr. WEHRY (Netherlands) said that his delegation had abstained in the vote on the draft resolution because the next Vienna Conference would be rather different from the international conferences to which the national liberation movements could make a useful contribution. Moreover, it was regrettable that the Conference was being held at the same time as other legal conferences because that might prevent some States from attending it. Finally, his delegation was not satisfied with the compromise solution which would leave it to the Secretary-General to apply the "all States" clause in accordance with the practice of the General Assembly. The Secretary-General's position should be made clearer.

27. Mr. PARRY (United Kingdom) said that his delegation's abstention must not be interpreted as an attitude of hostility towards the "all States" formula contained in operative paragraph 1 of the draft resolution; it had been the result only of the question raised by paragraph 2 of that document and, in particular, the question of the status of the movements referred to in it. In accordance with the attitude it habitually adopted on such matters, his delegation had voted in favour of the motion for division requested by the representative of Israel because it considered that that procedure was a legitimate way of enabling delegations to exercise fully their freedom of decision.

28. Mr. HAMID IBRAHIM (Ethiopia) said that his delegation had voted both in favour of the motion for division and in favour of the draft resolution as a whole, despite the rejection by the Committee of the motion for division. He considered that the retention of the phrase "and/or the League of Arab States" in operative paragraph 2 of the draft resolution was superfluous, adding nothing substantive since the liberation movement sought to be covered by that

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[1] The delegation of Bahrain subsequently made it known that it had intended to vote against the Israeli motion.

[2] The delegations of Madagascar and Democratic Yemen subsequently made it known that, had they been present during the voting, they would have voted against the motion.

[3] The delegation of Democratic Yemen subsequently made it known that, had it been present during the voting, it would have voted in favour of the draft resolution.

phrase was the Palestine Liberation Organization, which was already recognized by the Organization of African Unity (OAU).

29. Mr. KLAFKOWSKI (Poland) recalled the well-known arguments already put forward by his delegation in favour of the "all States" formula. At present, all States were linked together by a network of international relations based on a universal system of international law. Moreover, contemporary international law was usually created only through conventions reflecting the will of States. The condition for the creation and progressive development of international law was thus the right of all States to take part in the formulation and application of international law. The need to preserve the unity of international law meant that all States should be able to accede to multilateral conventions. Furthermore, if the norms of international law were to be universally applied, it was obviously essential to allow universal participation in multilateral conventions. The right of every State to take part in universal conventions existed independently of the conflicts and disputes of the international community. It was also necessary to consider the question of universal participation in multilateral treaties from the point of view of the Charter of the United Nations, which had a special place in the system of contemporary international law. The purposes and principles of the Charter were those of universal law; they applied to all States and not just to the Members of the United Nations. Thus, the Charter had guaranteed the unity of the system of universal international law and contained no provision whatever that only Member States could accede to conventions concluded under the auspices of the United Nations. The right to take part in the implementation of such conventions could therefore not be denied to any State. A distinction should also be drawn between the universal participation clause and the "Vienna" formula, which was not unrelated to the political aspects of the recognition of a State. Account must be taken of the fact that there were a number of important multilateral conventions to which States that did not recognize each other were parties. Legal solutions had already been found which made it possible to solve the problem of participation according to the "all States" formula.

30. His delegation had voted in favour of draft resolution A/C.6/L.980, which used that formula.

31. Mr. BESSOU (France) said that his delegation's abstention on the draft resolution as a whole should not be taken to imply recognition of movements claiming to be the spokesmen of the inhabitants of certain French Territories.

32. Mr. KOLESNIK (Union of Soviet Socialist Republics) recalled that his delegation had voted against the motion for division and for draft resolution A/C.6/L.980. That document reflected a consensus, and it could not have been divided for the vote.

33. His delegation confirmed its position of principle on operative paragraph 1, namely, that the term "all States" must be applied with strict respect for the equality of States. His delegation was gratified that the Committee had decided to invite all States to the Vienna Conference of 1975 and hoped that the formula used in that paragraph would be applied without any discrimination, particularly with regard to the Provisional Revolutionary Government of the Republic of South Viet-Nam. His delegation regretted, however, that the Committee's report should contain a view which opened the way to restrictive interpretations of the term "all States" when the invitations were sent out for the 1975 Conference. If a vote had been taken on that view, his delegation would have abstained for reasons of principle.

34. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that his delegation had voted in favour of draft resolution A/C.6/L.980. His delegation's position with regard to the term "all States" was identical to that previously set forth by the Colombian delegation (1463rd meeting), i.e. the expression should not lead to a State having dual representation.

35. With regard to operative paragraph 2 of the draft resolution, his delegation endorsed the statement made by the Legal Counsel. It was difficult to agree to the participation of representatives of liberation movements in a legal conference on the representation of States. Uruguay unreservedly supported the right of all peoples to self-determination and, of course, the right of those struggling within a decolonization movement. In many Latin American countries, however, groups calling themselves "national liberation movements" had been formed which were in fact completely different in nature from those movements which the General Assembly supported. If the Committee had taken a decision by a separate vote on the words singled out by the representative of Israel, his delegation would have abstained in order to avoid a situation in which a United Nations conference would one day have to admit movements having no legal status.

36. Mr. ROSENSTOCK (United States of America) said that operative paragraph 1 of the draft resolution presented no problem for his delegation, which, however, had been unable to vote for the text as a whole because of the possibility, envisaged in operative paragraph 2, of inviting liberation movements to participate in the 1975 Vienna Conference. While his delegation considered that the presence of liberation meovements was justified at certain conferences which dealt with questions relating to their activities, it felt that the subject of the forthcoming Vienna Conference was of concern only to States.

37. His delegation had voted for the motion for division submitted by the representative of Israel because it thought it fair to permit delegations to take a separate decision on the words in question.

38. Mr. USTOR (Hungary) recalled that, in accordance with the principle of equality, all States had the right to participate in the development of international law. For that reason, his delegation had voted against the motion for division and in favour of the draft resolution as a whole.

39. His delegation hoped that the provisions of operative paragraph 1 would be implemented without discrimination, in conformity with the principles of international law, and that representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam would be present at the 1975 Vienna Conference.

40. Mr. WANG (Canada), noting that his delegation had voted in favour of the draft resolution, said that if the Committee had taken the separate vote requested by the representative of Israel, his delegation would have abstained so as not to prejudge the question of the representation of the Palestinians at future conferences.

41. Mrs. HO Li-liang (China) said that her delegation had voted for the draft resolution since all States should be invited to the Conference in accordance with General Assembly resolution 2758 (XXVI). Her delegation had already had occasion to stress that the Provisional Revolutionary Government of the Republic of South Viet-Nam was the only authentic representative of the population of South Viet-Nam. However, the Paris agreements of 1973 recognized the existence of two régimes in South Viet-Nam, and the Provisional Revolutionary Government therefore had the unquestionable right to participate in the 1975 Vienna Conference, to which "all States" would be invited.

42. Her delegation also supported the terms of operative paragraph 2 of the draft resolution concerning invitations to national liberation movements to participate as observers.

43. Her delegation considered it necessary to point out that, in spite of the claims of the régime installed in Phnom Penh, the only legitimate representative of Cambodia was the Royal Government of National Union of Cambodia.

44. Mr. MANSFIELD (New Zealand) said that his delegation's vote in favour of the draft resolution should not be viewed as an endorsement of all the terrorist acts by revolutionary movements.

45. Mr. SUZUKI (Japan) stressed that his delegation had voted in favour of the motion for division tabled by Israel because it felt that it was fair to adopt that procedure. His delegation had, however, voted in favour of the draft resolution as a whole.

46. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) recalled that his delegation had voted against the motion for division. On the other hand, it had supported the draft resolution, which observed the principle of participation by all States and called for inviting national liberation movements to the forthcoming Vienna Conference. His delegation supported the principle of universality, as it signified the sovereignty of all States and derived directly from the Charter of the United Nations.

47. His delegation regretted that a so-called text of "understanding" was to be incorporated into the report of the Sixth Committee, which would confer on the Secretary-General the right to take certain measures relating to the application of the "all States" formula. That text should in no case preclude invitations to representatives of the Democratic Republic of Viet-Nam and the Provisional Revolutionary Government of the Republic of South Viet-Nam. If the text of "understanding" had been put to the vote, his delegation would have abstained.

48. Mr. COLES (Australia) said that his delegation had voted for the draft resolution and welcomed the consensus achieved with regard to operative paragraph 1. His delegation felt that the statement by the Chairman should become an integral part of the draft resolution which had been adopted.

49. His delegation supported liberation movements but had reservations concerning the advisability of expanding the terms of the invitation formulated in paragraph 2.

50. Mr. VARELA (Costa Rica) said that his delegation would have voted in favour of the draft resolution if it had not had certain reservations with regard to operative paragraph 2. When the question of the participation of Palestinian observers had arisen at the third United Nations Conference on the Law of the Sea, his delegation had voted in favour of inviting them, since that solution had seemed to it to be fair and reasonable. If draft resolution A/C.6/L.980 had specified the bodies to be invited, his delegation would have been able to vote for it. However, the ambiguity of the wording proposed had compelled it to abstain, since there was no indication anywhere of the number of movements to be invited or of whether the resolution applied to movements recognized at the time the resolution was adopted or to those which might be recognized up to the time of the Conference.

51. His delegation had reservations with regard to the wisdom of inviting movements which did not represent States to a conference dealing specifically with the representation of States in their relations with international organizations. Despite its respect for those movements, his delegation noted that they did not have legal status which would permit them to participate in such a conference.

52. Mr. MEISSNER (German Democratic Republic) welcomed the presence of the "all States" formula in draft resolution A/C.6/L.980 and said that its adoption was an important step towards the implementation of the principle of universality.

53. The statement read out by the Chairman was not essential to the application of the "all States" formula. His delegation hoped that it would be possible to apply the formula independently of that statement.

54. Mr. ALVAREZ TABIO (Cuba) recalled that his delegation had always defended the principle of universality without any restrictions and had supported the participation of national liberation movements in international conferences. His delegation had voted in favour of the draft resolution on the understanding that the expression "all States" would be interpreted without restriction. He wished to stress that the one and only representative of the population of South Viet-Nam was the Provisional Government of the Republic of South Viet-Nam, which should be a full-fledged participant at the Vienna Conference of 1975.

55. Mr. BRACKLO (Federal Republic of Germany) said that his delegation, although it had abstained in the vote on the draft resolution, had no objection regarding the provisions concerning the organization of the Conference. It joined in the consensus in that respect.

56. His delegation had earlier expressed its apprehensions concerning the formula on participation. However, the precise instructions given to the Secretary-General regarding

interpretation of the "all States" formula had mitigated those apprehensions. His delegation could therefore have voted for the draft resolution, but it had abstained because of its reservation about the principle of inviting representatives of liberation movements to international conferences as observers. Despite its sympathetic feelings towards liberation movements, his delegation felt bound to say that the invitation could not be interpreted as conferring on the movements concerned a legal status which was not accorded to them under international law.

57. Mr. BRUNA (Chile) said that his delegation had voted in favour of the motion for division out of a democratic spirit so that every delegation would be able to express itself freely on any and all parts of a draft resolution. It was quite legitimate for a country to wish to invite one liberation movement but not another. In the same spirit, his delegation had voted affirmatively on the question of inviting movements recognized by the Organization of African Unity and/or by the League of Arab States, on the understanding that the movements invited must be in existence before the date of the Conference and must conduct their activities within the respective regions of those two organizations.

58. His delegation had accepted the "all States" formula in its authentic meaning, namely, that two Governments could not represent the same State. The formula concerned States, not Governments.

59. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that her delegation had voted against the motion for division and in favour of the draft resolution, which attested to the fact that the principle of universality was being increasingly recognized.

60. Her delegation was gratified to note that the Committee, by its vote, had decided to invite all States to participate in the Conference. Her delegation reaffirmed that the "all States" formula must be applied on the basis of the principle of the equality of all States and non-discrimination between them, in accordance with the Charter of the United Nations. It hoped that invitations would be sent to all States, including the Provisional Revolutionary Government of the Republic of South Viet-Nam.

61. Her delegation regretted that the draft resolution adopted was accompanied by a statement that left the door open to a restrictive interpretation of the "all States" formula. Had that formula been put to the vote, her delegation would have abstained. She added that the formula should be regarded as exclusively linked to the draft resolution just adopted.

62. Mr. HAMMAD (United Arab Emirates) said that the vote by 24 delegations in favour of the motion for division could not be taken to imply opposition to the Palestine Liberation Organization. By the same token, the 72 delegations which had opposed that motion did not accurately reflect the support which that organization commanded. At the Conference on the Law of the Sea, 88 delegations had been in favour of sending an invitation to the Palestine Liberation Organization, and, in the General Assembly, 105 delegations had supported its participation in the discussion of the Palestine question.

63. Mrs. SLÁMOVÁ (Czechoslovakia) said that her delegation favoured unrestricted application of the principle of universality. In the interests of the peaceful development of inter-State relations, all States must participate in the elaboration of international law and assume responsibility for its application. Her delegation could not accept an interpretation of the "all States" formula which would justify a discriminatory practice. It was in favour of the participation of the Provisional Revolutionary Government of South Viet-Nam.

64. Mr. BOJILOV (Bulgaria) said that his delegation had voted for the draft resolution because it was gratified by the decision not only to invite all States but also to invite the national liberation movements as observers. However, it was regrettable that the application of the principle of universality, which derived from that of the sovereign equality of States, should be the subject of a statement in the report which might lead to a restrictive interpretation of the "all States" formula. His delegation believed that nothing could justify a discriminatory policy, particularly one which excluded the Provisional Revolutionary Government of South Viet-Nam from the Conference.

65. Mr. HENGVONG BOUN CHHAT (Khmer Republic) said that he had voted for the draft resolution. As far as Asia was concerned, the competent Asian organization, not China, must decide whether or not a liberation movement should be invited.

66. Mr. RAKOTOSON (Madagascar) said that his delegation had been absent for both votes. Had it been present, it would have voted against the request for a separate vote and in favour of the draft resolution, since it wholeheartedly supported the national liberation movements.

67. Mr. NYAMDO (Mongolia) said that his delegation had voted for the draft resolution. It considered that the "all States" formula should be interpreted so as to permit the Provisional Revolutionary Government of South Viet-Nam to be invited.

68. Mr. VEROSTA (Austria) welcomed the decision to hold the Conference at Vienna from 4 February to 14 March 1975. He said that his Government, which had made all the necessary arrangements to act as host for the Conference during that period, regarded the dates as firm.

69. Mr. HASSOUNA (Egypt), speaking as a sponsor of the draft resolution, said that there should be no doubts as to which national liberation movements would be invited to participate in the Conference. It was clear from the resolution itself that invitations would be sent only to those national liberation movements which were recognized by the Organization of African Unity and/or by the League of Arab States in their respective regions. Furthermore, a list of those movements had been read out.

70. Some delegations held the view that the national liberation movements should not participate in the forthcoming Vienna Conference because of the special nature of that Conference. However, the invitation to the national liberation movements to the Conference should serve to consecrate the principle of universal participation in major international conferences. Furthermore, it was right and

proper that those national liberation movements which would soon be subjects of international law should become conscious of the rights and duties they would assume.

AGENDA ITEMS 96 AND 97

Declaration on Universal Participation in the Vienna Convention on the Law of Treaties *(concluded) (A/C.6/L.181)**

Question of issuing special invitations to States which are not Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice to become parties to the Convention on Special Missions *(concluded) (A/C.6/L.981)**

71. The CHAIRMAN announced that the delegations of Czechoslovakia and Romania had become sponsors of draft resolution A/C.6/L.981.

72. Mr. HASSOUNA (Egypt) expressed the hope that the draft resolution would be adopted by consensus.

73. Mr. WEHRY (Netherlands) said that, as he understood it, the draft resolution would be covered by the same statement as draft resolution A/C.6/L.980 as far as the application of the "all States" formula was concerned.

74. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the draft resolution under consideration, like draft resolution A/C.6/L.980, was the product of lengthy negotiations between the representatives of the regional groups. It had finally been agreed that draft resolution A/C.6/L.981 should not be accompanied by a statement similar to that appended to draft resolution A/C.6/L.980.

75. The CHAIRMAN said that if he heard no objection he would consider that the Committee wished to adopt draft resolution A/C.6/L.981 by consensus.

It was so decided.

The draft resolution was adopted by consensus.

76. Mr. ROSENSTOCK (United States of America) said that his delegation associated itself with the consensus because the understanding was well established.

77. Mr. BESSOU (France) said that if the draft resolution had been put to the vote his delegation would have abstained because of the phrase "all States".

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

78. Mr. ESSY (Ivory Coast) congratulated the Chairman and the Rapporteur of the Special Committee on the Question of Defining Aggression and expressed his delegation's gratitude to all those who had been taking part for the past 50 years in the formulation of a definition of aggression the adoption of which would constitute a victory in the struggle to establish a world order under the rule of law. The Ivory Coast had always been interested in that question because the principal objective of its policy was peace, which was indispensable for the economic and social development and the complete political independence of States. After exchanges of views on the usefulness of a definition of aggression, that notion had been the subject of detailed studies, followed by discussions on the substance of the question which had culminated in the text adopted by consensus by the Special Committee (see A/9619 and Corr.1, para. 22). It was to be hoped that the present international climate, which was not unrelated to the success of those endeavours, would continue to be characterized by the spirit of co-operation so as to permit the codification and progressive development of international law.

79. The adoption of the draft definition would constitute a positive factor in the legal system of collective security in Article 39 of the Charter. Admittedly there would be many cases of aggression to which it would not put an end; however, it would help to prevent such cases from arising because it would enable the international community to identify acts of aggression.

80. Article 1 of the draft definition, the predominating element in which was the use of armed force, was unduly restrictive in the view of his delegation, for subversive intervention in the internal affairs of States constituted as grave a danger to the peace, security and territorial integrity of States as did armed force. The definition of aggression could therefore have been broader so as to cover all possible situations and to permit the Security Council to exculpate a party invoking a case of aggression of which it was the victim. His delegation considered that the concepts of sovereignty and political independence were closely linked and were rightly included in that article in order to strengthen State sovereignty.

81. Article 2 was a judicious compromise between the principle of priority, which constituted *a priori* proof, and aggressive intent, which was considered a subsidiary element. He asked what was covered by the "relevant circumstances" which could be invoked to enable the Security Council to absolve a State that had been the first to use force. Did the phrase include, for example, what had been called indirect aggression? It was to be feared that that notion of relevant circumstances would allow certain Powers to disguise acts of aggression to which they might have recourse in order to protect their interests. Moreover, with regard to the procedure by which the Security Council would establish that an act of aggression had or had not been committed, he recalled that in the past, when the great Powers which were permanent members of the Security Council had been involved in a dispute, they had availed themselves of their prerogatives to paralyse action by the Council. Therefore, it would have been preferable to invoke the provisions of Article 27, paragraph 3, of the Charter, under which members of the Security Council would abstain in the voting on decisions relating to disputes to which they were parties, so as to avoid a situation in

* Resumed from the 1475th meeting.

which a State would at one and the same time be a judge and a party and could prevent any decision from being taken. That was all the more likely to be committed by a great Power than by a small one. The way in which that article was applied would determine the fate of the definition of aggression.

82. His delegation approved the enumeration of possible cases of aggression in article 3, while noting with satisfaction that, according to article 4, the enumeration was not exhaustive. As to article 3 *(d)*, it was clear to his delegation that only acts committed outside national territory, as it was recognized by international law, could qualify as acts of aggression. Understanding as it did the legitimate fears which had been expressed with regard to the interpretation of that subparagraph, his delegation would have no objection to the inclusion of an explanatory note in the draft definition.

83. With regard to article 5, he said that aggression as such and an act of aggression constituted the same process aiming at the same goals, and that article 5, second paragraph, should have stipulated that it was aggression which was a crime against international peace and which consequently gave rise to international responsibility.

84. His delegation noted that article 7 excluded from the definition of an act of aggression acts which might be carried out by peoples in order to gain their freedom and independence. The experience of the Ivory Coast showed that such peoples did not necessarily have to resort to armed conflict, provided the countries exercising any kind of tutelage over them permitted them to exercise their rights. The Ivory Coast had always encouraged the process of decolonization, but it had been obliged to recognize that force sometimes became the only means by which peoples could gain their freedom and independence.

85. Many delegations had spoken of the fragility of the basis on which the legal edifice represented by the draft definition rested and which had been accepted by delegations with differing views in a spirit of conciliation. That legal framework included the minimum of possible cases of aggression and his delegation hoped that the draft definition would be but a first step in the process of establishing a larger and more realistic legal framework which would make it possible to define aggression more broadly and include specific examples of cases of aggression. The Ivory Coast, for its part, was ready to strengthen the fragile foundations of the draft which had been submitted to the Assembly and which represented one more step towards the building of an international society ruled by law.

86. The CHAIRMAN invited the representative of Cyprus to speak in reply to a statement made by the representative of Turkey at the preceding meeting.

87. Mr. GÜNEY (Turkey), speaking on a point of order, said that the representative of Cyprus had already exercised his right of reply for more than the 10 minutes normally allotted and had then reserved the right to revert at the current meeting to the question of the Treaty of Guarantee. He would not have any objection if the representative of Cyprus really wished to continue to exercise his right of reply. But if the representative of Cyprus was going to speak on the substance of the question of Cyprus, he should be reminded that the General Assembly was seized of that question and was to begin considering it on 28 October 1974. The General Assembly had decided (2237th plenary meeting) that the representatives of the Turkish community would participate in the discussion in the Special Political Committee. It must therefore be ascertained first whether the Sixth Committe was prepared to hear the representative of Cyprus present the views of the Greek community on the question of Cyprus in the absence of representatives of the Turkish community. He reiterated that the Sixth Committee was not seized of the question of Cyprus.

88. Mr. ROSSIDES (Cyprus), speaking on a point of order, said that he wished to continue to exercise his right of reply in order to deal with the question of intervention within the framework of the Treaty of Guarantee. He had not raised the question of Cyprus. In his first statement on the question of the definition of aggression, he had spoken of the events in Cyprus only because they coincided with the adoption of the definition.

89. Mr. GÜNEY (Turkey), speaking on a point of order, reiterated his observations. If the representative of Cyprus was given the floor, he would in turn ask to be allowed to exercise his right of reply, within the same limits.

90. The CHAIRMAN said that at the following meeting he would give the floor to the representative of Cyprus and then to the representative of Turkey if the latter wished in turn to exercise his right of reply. He appealed to representatives to keep their statements as short as possible and not to depart from the subject with which the Committee was dealing.

The meeting rose at 6.10 p.m.

1482nd meeting

Tuesday, 22 October 1974, at 3.15 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1482 and Corr.1

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1)

1. Mr. RIOS (Panama) said that, for reasons of a practical nature, his delegation approved of the draft definition of aggression (see A/9619 and Corr.1, para. 22) in general terms. The proposed text represented a decisive step forward on the long road leading to international peace and security.

2. However, his delegation would like the Committee to clarify further some of the terms used in the draft definition; it would be a good idea, for example, to state expressly in article 3 *(d)* that no provision of that paragraph affected the right of coastal States to take any measures they deemed necessary in maritime areas placed under their jurisdiction or sovereignty. It was important to set forth as clearly as possible the principles and concepts of international law, so as to avoid unilateral interpretations which generally favoured the most powerful. In that connexion, Panama could not easily forget the lessons of a past which continued to weigh on its future.

3. It should be recognized that, although it had its source in the most noble aspirations of man, international law, as it existed today, had been deeply influenced by the Powers which had consolidated their empires through the nineteenth and twentieth centuries. That accounted for certain acts of flagrant injustice which were still committed in the name of international legal order, even though the rules of classical international law were applied and legal formalities were rigorously, albeit superficially, observed.

4. His delegation therefore considered that, although the proposed draft definition represented a notable step forward, it had in it gaps and used concepts which were not sufficiently clear, as in the case already mentioned of the merchant marine, or it passed over in silence situations which, despite their apparent legal validity, in fact constituted permanent aggression against the very existence and personality of a nation. For that reason, without wishing to reopen the debate, his delegation would like the following new subparagraph to be included in article 3: "The permanent or temporary presence of the armed forces of a State, whatever the circumstances explaining that presence, in the territory of another State, without the agreement of the latter or against its express or declared will".

5. He asserted his belief that, sooner or later, a definition formulated in terms similar to those he had just proposed would form part of a more equitable system of international codified law. He reiterated his support for the draft definition which, although it was not likely to arouse enthusiasm, would make it possible to promote the moral progress of nations in a world in which "international legality" had often merely concealed injustice.

6. Mr. NIYUNGEKO (Burundi) congratulated Guinea-Bissau, Bangladesh and Grenada on their admission to membership in the United Nations.

7. His delegation recognized that the draft definition of aggression was the result of long and arduous negotiations conducted with tact and patience. It shared the satisfaction felt by many other delegations at the result achieved, but nevertheless wished to express some reservations, since the draft did not cover all the elements necessary to deter a potential aggressor.

8. His delegation was convinced, as the ninth preambular paragraph showed, that the adoption of the definition of aggression ought to have the effect of deterring a potential aggressor, simplifying the determination of acts of aggression and the implementation of measures to suppress them, and facilitating the protection of the rights and lawful interests of, and the rendering of assistance to, the victim. Article 1 referred only to armed aggression, and deliberately left other forms of aggression undefined. Articles 1 to 4 were closely interrelated and in reality formed a cohesive whole. Article 4 made it possible for the Security Council to determine that other acts constituted aggression; that was a right accorded to it by the Charter, but it remained to be seen whether the Council would determine that acts not covered in the definition constituted aggression. Article 2 stated that the first use of force was merely *prima facie* evidence, which could be rebutted. In his delegation's view, such *prima facie* evidence should be irrefutable. To permit the Security Council not to determine that the first use of force constituted an act of aggression would be tantamount to saying that it was permitted not to recognize as acts of aggression acts considered as such in the draft definition. Indeed, the acts listed in article 3 as qualifying as acts of aggression were listed subject to and in accordance with article 2. His delegation was pleased that article 7 recognized the right of peoples struggling for their independence to use all means to that end, including armed force. That article in no way contradicted the provisions of article 3 *(g)*.

9. The concern of all peace-loving peoples was to deter any act which ran counter to harmony, concord and fraternity. A definition accepted by all nations stood every chance of gaining recognition, but to do so it must be as exhaustive as possible and contain all the necessary elements. His delegation therefore noted with some anxiety the almost deliberate omission of certain forms of aggression, including economic aggression, which was of particular concern to land-locked countries. Certain delegations had felt that it would be too difficult to define that concept, others that it should be left aside because it would

delay by several years the working-out of a draft definition of aggression. Obviously, that concept presented some difficulties, but why leave an examination of those difficulties till later? Economic aggression was subtle in form and sometimes gave rise to armed aggression. For that reason, his delegation thought that the possibility might have been considered of including in the draft a paragraph dealing with that concept. Such a paragraph could be added to article 3 *(c)* and supplement the list of acts of aggression, or it could be the subject of a separate article. His delegation supported the working paper submitted by Afghanistan and other countries (A/C.6/L.990) with regard to article 3 *(c)* and it would even have joined the sponsors if it had known the exact wording.

10. In any event, the adoption of the draft definition would represent a step towards peace; the draft would become a useful instrument of service to the international community and, more particularly, the Security Council.

11. Mr. FERNANDEZ BALLESTEROS (Uruguay) stressed the importance of the definition of aggression from the political standpoint, which had been mentioned by the Minister for Foreign Affairs of Uruguay in his statement at the twenty-ninth session of the General Assembly (2240th plenary meeting). His delegation welcomed the successful outcome of the work of the Special Committee, but was not unaware of the imperfections of the draft definition submitted to the Sixth Committee and, in particular, of the absence of a definition of economic aggression. It was to be hoped that that special question would be the subject of the thorough analysis called for by a number of delegations during the debate. To try to apply the same rules to all countries in that respect would be over-idealistic. During the most serious crises, the developed countries had reserves which enabled them to cope with the situation more easily than the less developed countries. Moreover, the protectionist reflex of the developed countries hindered and undermined the progress of small developing countries. Despite the wording of article 4, the provisions of article 8 of the draft definition excluded any thought that the text might cover acts other than acts of armed aggression. However, the very words "definition of aggression" inspired the hope that the draft would be general in scope and would be applied to all forms of aggression.

12. From the legal standpoint, the draft definition submitted to the Sixth Committee was the result of a compromise, and his delegation considered it acceptable on the whole. Some delegations had pointed out that when adopted the definition would have the legal force of guidelines addressed to the Security Council, which would retain all its discretionary power in the matter of determining aggression. There was some ambiguity on that point, since there appeared to be no thought of changing the provisions of the Charter regarding the role of the Security Council in that field. It was true that, if the General Assembly approved the text of the draft definition, the Security Council would not be able to disregard it in any attempt to determine aggression. However, his delegation would have liked the draft resolution in which the Sixth Committee recommended the adoption of the draft definition by the General Assembly to specify that the definition would be binding on the Security Council, without thereby affecting the powers conferred on the Council by the Charter.

13. It was also clear that the provisions of the draft definition were part of and must be interpreted within the general framework of international law and that the main criterion to be followed was that of the illegality of the act of aggression. That was what should be stressed in particular with regard to article 3 *(d)* of the draft. The concept of an attack used in that paragraph could in no way refer to the use of armed force in a situation of self-defence. As had been stressed at the Third United Nations Conference on the Law of the Sea, the sovereignty of a coastal State gave it the authority to ensure by all possible means the exercise of its jurisdiction over its territory, air space and waters. The development of the law of the sea must be taken into account in the characterization of an act of aggression and his delegation shared the point of view expressed by the coastal States. It was prepared to endorse the suggestion made by the Kenyan delegation at the 1474th meeting, provided that it did not go against the consensus achieved.

14. He wondered whether there was any difference between the English and Spanish versions of the text of article 3 *(d)*. The English words "marine and air fleets" seemed to have a broader meaning than the Spanish words "*flota mercante o áerea*".

15. His delegation hoped that the adoption of the draft definition by the General Assembly would represent a new step towards international peace.

16. Mr. GUERRERO (Philippines) said that, like other delegations, including that of Uruguay, his delegation had some difficulties with article 3 *(d)* of the draft definition. The first of those difficulties was due to the form of the text and, more specifically, to the discrepancies between the English, Spanish and French versions. The English version used the words "marine and air fleets", which had a general meaning, whereas the Spanish text referred to the "*flota mercante o áerea*" and the French text referred to "*la marine et l'aviation civiles*", both of which were considerably more specific than the English words. He considered that, in that particular context, the English adjective "marine" was dangerously imprecise, when, to take examples which came immediately to mind, words such as "merchant marine" and "civil airlines" were available.

17. Moreover, his delegation was concerned that article 3 *(d)* might be interpreted as a totally unacceptable limitation on a sovereign State's jurisdiction over its territorial waters and air space. His delegation feared that the text might be used to characterize as an act of aggression and to condemn as such the perfectly legitimate and indisputable exercise by a State of its sovereign right to ensure its security, safeguard and conserve its natural resources, ensure their use and enjoyment for its people, whose natural heritage those resources were, and protect them from wanton pollution and exploitation by taking the necessary measures to arrest and seize, by armed force, if necessary, vessels or aircraft which might, without permission, intrude into its waters or air space.

18. If it was proposed to add to the draft decision of the Special Committee a new provision designed to clarify and restrict the scope of article 3 *(d)* in the way indicated above, his delegation was prepared to support such an initiative. It was prepared to act in a similar way, if, to that same end, it was proposed to add a new subparagraph to article 6 or to introduce to that effect a foot-note to article 3, or if it was proposed that the Committee or the General Assembly should reach agreement on an interpretation along those lines.

19. If such efforts failed, his delegation would be in favour of the adoption of the draft definition of the Special Committee, on the clear understanding that, in accordance with article 8, all the provisions of the text were "interrelated and each provision should be construed in the context of the other provisions"; that, in accordance with article 6, nothing in the definition "shall be construed as in any way enlarging or diminishing the scope of the Charter including its provisions concerning cases in which the use of force is lawful"; and that, consequently and in particular, nothing in article 3 of the definition could in any way detract from, diminish, render illegitimate or condemn as an act of aggression the exercise by a State and, specifically, an archipelagic State like the Philippines, of its inherent right to ensure respect for all elements of its national legislation in the national territory, air space and waters, including straits, declared by its Constitution and laws to be within the limits of its sovereignty and under its jurisdiction.

20. Mr. GANA (Tunisia) said that it was the climate of détente within the international community which had enabled the Special Committee to adopt by consensus the draft definition submitted to the Committee. His delegation was fully aware of the extremely fragile nature of the balance achieved between divergent views. The draft of the Special Committee was the best that could have been expected in a political context which, despite everything, had not augured well for the success of such an initiative. His delegation also recognized the importance of the draft as an instrument which might discourage possible aggressors, enlighten the Security Council and strengthen its role in the maintenance of international peace and security and contribute effectively to the progressive development of international law and the codification of a collective system of security based on law.

21. The preamble rightly referred to the main goals of the United Nations and reaffirmed the role of the Security Council in the maintenance of peace, as well as the right of peoples to self-determination, freedom and independence.

22. His delegation wished to stress the restrictive nature of the definition given in article 1, which seemed to refer to States only as parties to a conflict and as the perpetrators of only one form of aggression, namely, the use of armed force. It was fortunate that, in article 4, it had been specified that the list of acts of aggression enumerated was not exhaustive. The words "in contravention of the Charter" in article 2 limited the scope of the definition even more and might enable the aggressor to justify its act on the plea that it had not contravened the principles of the Charter.

23. Article 2 was the result of a compromise between the supporters of priority and the supporters of intent. His delegation was of the opinion that priority should have pride of place over intent. Taking into account the difficulties that might arise from the introduction of a subjective element, his delegation considered that the State first using force committed an act of aggression and thus incurred responsibility for the act, and that, in order to determine such responsibility, there was no need to seek any element of intent. Otherwise, the aggressor might be able to find a justification for its act. The burden of proof must always lie with the aggressor, not with the victim, and that legal principle could not be applied in the context of aggression unless the element of intent was ruled out. It should, however, be noted that the possibility of invoking the subjective element was maintained by the words *"prima facie"* and the words "other relevant circumstances" contained in article 2. Since the Security Council could use those terms to determine the relative gravity of acts and, thus, draw a distinction between an act of aggression and an act of self-defence, and not to absolve an aggressor, but to establish the responsibility of the aggressor and of the instigators of the act of aggression more on the basis of motive than intent, his delegation could only support such an attitude, which it considered to be in conformity with truth and law.

24. Article 3 contained a non-exhaustive list of acts of aggression, including cases of indirect aggression. His delegation was glad that the non-exhaustive nature of that list had been specified in the following article. It considered that article as reflecting a general desire among States for progressive development of international law and hoped that it was a first step towards the recognition of other forms of indirect aggression, such as economic aggression. His delegation wished to stress that article 3 *(d)* could not be interpreted as restricting in any way whatever the right of a sovereign State to apply its national legislation to its territorial waters and air space and to take the necessary measures to protect its security and natural resources.

25. He had no special comments to make about articles 4, 5 and 6, except to note that article 5, second paragraph, made an artificial and pointless distinction between aggression and a war of aggression. The expression "war of aggression" destroyed the harmony of the text and was unnecessary.

26. The right to self-determination, freedom and independence of peoples deprived—forcibly or by other more indirect means—of that right, reaffirmed in article 7, was an inalienable and sacred right. Tunisia, which had been deprived of that right many times in its history, firmly supported the peoples who could not enjoy that right and assured them of its unconditional support. His delegation affirmed that those peoples had the right to struggle to recover their freedom and independence by all means at their disposal, including the use of armed force. In so doing they would be acting in accordance with the inherent right of self-defence embodied in Article 51 of the Charter and in conformity with the relevant General Assembly resolutions, including resolution 3070 (XXVIII), in which the Assembly reaffirmed "the legitimacy of the peoples' struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed strug-

gle" and resolution 3103 (XXVIII), adopted on the proposal of the Sixth Committee, concerning the basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes.

27. Subject to the preceding remarks, his delegation was prepared to support the draft definition if it was adopted, as his delegation hoped, by consensus. It might wish to speak again on the question if necessary.

28. Mr. VARELA (Costa Rica) said that, like most of the speakers who had preceded him, he accepted the fact that the provisions of article 3 of the draft definition were not exhaustive but only enumerative. His delegation considered that it was impossible to adopt another solution because it was difficult to reach a simple and univocal definition and because man, throughout his history, had proved his capacity constantly to devise new means of aggression not only individually but also collectively. The definition recommended by the Special Committee, as it stood, with its gaps and imprecisions, was nevertheless adequate and acceptable because it left it to the Security Council to take the final decision pursuant to the provisions of the Charter and that decision, in accordance with the provisions of article 8, should be construed in the context of other norms in force.

29. His delegation considered that the draft definition under consideration should be welcomed for the simple reason that it was the first time for more than 50 years that it had been possible to reach a consensus on the definition concerning such an important and delicate question, and that a great contribution had thus been made to international law and to the efforts which were being made by the United Nations to maintain peace. On the practical level the definition helped to establish security and to create the feeling of "knowing where things stood" which facilitated relations within the international community and constituted an invaluable tool for the Security Council when it had to consider specific cases. Moreover, in accordance with the most lofty principles of the Charter, the draft definition maintained and affirmed the principles of territorial integrity and the self-determination of peoples on which peaceful coexistence between States was based.

30. He had listened attentively to the relevant observations made by the speakers who had preceded him, including the representatives of Chile, Madagascar and Peru in their statements at the 1474th meeting, especially on the subject to the exercise of sovereignty and the application of internal law, particularly with regard to article 3 *(d)* of the draft definition. He considered that the spirit of that provision did not prevent the legitimate exercise of territorial jurisdiction in national air or sea space in conformity with international treaties and internal law, and also considered that the draft definition, in conformity with its article 6, in no way prejudiced the principle of self-defence embodied in Articles 51, 52 and 53 of the Charter.

31. His delegation, which recalled that Costa Rica, after having been involved in a serious dispute, had accepted the decision of the body responsible for ensuring peaceful coexistence in the region, urged all members of the Committee to vote in favour of the draft definition submitted by the Special Committee.

32. Mr. WISNOEMOERTI (Indonesia) said that he was very pleased that the Special Committee had succeeded in completing a draft definition of aggression, a difficult endeavour in which the international community had been engaged for 50 years. The draft definition, if adopted, would strengthen the role of the maintenance of international peace and security entrusted to the United Nations by the Charter. The definition would provide guidance for the Security Council in determining the existence of acts of aggression and it would also be useful for the international community as a deterrent to potential aggressors.

33. As other delegations had already observed, the draft definition reflected a delicate balance which had been achieved through the goodwill and spirit of compromise shown by the members of the Special Committee. His delegation, as a member of that Committee, was well aware of the complexity of the problems relating to the definition, and it particularly wished to express its gratitude to the Chairman of the Special Committee for the efforts he had made. However, the draft definition, as it represented a compromise solution, contained certain ambiguities and short-comings which the Sixth Committee had to deal with.

34. The general definition contained in article 1 was acceptable to his delegation, as it included the concept of sovereignty as one of its basic elements and was consistent with the principle of renunciation of the use of force embodied in Article 2, paragraph 4, of the Charter; it was the understanding of his delegation that the concept of territorial integrity contained in article 1 of the draft definition included territorial sea and air space. It also approved of the principle of priority contained in article 2 which aimed, *inter alia,* at deterring States from resorting to force to achieve their objectives. At the same time that article recognized that no definition of aggression could undermine the power granted to the Security Council under Article 39 of the Charter to determine whether aggression had been committed in any specific case, and the Security Council could in that respect take into account "other relevant circumstances".

35. The fact that the acts of aggression enumerated in article 3 were not exhaustive was acceptable to his delegation, but it had reservations with regard to subparagraph *(d),* which created ambiguity because it did not define the maritime zone or the air space to which it was applicable. Such a provision would create a situation in which a State exercising its sovereignty in its territorial sea and air space and also its sovereign rights in the maritime zone within its national jurisdiction, and taking legitimate measures against foreign marine or air forces engaged in unlawful activities in that maritime and air space might be accused of committing an act of aggression. The formulation of article 3 *(d)* might endanger the sovereignty and territorial integrity of a coastal State and his delegation had therefore made reservations on the matter which were in annex I of the report of the Special Committee. His delegation wished to reaffirm that nothing in article 3 *(d)* should prejudice or affect the rights of a coastal State to enforce its laws and regulations in the maritime zone or air space within the limits of its national sovereignty and jurisdiction. Many other delegations had expressed similar doubts regarding the formulation of article 3 *(d).* The Committee should take that into account and seek a

solution which would remedy those short-comings. With regard to article 3 *(g)*, his delegation considered that the text should be more explicit in defining indirect aggression, since the indirect use of force could have consequences which were as destructive as direct aggression. Nevertheless subparagraph *(g)* was acceptable to his delegation as a compromise. However, his delegation made it clear that that paragraph should be read in conjunction with the principle that no State or group of States had the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State, as contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) and with article 7 of the definition, which affirmed respect for the right to self-determination, freedom and independence. Moreover, the word "substantial" in paragraph 3 *(g)* was ambiguous, as it was understood that all the acts qualified as acts of aggression in the draft definition should be "substantial"; the word was therefore unnecessary.

36. His delegation welcomed article 5, in particular the third paragraph, which reaffirmed the principle of international law according to which any territorial acquisition resulting from the threat or the use of force was inadmissible and should not be recognized.

37. Mr. AL-HADDAD (Yemen) expressed his satisfaction with the text of the preamble to the draft definition submitted by the Special Committee. Since it represented a compromise, the definition was not entirely faultless, but it would provide useful guidelines for the Security Council in exercising the powers conferred upon it regarding the determination of the existence of an act of aggression.

38. His delegation noted with regret that the scope of the definition had been restricted through the deletion, in article 1, of the expression "however exerted" in the consolidated text of the reports of the contact groups and of the drafting group of the Special Committee in 1973.[1] It also considered article 3 *(d)* to be superfluous and deplored the fact that aggression had not been qualified as a crime against humanity under international law. On the other hand, the provisions of article 7 were highly satisfactory, as they reaffirmed the right of peoples to self-determination, freedom and independence, in conformity with the Charter of the United Nations and resolutions of the General Assembly.

39. Mr. SOGLO (Dahomey) said that the people of the third world were the least satisfied with the draft definition of aggression which had been drawn up. Those peoples had experienced aggression in the form of slavery, the pillage of their lands and property, and the destruction of their cultures and civilizations. They were still experiencing it, as they were the helpless victims of economic exploitation. They were therefore in the best position to provide the most accurate and complete definition of aggression; but those who were afraid of such a definition had opposed it, thus making the work of the Special Committee very difficult. Nevertheless, in view of the results it had achieved, his delegation could not but join very sincerely in the unanimous tribute paid to the Special Committee for having spared no effort to draw up a definition acceptable to all. That was an important contribution to the cause of peace, despite the gaps and ambiguities other delegations had already pointed out. It would have been worth while to dwell on the practices of multinational corporations, to define the manoeuvres of certain national agencies against the political independence of States and to speak in appropriate terms of how *apartheid* constituted a crime against humanity and a permanent state of aggression.

40. Some delegations had expressed satisfaction at the fact that the definition of aggression had been drawn up in accordance with the letter of certain provisions of the Charter. Delegations had been requested not to upset the difficult and precarious balance achieved by the Special Committee. His delegation would heed that appeal. Nevertheless, it was worth asking whether the ultimate purpose of the Organization was merely to determine the current state of affairs and to accept it. Was it not also its duty to establish a basis for a more just world and to abolish, *inter alia*, certain principles that were no longer justified in the view of the majority of delegations? In that connexion, many speakers had failed to mention the fact that the question of the review of the Charter was also on the Committee's agenda (item 95) and that special attention would be given to the nature and importance of the prerogatives of the Security Council. His delegation felt that one of the weaknesses of the draft definition lay in the wording of the second and fourth preambular paragraphs and the first part of article 6, which confirmed the existing prerogatives of the Security Council. In modern times, hardly any war of aggression continued unless it received the prior approval or served the purposes of one of the great Powers. Under such circumstances, a definition that was nothing but a simple recommendation by the General Assembly, to be freely interpreted by the Security Council, did not fully achieve the desired goal.

41. His delegation also felt that article 3 *(d)* did not restrict the right of States to repel any violation of the waters under their jurisdiction. It was most satisfied with the inclusion of article 7, because any provision aimed at obtaining freedom was to be regarded as sacred.

42. Since the definition contributed to the codification of international law, his delegation would have liked it to be perfect; however, it would go along with the consensus that seemed to have been reached, inasmuch as the draft represented a first step on the way to a global definition of aggression.

43. Mr. EUSTATHIADES (Greece) said that his country, which had not participated in the work of the Special Committee, had followed the effort to define aggression with great interest. Greece, a loyal advocate of the peaceful settlement of international disputes, had always made a scientific contribution to international law. From the time of the League of Nations the name of Nicholas Politis had been associated with a draft definition of aggression. Later on, in the International Law Commission, Mr. Spiropoulos had been associated with the preparation of the draft Code of Offences Against the Peace and Security of Mankind. It was precisely because that draft had raised problems related

[1] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex II, appendix A.

to the definition of aggression that it had not yet been adopted by the General Assembly.

44. The draft definition submitted by the Special Committee had certain weaknesses, but it was important not to upset its balance, because it represented a landmark on the road to the maintenance of peace and security in the world. The draft was particularly significant because representatives of the third world had taken part in its preparation. It was the result of collective efforts and necessarily reflected compromises on several points.

45. Political reasons should not be adduced to minimize the value of the draft; it would certainly fill some gaps. Indeed, the absence of a definition did not explain the existence of aggression in modern times. Aggression could not be banished from the international scene until all nations took to heart the principles of the Charter and had recourse in every case to peaceful methods for the settlement of international disputes. But the definition could help to ensure that Governments adopted a peaceful approach, inspired by a desire to maintain peace, on the one hand, and, on the other, the fear of social reaction as expressed by public opinion and the attitudes of the competent bodies.

46. The maintenance of international peace was too serious a matter to allow for the luxury of having a legal text that might be perfect but would not pursue any practical objective. One of the practical purposes of a draft definition was to discourage potential aggressors. That purpose could be better accomplished if the constituent elements of aggression could be properly defined. In that regard, the text proposed was more or less satisfactory. Obviously, no State would be willing to admit to an act of aggression and every effort must be made to avoid loop-holes.

47. The draft definition should also serve as a guide to the competent international organs. That had been recognized by the League of Nations and by the General Assembly of the United Nations when it stated, in resolution 599 (VI) of 31 January 1952, that it was possible and desirable to define aggression by reference to the elements which constituted it and that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as might be called upon to determine the aggressor. It should be stressed that the draft would have an even broader scope: it would facilitate the other activities of those bodies and be useful to other organs.

48. The definition would be of considerable assistance to the Security Council in determining the existence of acts of aggression. Certain delegations had questioned the usefulness of the definition in that connexion, and had stressed the political opportunism of the bodies concerned. Of course, the existence of such opportunism could not be denied and the text of the draft did not in fact overlook it. The Charter itself had not made the conclusions of the Security Council an automatic process. It had allowed for discretionary powers. Thus, article 4 of the draft provided that the Security Council might determine that other acts, in addition to those enumerated in article 3, constituted aggression under the provisions of the Charter. Article 2 allowed the Security Council to take into account "other relevant circumstances" and also to conclude that a determination that an act of aggression had been committed would not be justified, particularly if the acts concerned or their consequences were not of sufficient gravity. That same clause allowed for reference to the notion of aggressive intent. The concern for preserving the powers of the Security Council had been pressed so far that, despite article 8, which stipulated that the provisions of the draft were interrelated, article 3 expressly—and uselessly, in his opinion—reserved the provisions of article 2. However, although it did not attempt to modify the powers of the Security Council, the draft definition did try to define them to some extent, since the definition of aggression included the basis for an interpretation of the concept of aggression, mentioned but not defined in the Charter.

49. If the definition was to serve only as a guide to the Security Council in determining the existence of acts of aggression, its usefulness would be limited. The Security Council had never yet determined that an act of aggression had been committed and that attitude did not seem to be due to the absence of a definition of aggression. The Security Council was hardly likely to change its attitude in future.

50. The draft would therefore be much more valuable in cases other than those involving the determination that an act of aggression had been committed.

51. Firstly, the concern of the Security Council was not to condemn the aggressor but to make recommendations or to decide on measures to be taken to maintain or restore international peace and security. In such cases, it would necessarily take into consideration the definition of aggression, which might prove useful in the course of the work not for determining the aggressor, but for the substance and content of such recommendations and measures. The expression *"prima facie"*, which appeared in article 2, could possibly be deleted. The expression was superfluous for the purpose of having the Security Council determine who was the aggressor, in view of the provisions of the Charter and of the draft itself. The provisions of article 3 were adequate, and it was not necessary to refer to the notion of presumption.

52. Secondly, the first use of armed force by a State, in the cases envisaged in article 3, justified self-defence. The victim would not wait to fight until the aggressor had been duly determined. The fact that the draft did not expressly mention the right of self-defence did not invalidate that right. In any case, particularly where the Security Council had not yet been called in or had not made a recommendation or taken a decision, the definition of aggression would contribute toward the application of Article 51 of the Charter, regarding self-defence.

53. Thirdly, the General Assembly, in similarly applying Articles 10, 11 and 14 of the Charter, could not ignore a definition of aggression it had itself adopted.

54. Fourthly, particularly the General Assembly, together with other bodies, reflected or influenced international public opinion the value of which was recognized and which would be formed, taking into account the definition of aggression.

55. Finally, in addition to the principal organs of the United Nations, States, in particular those linked by regional mutual assistance agreements, would benefit by the definition of aggression. The right of self-defence, which was sanctioned by international law and by the Charter, was closely connected with the definition of aggression. Moreover, the existence of an act of aggression called for recourse to machinery for consultations between States parties to a mutual assistance agreement, with a view to the exercise of their collective right of self-defence. In such cases, too, a definition of aggression would be useful.

56. Given the many possible applications of the definition of aggression, in cases other than those where the Security Council would have to determine who was the aggressor, it was important to improve it as much as possible, without weakening its content. His delegation therefore wished to propose the following amendments.

57. In article 1, the phrase ", as set out in this definition" was imprecise, and might give the impression that the intended reference was to the definition contained in article 1. His delegation proposed that it should be replaced by the following words: "by means of one of the acts mentioned in Article 3", or possibly by "as set out in the definition contained in this declaration". Explanatory note *(a)* contained a necessary clarification, but explanatory note *(b)*, which referred to the concept of a "group of States", far from providing a clarification, was likely to cause complications. He therefore doubted the advisability of including it.

58. Article 2 rightly proclaimed the principle of priority, on the basis of which the use of armed force justified the exercise of the right of self-defence. As he had previously stated, he considered the words *"prima facie"* unnecessary. Moreover, he proposed that article 2 should be divided into two sentences, the first concerning the objective criterion, and the second establishing the discretionary power of the Security Council.

59. In article 3 the words "shall . . . qualify as an act of aggression" could be replaced by the simpler "shall . . . constitute an act of aggression", in view of the presence of the clause "subject to and in accordance with the provisions of article 2".

60. Article 5, second paragraph, provided that "A war of aggression is a crime against international peace". However, as other delegations had observed, an act of aggression could threaten international peace and security without necessarily constituting a breach of the peace. It would therefore be preferable to replace the words "A war of aggression" by "Any act of aggression". Some delegations had rightly proposed that the sentence "Aggression gives rise to international responsibility" in the same paragraph should be replaced by "Any act of aggression gives rise to international responsibility". With or without that amendment, article 5, second paragraph, laid down the principle of international responsibility. Some delegations had criticized the provision as being superfluous in the light of other relevant international instruments. In his view, a breach of an international commitment—in the case at hand, the Charter—gave rise to international responsibility without the need for any express statement to that effect. However, his delegation considered that it might be useful to specify that an act of aggression gave rise to international responsibility. In any event, once the definition was adopted, it would probably be possible to resume consideration of the draft Code of Offences against the Peace and Security of Mankind. Article 5 had the merit of not prejudging the nature of the responsibility, which could devolve not only on the State, but also on the individual.

61. He noted with satisfaction the reservation contained in article 7 concerning the right to self-determination.

62. The definition would definitely be useful to all States, and especially small States. It did not deal with purely academic hypotheses. Cyprus, for example, had lately been the victim of aggression and of acts which clearly fell within the scope of the definition of aggression. It was deplorable that the deeds of a country whose delegation had stated its agreement with the draft definition should be at variance with the words of its representatives. The situation prevailing in Cyprus was a vivid example of the problem facing the Committee, and it was regrettable that solemn legal texts could be completely ignored in some quarters. The attack on and invasion of Cyprus, although temporary, were unlawful and deserved condemnation as genuine acts of aggression in accordance with the seventh preambular paragraph and article 3 *(a)*. It should also be borne in mind that according to article 5 no territorial acquisition or special advantage resulting from aggression was or would be recognized as lawful.

Mr. Broms (Finland), Vice-Chairman, took the Chair.

63. Mr. CHAILA (Zambia) pointed out that aggressive war and armed attack were the main, though not the only, categories of illegal use of force. Armed aggression was identical with armed attack, but, on the whole, the concept of aggression was broader than that of armed attack. The concept of aggression included psychological, economic or indirect aggression. Therefore, in establishing whether a State had committed an attack or armed aggression against another State, account should be taken of the following factors: military character of the action, intention of the aggressor, use of force and seriousness of the situation, and the priority principle.

64. Currently the most common type of aggression was economic aggression, particularly against land-locked countries such as Zambia, which could not survive without access to the sea. His country was surrounded by racist and illegal régimes which were applying policies designed to destroy its economy. Those régimes had threatened the use of military force, and committed acts of provocation against it. The Security Council had been requested to consider the situation, and in resolution 326 (1973) had condemned the conduct of those régimes.

65. With reference to the draft articles, his delegation considered that article 1 laid too much emphasis on armed force. However, it noted with satisfaction the inclusion of the words "or in any other manner inconsistent with the Charter of the United Nations", which it understood to mean that the closure of access routes to the sea, acts of provocation, blackmail and threats to use military force constituted acts of aggression. Article 2 was satisfactory,

but the principle of priority would not be relevant in cases in which aggression did not involve the use of armed force. Article 3 *(c)* mentioned the blockade of the ports or coasts of a State by the armed forces of another State, a provision which was relevant only to coastal States, although every State had a right of access to the sea. The Committee should ask itself what would happen if a country's routes of access to the sea were blocked and whether the blockade of Zambia's routes of access to the sea did not constitute an act of aggression. His delegation regretted that the Special Committee had not taken into account Security Council resolution 326 (1973) on that subject. It shared the views expressed at the 1479th meeting by the representative of Afghanistan, and would support the working paper submitted by that delegation (A/C.6/L.990). It did not feel that the modification of article 3 *(c)* would jeopardize the consensus reached by the Special Committee.

66. His delegation commended the Special Committee for its remarkable achievement; it was convinced that the definition of aggression would contribute to the codification of international law.

Mr. Šahović (Yugoslavia) resumed the Chair.

67. Mr. ROSSIDES (Cyprus), exercising his right of reply at the invitation of the Chairman, said that the Treaty of Guarantee of 1960[2] did not provide for possible intervention by force in the internal affairs of Cyprus. Article IV of the Treaty stipulated that the parties undertook to consult together with respect to the representations or measures necessary to ensure observance of the Treaty. The purpose of those provisions was to protect the independence and territorial integrity of Cyprus. However, not only had Turkey made use of force, but it had also violated the Treaty for the manifest purpose of dismembering the territory of Cyprus and annexing it. Following two successive invasions in July and August 1974, Turkey was occupying 40 per cent of the territory of the island. Turkey had therefore violated both Article 2, paragraph 1, of the Charter, according to which the Organization was based on the principle of the sovereign equality of all its Members, and paragraph 4 of that Article, which prohibited the use of force.

68. Even if such acts were authorized by the Treaty of Guarantee, they would be in direct conflict with the Charter, Article 103 of which provided that in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, the former should prevail. Turkey could not therefore rely on the Treaty of Guarantee to justify its action. Moreover, even before the Charter had been drawn up, eminent jurists had set forth the thesis, reflected in Article 78 of the Charter, that no treaty could in any way restrict the sovereignty of a State. It was therefore abundantly clear, according to the international law on which the international legal order depended, that the ferocious invasion of Cyprus and all the inhuman acts which had followed it were condemnable in law for a multiplicity of reasons.

69. According to article 3, subparagraphs *(a)*, *(b)* and *(c)* of the draft definition of aggression, invasion or attack by the armed forces of another State, bombardment by the armed forces of a State against the territory of another State, and the blockade of the ports constituted acts of aggression. Moreover, article 5 stated that no consideration of whatever nature could serve as a justification for aggression. Turkey had therefore violated all those provisions and had failed to fulfil the international obligations incumbent on it under the Charter of the United Nations and under other treaties and conventions, in particular the Geneva Conventions of 1949 for the protection of war victims. In that connexion, it was true that Turkey had sought to denounce those Conventions, in spite of the denials made by the representative of Turkey. But, as was explained in the articles in *The New York Times* and the *Manchester Guardian*, such a denunciation was invalid because it was stipulated in article 142 of the Convention relative to the Treatment of Prisoners of War of 12 August 1949[3] that a denunciation made at a time when the denouncing Power was involved in a conflict was of no effect until peace had been concluded and until operations connected with the release and repatriation of persons protected by the Convention had been terminated.

70. Mr. GÜNEY (Turkey) said that, first of all, he would like to welcome the representative of Greece with whom he had had the pleasure of working in the European Committee on Legal Co-operation. Replying next to the comments made by the representative of Greece, he stressed that Greece was the instigator of an act of aggression which sought completely to destroy the Turkish Cypriot community and which had endangered the territorial integrity and sovereignty of Cyprus. In that connexion, he quoted certain passages from the statement made by Archbishop Makarios at the 1780th meeting of the Security Council. Archbishop Makarios had stated on that occasion that the Greek military régime had pitilessly violated the independence of Cyprus and that, after the coup d'état, the agents of the Greek régime in Cyprus had appointed as President a well-known killer. The Greek military régime, the Archbishop had continued, had established and supported a terrorist organization whose avowed aim was the union of Cyprus with Greece and whose members called themselves "unionists". He, the Turkish representative, thought that there was no need to add anything to those quotations. Greece had committed aggression as it was defined in the draft definition of aggression before the Sixth Committee. The Greek Government must reply not to Turkey but to the arguments put forward by Archbishop Makarios himself.

71. The representative of Cyprus had tried to give a subjective interpretation to the Treaty of Guarantee, an interpretation that conformed to the views of the Greek community and its leaders who had never respected the Treaty in question. Any treaty in force was binding on the parties according to the rule *pacta sunt servanda.* To be entitled to give an interpretation of a text, if only in a unilateral and subjective manner, it was necessary to respect the text or at least to have the intention of doing so. Cyprus had not respected article I of the Treaty of Guarantee concerning the maintenance of its independence, its territorial integrity and its security, the obligation not to participate in any political or economic union with any

2 United Nations, *Treaty Series*, vol. 382, No. 5475, p. 4.

3 *Ibid.*, vol. 75, No. 972, p. 135.

State, and the prohibition of any activity likely to favour either union with any other State or partition of the island. Turning to certain passages of the statements made by Archbishop Makarios in 1960 and 1964, he pointed out that, although *enosis* had not been achieved at the present time, its aim remained the same.

72. As for article II of the Treaty of Guarantee which stipulated that Greece, the United Kingdom and Turkey recognized and guaranteed the independence, territorial integrity and security of the Republic of Cyprus, it had been flagrantly violated by Greece. The coup d'état organized by the Greek officers in Cyprus and planned in Athens had brought about the crisis. The aim on that occasion had been the complete destruction of the Turkish Cypriot community and it was only when his personal power had been threatened that Archbishop Makarios had appealed to international organizations, for he had never hidden his ultimate aim: the reunion of Cyprus with Greece.

73. In collaboration with the leaders of the Greek Cypriot community, a guarantor of the Treaty of Guarantee had violated article III of that Treaty by planning a coup which sought to annex the island and destroy the Turkish community which, according to the Constitution, had rights equal to those of the Greek community.

74. Turkey, which also was required to safeguard the independence, territorial integrity and security of the Republic of Cyprus, had tried to fulfil those obligations in concert with the other guarantor Powers. It had exhausted all the means provided in the Treaty of Guarantee, without success. It had therefore been forced to act alone with the sole aim of discharging the obligations incumbent upon it. The Republic of Cyprus would have disappeared long ago as an independent State if the categorical opposition of Turkey and the resistance of the Turkish community on the island had not prevented *enosis*.

75. Mr. ROSSIDES (Cyprus), speaking in reply to the representative of Turkey, concerning the statements alleged to have been made by Archbishop Makarios, said that those statements were borne out by history and that Cyprus had always desired union with Greece. Before acceding to independence, Cyprus envisaged not independence but union with Greece, a fact which was no secret for anyone. Subsequently, as a result of objections to this planned union, Cyprus had accepted independence.

76. Furthermore, the Turkish Cypriot community had obtained many advantages, which had given rise to recent events.

77. Archbishop Makarios had been far from working to achieve *enosis* because his disappearance had been planned before the attempt to bring about the union of Cyprus with Greece. In fact, it was Turkey which was trying to dismember Cyprus; that had been the aim Turkey had been seeking in 1964 when it was preparing to invade the island.

78. He also wondered why the Turkish Minister of Foreign Affairs had gone to London to consult the British Government. Did Turkey think that the United Kingdom was going to join its operations? If not, why had Turkey acted as it did?

79. Mr. GÜNEY (Turkey) stressed that Turkey had not denounced the Geneva Conventions of 1949, that it was still a party to them, and that the representative of Cyprus could not base his statements on newspaper articles written in the light of reports from Greek sources. When anyone wished to know whether a State had denounced a convention, it was necessary to consult the depositary authorities of the convention in question, namely the Swiss Federal Council.

80. He also recalled the inhuman acts committed during the last 11 years against the Turkish Cypriot community and pointed out that any acts based merely on emotions should be avoided.

81. As for the reason why Turkey had not discharged its obligations in 1967, he explained that Turkey had wished to give the Cypriot régime another chance to fulfil the solemn undertaking that it had made under the terms of the Treaty of Guarantee.

82. The quotations that he had made were taken from the statements made by Archbishop Makarios after 1960.

83. Mr. EUSTATHIADES (Greece) pointed out that the military coup which had occurred on Cyprus had been condemned both by the Cypriot delegation and the Greek delegation. Thus, since supposedly it was an act of aggression in the eyes of Turkey, he wondered why Turkey did not in its turn condemn its own action in Cyprus. Greece, for its part, had formally declared that it was not seeking the union of Cyprus with Greece.

84. The Security Council had unanimously adopted recommendations requesting the withdrawal of Turkish troops as rapidly as possible. Those recommendations had been ignored, as had been the undertakings assumed by Turkey at the recent Geneva Conference. Turkey was actually using pretexts to carry forward a plan that had been long projected and carefully prepared. However, it could not invoke the Treaty of Guarantee which in no way could be interpreted as authorizing aggression against Cyprus.

85. Mr. GÜNEY (Turkey) said that, regarding plans for annexation, Greece must first reply to the statements of Archbishop Makarios. The intervention of Turkey in Cyprus sought to safeguard the territorial integrity and independence of Cyprus and to ensure the security of the Turkish Cypriot community.

86. Mr. ROSSIDES (Cyprus) said that the newspapers he had quoted were not Greek and that the articles had been written by independent journalists.

87. Mr. GÜNEY (Turkey) said that he questioned the legal value of the newspaper reports mentioned by the representative of Cyprus. It would be better to request the opinion of the depositary of the Geneva Conventions of 1949. As for the allegation that Turkey had not denied the reports, it was true that Turkey had not replied to them but in fact it did not have time to reply to all the allegations and propaganda of the Greek Cypriot community.

88. Mr. EUSTATHIADES (Greece) observed that the Turkish representative had replied only by affirming that Archbishop Makarios was working for the union of Cyprus with Greece. Such a reply was perplexing, for he wondered what explanation could be offered for the fact that the military coup which, according to the representative of Turkey had been designed to annex Cyprus to Greece, had been directed against Archbishop Makarios. In fact, Archbishop Makarios could express only the wishes of the population, the implementation of which had been abandoned. In signing the Treaty of Guarantee, Cyprus and Greece had made an important sacrifice.

89. Moreover, concerning the Geneva Conventions of 1949, the real issue was not in that instance whether those international conventions had been denounced: the important question was the observance of them.

90. Mr. GÜNEY (Turkey) replied that Archbishop Makarios wished to be the architect of *enosis* and that the rug had been snatched from under him.

The meeting rose at 6.30 p.m.

1483rd meeting

Wednesday, 23 October 1974, at 10.45 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1483 and Corr.1

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988)

1. Mr. ROSALES (El Salvador) said his delegation recognized that the draft definition of aggression (see A/9619 and Corr.1, para. 22) was the product of lengthy and delicate negotiations and had noted the concern expressed by some that any alteration of the text could nullify the work accomplished by the Special Committee on the Question of Defining Aggression. Nevertheless, his delegation had certain reservations with regard to the draft definition. First of all, it was regrettable that the definition was almost totally concerned with the concept of direct aggression, leaving out of account acts of indirect aggression such as economic aggression in its various forms and manifestations. In his statement to the General Assembly (2239th plenary meeting), his country's Minister for Foreign Affairs had drawn attention to that short-coming of the definition. The provision made in article 4 of the draft definition for the Security Council to determine that other acts constituted aggression did not remedy that deficiency, since article 1 restricted the concept of aggression to the use of armed force by one State against another. The definition was thus incomplete and the enumeration of acts provided in article 3 included only the obvious categories of armed aggression. The limited scope of the definition reduced its value, although no one could deny that the unlawful use of armed force by a State against the sovereignty, territorial integrity or political independence of another State was a typical form of international aggression. His delegation had particular reservations concerning article 3 *(d)*, in which the reference to marine fleets might be interpreted as prejudicing the sovereignty and jurisdiction of coastal States. It should have been made clear that fishing fleets did not fall within the scope of that term. In that regard, his delegation supported the views expressed by the representatives of Ecuador and Indonesia at the concluding stage of the Special Committee's last session (see A/9619 and Corr.1, annex I). During the present debate many delegations had expressed apprehensions with regard to the wording of article 3 *(d)*, and his delegation would support any proposal designed to clarify the meaning of that provision. It could not accept any limitation of the right of coastal States to protect the marine resources within their jurisdiction. He reserved his delegation's right to comment on other provisions of the draft definition, if necessary.

2. Mr. GODOY (Paraguay) welcomed the completion of the draft definition of aggression, which was the culmination of nearly 50 years of effort. Although it was not perfect, the draft definition seemed to be acceptable to a broad majority of States. His country had not been a member of the Special Committee, and he would like to make comments on the draft definition.

3. With regard to article 1, his delegation agreed with the Special Committee's decision to define aggression as, primarily, the use of armed force by a State against another. It should not be forgotten, however, that there were other serious ways of harming the national interests of a country. The phrase "or in any other manner inconsistent with the Charter of the United Nations" was legally imprecise and could give rise to various interpretations, thus complicating the task of the organ responsible for determining the nature and scope of the acts committed. The reference to the use of armed force against the sovereignty of a State was likewise imprecise, since the concept of sovereignty was almost totally intangible. His delegation also had misgivings with regard to the reference to a "group of States" in the explanatory note to article 1. It might be inferred that, where an act of aggression was committed by a State which belonged to such a group, the onus of aggression might also apply to other States in the group even if they had not participated in the act in question.

4. The language of article 2 was entirely appropriate and realistic. It should be emphasized that in determining the existence of an act of aggression the Security Council must

take account of other relevant circumstances. That would include action taken by a State to defend territory it considered to be its own. The first use of armed force, while giving rise to an objective presumption of aggression, was not sufficient for a determination that an act of aggression had been committed. It must be combined with the subjective criterion of aggressive intent.

5. With regard to article 3, his delegation would have preferred a specific mention of the blockading of land-locked countries' routes of access to the sea as an act to be qualified as aggression. The omission was regrettable, as his delegation considered that, even with the use of analogy or a broad interpretation, it could not be inferred from article 3 *(c)*, as it was drafted, that the land-locked countries' routes of access to the sea were protected by that subparagraph. Such protection was vital, since land-locked countries were totally dependent on access to the sea for their foreign trade and subsistence and could be economically isolated not only by an armed blockade but even by a mere boycott or dock worker's strike in a transit State. While his delegation understood the difficulty of amending the text recommended by the Special Committee, it hoped that an express reference could be included in article 3 *(c)* concerning the blockade of land-locked countries' natural routes of access to the sea.

6. With regard to article 3 *(d)*, his delegation understood the apprehension felt by some countries that an act of armed force carried out by a State within its territorial waters or air space against marine or air fleets of another State might be qualified as an act of aggression. However, his delegation could not agree with that interpretation, since it was clear that article 3 *(d)* referred to unprovoked attacks on the high seas or in international air space.

7. In article 5, second paragraph, his delegation would have preferred to use the words "acts of aggression" instead of "war of aggression". In the same article, third paragraph, it would have been better to replace the word "aggression" with "the use of armed force" since, as currently worded, that paragraph could be interpreted *a contrario sensu* as meaning that a territorial acquisition or special advantage not resulting from aggression was lawful.

8. His delegation was prepared to accept the recommendation of the Special Committee that the Sixth Committee and the General Assembly should adopt the draft definition.

9. Mr. BOOH-BOOH (United Republic of Cameroon) said that, despite the short-comings and ambiguities of the draft definition, the Special Committee had produced a balanced text of great political and legal significance which provided useful guidelines for the Security Council in exercising its functions with regard to international peace and security The draft definition was a contribution to the cause of peace, and his delegation was prepared to join in its adoption by consensus at the current session of the General Assembly.

10. Commenting on article 1, he noted with regret that the Special Committee had confined its attention solely to the use of armed force, which was not necessarily the most frequent form of aggression or the one most feared by small Powers. In order to be complete, the definition of aggression must take into account all forms of aggression, including the subtle forms of economic aggression which could assume alarming proportions. Therefore, in adopting the draft definition, the Sixth Committee should not exclude the possibility of broadening the definition at a later date in the light of pertinent studies. In that regard, he drew attention to the studies made under the auspices of the Economic and Social Council with regard to the effect of transnational corporations on development and international relations.

11. With regard to article 2, his delegation endorsed the idea that the first use of armed force by a State constituted *prima facie* evidence of an act of aggression. Of course, the discretionary powers of the Security Council under Article 39 of the Charter remained intact. After considering all relevant circumstances the Council could decide to reduce or nullify the responsibility of the State with which the presumption of aggression lay. In that regard, his delegation was concerned about possible abuses of the veto power, which a permanent member of the Council might use to exonerate itself or an ally from a charge of aggression. If it was to be successful, the definition would have to be accompanied by major changes in the conduct of States, particularly the great Powers, and by democratization of the Security Council or at least a generally accepted definition of the cases in which the veto right could be exercised.

12. The use of the term "war of aggression" in one instance in article 5 and the word "aggression" in other instances could give rise to conflicting interpretations. In his delegation's view, any act of aggression recognized as such in accordance with the definition was a crime against international peace, whether or not a war ensued. In that connexion, he stressed the importance of the last paragraph of article 5.

13. Article 3 *(d)* was ambiguous and did not sufficiently take into account the concerns expressed by many coastal States at the United Nations Conference on the Law of the Sea held at Caracas. Any action taken by his Government in the maritime zones under its national jurisdiction could not be regarded as an act of aggression. His delegation's position in that regard had been stated clearly at Caracas.

14. His delegation attached great importance to article 7, which recognized the legitimacy of the struggle of peoples under colonial and racist régimes or other forms of alien domination and declared that States were entitled to assist such peoples in every way–politically, morally or materially.

15. Mr. ALVAREZ PIFANO (Venezuela) said that his country, although it had not been a member of the Special Committee, had followed its work with interest and considered that the definition of aggression represented a contribution to the maintenance of international peace and the strengthening of international security. The definition would serve as a guide for the competent organs of the United Nations, particularly the Security Council, in determining the existence of an act of aggression and deciding what measures should be taken to restore international peace and security. World public opinion, which was

a factor in deterring potential aggressors, would also be guided by the definition.

16. Like others, his delegation was not entirely satisfied with the draft definition but understood how difficult it was to find a common denominator among the opposing views of States with different economic and social systems. The Special Committee had, in his delegation's view, approached the problem properly in laying down a general definition, followed by a non-exhaustive listing of acts of aggression with the proviso that the Security Council could determine what other acts constituted aggression.

17. Consistent with its policy of support for peoples struggling against colonial domination, racist régimes and *apartheid*, his delegation welcomed the provisions of article 7 of the draft definition.

18. His delegation had reservations with regard to the formulation of article 3 *(d)* and reserved the right to state its position at a later time.

19. Mr. SINGH (Nepal) said that the participation of the newly independent States of Bangladesh, Grenada and Guinea-Bissau would make a positive contribution to the work of the Committee. He offered his condolences, through the Chairman, to the bereaved family of the late Minister for Foreign Affairs of Iraq, and to the Government of Iraq.

20. The draft definition of aggression was a major step forward for the progressive development of international law and the culmination of half a century of effort by the international legal community. However, the draft definition should include all kinds of aggression, and article 1, in a manner compatible with the Charter, should expressly cover other forms of aggression. No mention had been made of intimidation and coercion by the threat of force or economic aggression.

21. His delegation endorsed the views expressed by the representative of Afghanistan (1479th meeting) with regard to article 3 *(c)*. The problem of the land-locked countries deserved special attention because when a land-locked State was denied the right of free access to the sea, the consequences were the same as for the blockade of a port, and amounted to an act of indirect aggression. It was unfortunate that there had been no representative from the land-locked countries in the Drafting Group of the Special Committee. No definition of aggression would be complete without a provision that the blocking of access to the sea should qualify as an aggressive act and if the draft definition were put to a vote, his delegation would abstain. He requested that his views be recorded in the Committee's report.

22. Mr. NICOL (Sierra Leone) said that his delegation had been a member of the Special Committee which, after many years of effort and tough negotiations, had arrived at a compromise definition. The document represented a balance between several concepts of aggression. The Special Committee had concentrated on armed aggression, omitting other forms, particularly economic aggression, with which his delegation was particularly concerned. In its report the Special Committee should have elaborated on economic aggression, in the form of exploitation of the natural resources of developing countries. Since the definition was a compromise it could not be perfect, but it would provide a guide to the Security Council in defining armed aggression and maintaining international peace and security. As stated in the preamble, the definition would also help to deter potential aggressors from committing acts of aggression.

23. His delegation shared the views of others which felt that article 3 *(d)* should be further clarified to emphasize the right of coastal States to defend their territories and natural resources within their jurisdiction. His delegation supported the liberation movements recognized by the Organization of African Unity whose main task was to obtain freedom from colonial and racist régimes, in the exercise of their right to self-determination, freedom and independence as stated in the Charter, and it therefore endorsed article 7 of the draft definition.

24. His delegation found the Special Committee's report acceptable and hoped that it would be adopted by the General Assembly at the current session.

25. Mr. BALDÉ (Guinea) said that it was natural that his delegation, representing a coastal State which had in 1970 been the victim of armed aggression by the land and marine forces of imperialist Powers, should reserve its position concerning the substance and drafting of article 3 *(d)* of the draft definition. That provision would not be acceptable to his delegation unless a specific stipulation were added to the effect that nothing in the definition, and in particular article 3 *(d)*, should be construed as in any way prejudicing or diminishing the authority of a coastal State to enforce its national legislation in maritime zones within the limits of its national jurisdiction. There was nothing more blind than international law when it was to be applied for the benefit of the third world countries. Despite the assurances his delegation had received, the ambiguous nature of the definition of aggression led him to request that his delegation's position should be recorded in the report of the Sixth Committee.

26. Mr. HASSOUNA (Egypt) said that the item under discussion was one of the most important items on the agenda of the General Assembly at the current session, since it related to the interpretation of the provisions of the Charter concerning certain fundamental purposes of the United Nations, namely the maintenance of international peace and security and the functioning of the collective security system. He traced the history of the definition of aggression from the time of the League of Nations and said that such a definition was of special importance for countries like his, which had been the victim of armed aggression and part of whose territory was still occupied by military force.

27. One of the questions which had been considered in the years of discussion it had taken to arrive at the draft definition was whether it should be a general, flexible definition, a more rigid definition listing the typical acts of aggression or a mixed definition. He was gratified that the definition before the Committee was a mixed definition.

28. His delegation had contributed to all the United Nations attempts to achieve such a definition and had as

early as May 1945 proposed an amendment to the Dumbarton Oaks proposals[1] to the effect that there should be a definition of aggression in the Charter of the United Nations and today it reaffirmed its opinion that the establishment of a definition would contribute to the maintenance of international peace and security and the progressive development of international law. By adopting the definition, the General Assembly would be fulfilling its interpretative function under the Charter, and the Security Council would be in a better position to assess any breach of the peace and to fulfil its responsibilities, while its authority to determine unlawful acts would not be affected in any way. However, since some countries still used force as a means of implementing their national policy, the purpose of the definition would be expressly to reaffirm the prohibition of armed force laid down in the Charter and justify self-defence only in the case where an armed attack had occurred.

29. His delegation had favoured a general definition comprising an illustrative list of acts as set forth in article 3, and believed that the definition would promote the development of international criminal law. The definition would remove any ambivalence concerning the nature of unlawful acts and thus assist the determination of legal responsibility for such acts. The success of the United Nations in arriving at the definition could largely be attributed to the positive contribution of the growing number of third world countries which had joined the United Nations during the period in which the Organization was embarking on its final attempt to arrive at such a definition. It was normal that the third world countries, emerging from an era of colonial, racist and alien domination based on conquest by force, should seek to establish an international order based on the equality, sovereignty and independence of all States, and to safeguard the rights of peoples still struggling for self-determination. The collective position they had adopted in discussions in the Special Committee was evident in the definition as drafted. However, it was clear from the report of the Special Committee and the statements made in the general debate that some of those countries still had misgivings about the loop-holes in the definition which might afford States the opportunity of justifying as lawful acts which were effectively acts of aggression. Unless the wording of the definition was precise, then the way would be open for explanations and interpretations which would run counter to the aims of the definition. Since the definition would be subject to interpretation by United Nations machinery and by Member States, he thought that certain rules should be followed so that any interpretation would conform to the declarations, recommendations and decisions of the United Nations and would be made in good faith.

30. It was clear from the definition that all the articles were based on the general legal concept of the prohibition of the use of force against the sovereignty, territorial integrity and political independence of another State, in conformity with the Charter. That was reflected in the seventh preambular paragraph, which reaffirmed the inviolability of a State's territory and the inadmissability of its military occupation and annexation. It was also reflected in articles 1, 3 and 5. The definition dealt only with armed aggression, which was one of the most serious forms of aggression according to the international legal order established by the Charter. Other forms of aggression, particularly economic aggression, which pursued the same goals as armed aggression, had been excluded from the outset by the Special Committee. However, economic aggression could also be used in conjunction with armed aggression if a State occupied the territory of another State and plundered the natural resources of that territory, or if the perpetrators of such aggression sought to deprive countries of their sovereignty over their natural resources.

31. Article 2, dealing with priority, which was a key feature of the definition, did not take into account the elements of intent inherent in the use of force. The Special Committee had been wise, since by doing so the article would have offered the aggressor the opportunity of justifying his act on the basis of selfless intentions. Article 5 likewise made it clear that there could be no justification for any act of aggression. However, the principle of priority dealt with in article 2 should have been stated in terms which made it clear that the first use of force constituted an act of aggression as an absolute principle, not merely as *prima facie* evidence of such an act. The text as it stood allowed the Security Council, by considering other relevant circumstances, to decide that no act of aggression had been committed. Once a material act of aggression had been established, the Security Council must declare that such an act had been committed: its decision in that regard would be declaratory and not constitutive. If the Council did not take such a decision, it would mean that the party being subjected to such aggression would be permitted to repel the aggressor and remove the consequences of aggression. He shared the misgivings of some delegations concerning the possible misinterpretation of article 3 *(d)*. It should be explicitly stated that that paragraph did not impair the right of any coastal State to take the necessary measures to implement its national legislation governing the maritime space under its jurisdiction. His delegation would support any measures taken by the Sixth Committee to clarify article 3 *(d)*.

32. Article 3 *(g)* should not be misinterpreted. Its provisions in no way limited the right of a State to assist peoples fighting against colonialism, alien domination and racist régimes, which was a right recognized in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations and clearly stated in article 7 of the draft definition, which was specifically linked to article 3 to avoid any misinterpretation. Article 7 contained a very important principle, embodied in the Charter, General Assembly resolution 1514 (XV) and many other United Nations resolutions. It had become an established rule in the codification of international law within the United Nations and in the application of international law generally. The term "struggle" in article 7 should be interpreted as including armed struggle, for United Nations resolutions on the subject explicitly stated the right of peoples to use all methods at their disposal to combat colonialism, alien domination and racist régimes. Thereby those peoples exercised their right of self-defence against a continuous aggression upon them. That rule derived its legitimacy not only from its acceptance by the

[1] See *Documents of the United Nations Conference on International Organization*, G/7(q)(1) (vol. III, p. 453).

international community but also from historical reality; many African and Asian countries had achieved their independence through armed struggle and had subsequently been recognized as sovereign members of the international community.

33. The definition rightly referred to the legal consequences of aggression, and his delegation had always endorsed the principles set forth in article 5 of the draft definition, which stated categorically that no territorial acquisition or special advantage resulting from aggression was lawful or could be recognized as lawful. His delegation had preferred to stipulate in that article that no such consequence could derive from the mere threat or use of force. That principle was fully in accordance with the Charter of the United Nations and the Declaration on Friendly Relations and was reaffirmed in many resolutions of the General Assembly and Security Council. The principle was made more explicit in explanatory note 4 in paragraph 20 of the Special Committee's report, which was considered part of the definition. Article 6 stated that nothing in the definition should be construed as in any way affecting the provisions of the Charter relating to the use of force, for example, for the purpose of self-defence, and acknowledged the right of a victim of aggression to resort to armed force in order to restore its territorial integrity and sovereignty, thus complementing and reaffirming the provisions of the Charter.

34. In the light of the foregoing observations, his delegation felt that the definition realized the goal the General Assembly had had in mind when it had given the Special Committee its mandate. However, that goal would be fully realized only when it came to the stage of practical application. United Nations history was replete with declarations and other texts which had not been implemented. It was there that the question of the responsibility of the Security Council arose. The major Powers, the permanent members of the Security Council, bore special responsibilities under the Charter which must be fulfilled if the efforts of the Special Committee were not to be in vain.

35. The General Assembly's adoption of the draft definition would undoubtedly be a contribution to the achievement of the purposes of the Charter, and it would be an important step in the series of steps already taken, which included the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security. If all those texts were applied with goodwill, that would certainly assist the United Nations in its task of saving future generations from the scourge of war. The trend in the United Nations towards universality in the establishment of those norms augured well for the future, and it was to be hoped that those norms would be respected universally.

36. He regretted that a few days earlier a wrong note had been sounded in the debate, when Israel in the 1480th meeting had launched a strong attack upon the draft definition and submitted objections to most of its provisions, terming them useless and not binding. Since 1950, Israel had explicitly objected to United Nations efforts to formulate a definition of aggression, because such a definition would contradict Israel's national policy, which was based on the use of military force to dominate other countries. Now that a generally acceptable draft definition of aggression had been formulated, Israel's attitude could only be interpreted as an indication that it found in the definition a condemnation of its own acts of armed aggression, military occupation and annexation of territory by force. Israel's position showed that it refused to commit itself to the fundamental legal principles embodied in the text, which were based on the provisions of the United Nations Charter. Israel thereby placed itself in a position outside the law and presented a threat to the existence and implementation of law in international relations.

37. Mr. DE SOTO (Peru) introduced document A/C.6/L.988 on behalf of the sponsors. That working paper suggested an additional article for insertion in the draft definition and related in particular to article 3 *(d)*. The difficulties expressed by many delegations in connexion with that provision hinged on the fact that it made no distinction between an attack perpetrated on the high seas, on the one hand, and, on the other, an attack carried out in the coastal waters, the contiguous zone or even the internal waters of a State. Thus, a coastal State applying its national legislation in an area over which it had jurisdiction might possibly be branded as an aggressor. The defenders of article 3 *(d)* had maintained, firstly, that no part of the definition should be construed out of context and, secondly, that the delicate balance which seemed to exist between the various parts of the definition should not be disturbed. Those arguments had not allayed the fears felt by the sponsors of document A/C.6/L.988 and by many other delegations.

38. The basic structural unity of articles 1, 2 and 3 was extremely important, and the sponsors of the working paper had been careful not to interfere with the text of article 3, precisely because of that unity. The proposed additional article was a kind of saving clause, somewhat similar to article 7 of the draft definition.

39. The language of the proposed additional article was largely self-explanatory and was intended to cover all forms of jurisdiction of coastal States, including their rights over coastal waters, the contiguous zone and other areas now receiving recognition in the work of the United Nations Conference on the Law of the Sea, such as the economic area and the archipelagic area.

40. The proposed additional article had not been submitted as an amendment but as an attempt to find appropriate language for insertion in the definition in order to meet the concern of those who were dissatisfied with the present wording of article 3 *(d)*. It had been argued that the submission of any amendment might encourage the submission of numerous amendments by those attempting to defend special interests and that such amendments would soon destroy the whole delicate balance struck by the Special Committee. Nevertheless, although great stress had been placed on the fact that the draft definition had been arrived at by consensus, a consensus should not be a strait jacket, and the important thing was that there should be a consensus not only of the Special Committee but among all members of the international community. The submission of the working paper did not mean that the sponsors in any way wished to qualify the praise which had been accorded to the Special Committee for its achievements. The

proposed additional article had been submitted in the same constructive spirit as had been demonstrated by other members of the Sixth Committee in their comments. The sponsors wanted a definition that would be acceptable to all and would welcome any other proposals and any comments on the proposed additional article.

41. He announced that Iceland had become a sponsor of document A/C.6/L.988.

42. The CHAIRMAN announced that Ecuador and Madagascar had become sponsors of document A/C.6/L.988.

43. Mr. SANDERS (Guyana), speaking as Rapporteur of the Special Committee, expressed appreciation to those representatives who had paid tribute to the officers of the Special Committee and to the Secretariat, and he stressed that the Special Committee's work had been a collective effort.

44. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, expressed regret that the representative of Egypt had deliberately disturbed the calmness of the conclusion of the current debate. He himself had been under the impression that items that were on the agenda of the General Assembly for discussion elsewhere were not supposed to be brought up directly in the Sixth Committee, and he regretted that Egypt had seen fit to expatiate on the situation in the Middle East.

45. His delegation had always expressed reservations concerning the usefulness of defining aggression and had explained its reasons. It had said that all such attempts would only serve to lull the world into a false sense of security. Those fears had been borne out time and time again since the beginning of the attempts to define aggression in 1950. The Egyptian representative's statement was one more indication that Israel's fears were founded. In 1973, as in 1948 and in the years between, Egypt had been in the forefront of those States which had committed acts of aggression and perpetuated wars of aggression, both indirect and direct, against Israel. That was documented in United Nations records, particularly in those of the Security Council, on the basis of objective reports from United Nations sources. His delegation's views on the question of defining aggression were based on 27 years of experience of aggression by a well-known group of States. The question was not an academic one for Israel. His delegation feared that the short-comings of the draft definition before the Committee would only promote the aggression of which his country was a victim.

46. Mr. HASSOUNA (Egypt), speaking in exercise of the right of reply, recalled that it had been the Israeli representative who had brought up the question of the situation in the Middle East, at the Committee's 1480th meeting. His clarifications concerning Israel's position had been prompted by the Israeli representative's allegations against certain Arab States. Whatever justification Israel might invoke to defend its position—which was indefensible—it was a fact that Israel had used force against the sovereignty, political independence and territorial integrity of Egypt and other Arab States, was still occupying some of their territory and had openly declared its intention to annex some of it. Such conduct constituted acts of aggression *par excellence.* It was the utmost cynicism for the Israeli representative to speak of the merits and short-comings of the draft definition and to portray his country as the victim of aggression over some 25 years. If Israel was the victim of aggression and desired peace, that desire was well concealed. It was strange for a pro-peace policy to be expressed by flagrant aggression and intimidation directed against whole countries and peoples. Until Israel stopped giving military force precedence over the rule of law, no one could take Israel's allegations seriously.

47. Mr. SA'DI (Jordan) said that his delegation had avoided referring to the situation in the Middle East in the current general debate in the Sixth Committee, because it had seemed neither the time or place to do so. However, Jordan had twice been termed an aggressor by implication. Since 1967, nearly one half of Jordanian territority had been under occupation; that constituted an act of continued aggression. In 1948, when Jordanian forces had entered Palestine, they had entered only that part of the territory assigned to the Arabs under the United Nations partition plan (General Assembly resolution 181 (II)). The same was true of the other Arab armies in the area in 1948. However, the Jewish armed forces had occupied areas other than those set aside for a Jewish State, even before the termination of the British mandate. The events of the 1950s and 1967 were history. He regretted that Jordan and other Arab States should be termed aggressors when the facts pointed in the opposite direction.

48. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said, with reference to the statement of the representative of Jordan, that it was typical of all aggressors, who to avoid any unpleasant associations tended to dismiss the past as belonging to history: he refuted the statement that in 1948 Jordanian forces had only entered that part of territory assigned to the Arabs under the United Nations partition plan, which had not given the Jordanian or Egyptian armies the right to attach Jewish sites.

49. With reference to the Egyptian delegation's pretension to "clarify" Israel's position, the only delegation qualified to do that was the delegation of Israel.

50. Mr. HASSOUNA (Egypt), speaking in exercise of the right of reply, pointed out that it was the sovereign right of any delegation to comment on a position taken by another delegation.

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)** (A/C.6/L.987)

51. The CHAIRMAN announced that Canada had become a sponsor of draft resolution A/C.6/L.987.

The meeting rose at 12.50 p.m.

* Resumed from the 1470th meeting.

1484th meeting

Thursday, 24 October 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1484

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. The CHAIRMAN invited the Chairman of the International Law Commission to introduce the report of the Commission on the work of its twenty-sixth session (A/9610 and Add.1-3).

2. Mr. USTOR (Chairman of the International Law Commission) said that, since 1957 when he had first attended the Sixth Committee as a member, times had changed considerably. The membership of the United Nations had almost doubled, mostly through the admission to the Organization of a great number of new States that had regained their independence from their former colonial status, with the result that the Organization had come much closer to universality. The international climate too had changed considerably. Notwithstanding all the miseries which still existed in the world and the controversies, and even armed clashes, among different States and groupings, the peoples of the world had become increasingly aware that their survival depended upon peace and co-operation. The current atmosphere of *détente* was a hopeful sign in international life and augured well for international law, since law would undoubtedly have an important role to play in the growing co-operation for the better organization of the world.

3. In the course of the Commission's twenty-sixth session, he had presided over three solemn events. On 12 June 1974, the Commission had paid tribute to the memory of the late Mr. Milan Bartoš, former Chairman, Vice-Chairman and Rapporteur of the Commission and Special Rapporteur for the topic of special missions. On 2 July 1974, the Secretary-General had addressed the Commission, and his complimentary words concerning the Commission's contribution to the codification and progressive development of international law, and thus to the fostering of friendly relations and co-operation among States and to the strengthening of international peace and security, had been most gratifying. The most solemn event had been the meeting held on 27 May 1974 commemorating the twenty-fifth anniversary of the opening of the first session of the Commission. Speeches had been made before a large audience of prominent persons, and the list of speakers appeared in paragraph 15 of the Commission's report. After the introductory words of the Chairman, Mr. Suy, the Legal Counsel, had made a scholarly statement on the work of the Commission and on the problems of codification and progressive development. He had recalled that the General Assembly had already paid a resounding tribute to the work accomplished by the Commission over the past quarter of a century and had stressed the importance of the support that the Commission always received from the Sixth Committee and how fundamental its relations with the regional intergovernmental organizations were. He had also paid tribute to the learning and ability of the members of the Commission and to their spirit of idealism and self-sacrifice.

4. Sir Humphrey Waldock, Judge of the International Court of Justice, had conveyed to the Commission the congratulations of the whole Court and had reminded the audience of the close relationship between the Commission and the Court, noting that in all some 15 members of the Commission had become Judges of the Court and that presently 7 members of the Court were former Commission members. His speech had been an elaboration on a quotation from Professor Jennings of Cambridge who, in 1964, had stated, with regard to the work of the Commission and of the Sixth Committee, that the whole procedure that had developed under Article 13, paragraph 1 *(a)*, of the Charter now seriously rivalled the International Court of Justice in its importance for international law.

5. Mr. Ago had said, *inter alia,* that, although the activities of the Commission were less spectacular than those of other United Nations bodies, there was reason to believe that in the long-term its work would not be the least important; the world might one day forget the successes and failures of certain United Nations organs, but it would remember the contribution of the Commission to the rule of law.

6. Mr. Yasseen had emphasized that the Commission in its declaratory role, which consisted in stating existing rules, and in its creative role, which consisted in proposing new rules, thanks to its methods of work, drew on all the opinions expressed by States and all the practices they followed. If it had been able to do useful work, that had been because its work was the result of continuous interaction, throughout the preparation of a codification draft, between scientific expertise and governmental responsibility, between independent thinking and the reality of international life.

7. Mr. Ushakov had stressed that the codification and progressive development of international law were assuming increasing importance, as they provided a basis for peaceful and friendly relations between all States, especially in the present-day world of States with different social systems. He had praised the method of appointing a special rapporteur for each topic and had paid tribute to all past and present special rapporteurs for the diligence with which they performed their difficult and often thankless tasks.

8. Mr. Elias, in an outspoken statement, had deplored the great difference in the status and treatment which existed between Judges of the Court and the members of the Commission, notwithstanding the great importance of the

latter's services to the United Nations, and he had expressed regret that the Fifth Committee was often parsimonious in its appropriations for the Commission to an extent which was not conducive to the proper discharge of the Commission's functions. Mr. Elias had highly praised the work of the Secretariat and expressed appreciation for the support of the Legal Counsel.

9. Mr. Tsuruoka had recalled that the members of the Commission were recruited from among jurists: judges, professors, ambassadors, who, by reason of their professions, were in constant contact with international life. Their varied experience provided the Commission with a source of exceptional quality, covering the various legal trends: revolutionary, progressive, conservative, as he had termed them, the synthesis of which shaped the Commission's work. In the new world, where the birth of a great number of States had created a new diplomatic, political and economic climate, the Commission was called upon to play an increasingly important part, meeting new needs and aspirations and taking into account all trends of thought and the legitimate interests of all peoples.

10. Mr. Kearney had said that the law-making treaties prepared by the Commission that were in force were proof that universality of legal concepts was not unattainable. However, they did not yet provide a partial skeleton around which a living body of world law could be constructed. The Commission must move with all deliberate speed to meet the needs of world society, and the possibilities of prolonging the yearly sessions of the Commission should be studied, together with other proposals for improvements. The basic structure of the Commission, however, should not be changed in an effort to accelerate codification. Any substantial modification in the organization or functioning of the Commission would destroy the delicate balance which it now achieved through the interplay of minds trained in different legal systems and different cultures and through the harmonization of a wide range of experiences.

11. In his own statement he had demonstrated how old, historically speaking, was the idea that a commission of jurists should work on the codification of international law and had expressed the conviction that the international law-making procedure, in which the Commission played such an important part, was destined to improve further. He had stressed that, despite their different creeds and colours, different legal systems and different political persuasions, men could only continue to live together on a shrinking earth by constantly maintaining and developing the legal order which would enable them to live in peace, freedom and justice and that the tasks before the international law-making machinery were endless.

12. Turning to the topic of succession of States in respect of treaties, he could now report that the General Assembly's recommendation, in its resolution 3071 (XXVIII), that the International Law Commission complete the second reading of the draft articles on that topic in the light of the comments received from Member States had been meticulously followed. The Commission had carefully studied the written comments of Governments and also the records of the Sixth Committee. After a thorough, renewed consideration of the emerging problems, the Commission now presented draft articles (A/9610, chap. II, sect. D), which it believed to be an improved version of the 1972 draft.[1] That achievement had been largely due to the extraordinary diligence and dedication of the Special Rapporteur, Sir Francis Vallat, who had not only prepared a lengthy, detailed yet concise report containing summaries and analyses of the comments of Governments, but also proposals as to the changes to be made in the articles or the reasons for leaving them unchanged. He had adapted the explanatory introduction and the commentaries to the 1972 draft to the needs of the 1974 drafts so that chapter II of the Commission's report on its twenty-sixth session contained practically all the relevant material and gave a clear picture of the thinking of the Commission, both in 1972 and 1974. The gratitude of the Commission had been expressed in a resolution reproduced in paragraph 85 of its report.

13. He paid a tribute also to the Chairman of the Drafting Committee, Mr. Hambro, and to all of its members for their untiring efforts and perseverance not only in respect of that topic but with regard to all other subjects dealt with by the Commission. In that connexion, he expressed appreciation also for the invaluable assistance of the secretariat of the Commission.

14. The 1972 draft had been somewhat amplified; the 1974 draft consisted of 39, instead of 31, articles. Moreover, it was now arranged in five parts instead of six. Part V of the 1972 draft had disappeared, and the two articles of which it had consisted–the one on boundary régimes and the other on other territorial régimes–had been transferred to part I and now formed part of the general provisions. That arrangement made it more evident that, in the Commission's view, those régimes remained unaffected by the succession of States as such, irrespective of what type of succession the case in question belonged to. Thus, all successor States were entitled to enjoy the rights arising from such inherited régimes and were bound to carry the burden of obligations stemming therefrom. The articles in question were now articles 11 and 12 and, apart from some drafting changes, had been retained in their original form. Most members of the Commission had felt that the criticism that those articles were contrary to the principle of self-determination was unfounded. The rule of the continuation of those régimes obviously left untouched any legal ground that might exist for challenging them, just as it also left untouched any legal ground for defence against such a challenge. To allay the fears of those who held opposing views, the Commission had included a new article in the draft–article 13–which explicitly stated that nothing in the draft articles should be considered as prejudicing in any respect any question relating to the validity of a treaty. A treaty in that context meant, of course, any type of treaty, including that which established a boundary or other territorial régime.

15. Another new article among the general provisions was article 7, on non-retroactivity. Obviously, a codification convention could not legislate in respect of events which had happened in the past. Some members of the Commission had felt, however, that it was desirable to include a special provision to that effect, having regard particularly to

[1] See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10,* chap. II, sect. C.

article 6. Article 6 stated that the articles applied only to the effects of a succession of States occurring in conformity with international law, and it had been said that that statement, without further elucidation, might have implications with respect to events which had occurred in the past, even if that statement referred also to the principles of international law embodied in the Charter of the United Nations. That had led to the proposal which had now become article 7 of the draft. The article had been adopted only by a narrow majority, but the cause of the controversy was, of course, only the second part of the article.

16. The main arguments of the opponents of article 7 had been that non-retroactivity was a matter beyond the material rules of the topic and that it was not for the Commission but for Governments to decide upon it when considering the other questions which were usually settled by the final clauses of a convention. It had also been said that the article might give the erroneous impression that a provision of that kind made the draft articles and an eventual convention largely irrelevant to the current interests of States. It had also been argued that the provision was superfluous, because if the articles became a convention, that convention would be subject to the rules of the law of treaties, i.e., to the rule of article 28 of the Vienna Convention on the Law of Treaties,[2] which excluded retroactivity in quite general and unambiguous terms.

17. The majority of members, however, had felt that the adoption of that provision was useful precisely in order to restrict the possible effect of article 28 of the Vienna Convention on the future convention on succession of States in respect of treaties. Indeed, the application of article 28 of the Vienna Convention, which provided for non-retroactivity with respect to "any act or fact which took place . . . before the date of the entry into force of the treaty with respect to that party" would prevent the application of the articles to any successor State on the basis of its participation in the Convention.

18. Article 7 referred to entry into force in general, in contradistinction to article 28 of the Vienna Convention, which spoke of entry into force with respect to the individual State. Article 7 of the Commission's draft limited the non-retroactivity rule to a succession of States which had occurred after the entry into force of the treaty and did not extend it to any act or fact which took place before the entry into force with respect to the individual State, as did article 28 of the Vienna Convention. Thus, article 7 made it possible for the future convention on succession of States in respect of treaties to become applicable to a succession of States which occurred after the general entry into force of the convention, provided that the successor State became a party to it either according to the ordinary rules of the final clauses of the convention or by a notification of succession or by force of a rule of continuity, as the case might be. Article 7, as a *lex specialis,* compared to the *lex generalis* of article 28 of the Vienna Convention, restricted or mitigated the effects of the latter.

19. The Commission had not introduced any changes in the general scheme of the draft, in the belief that the scheme of the 1972 draft had been generally approved by Governments.

20. The title of part II of the draft articles had been changed from "Transfer of territory" to "Succession in respect of part of territory", in order to make it clear that its scope did not extend to cases of incorporation of the entire territory of a State into the territory of another State. Total incorporation would be covered as an instance of uniting of States. Otherwise, that part of the draft restated the so-called and generally recognized "moving treaty frontier" rule in a somewhat more elaborate and perhaps improved drafting.

21. Part III dealt with the position of newly independent States, i.e., those States–as defined as article 2, paragraph 1 *(f)*–the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecesor State was responsible. The Commission had maintained its view, not challenged by Governments, that the special situation of new States emerging from colonial status warranted special treatment and the adoption of special rules.

22. With regard to the underlying principles of part III of the draft articles, after careful consideration of the comments of Governments and delegations in the Sixth Committee, the Commission had found overwhelming support expressed for the "clean slate" principle, as understood by the Commission in 1972. Apart from the fact that the Commission evaluated the practice of States as confirming that principle, it believed that that principle alone corresponded to the situation in which a newly independent State generally found itself. It could be presumed, as a general rule, that the population of a territory in colonial status was normally not in a position to play any part in the actual government as the metropolitan Power and could not, therefore, be regarded as responsible for the conclusion of treaties and, consequently, could not be bound by treaties to which it had not consented. Thus the Commission believed that the "clean slate" principle was well designed to meet the situation of newly independent States and was consistent with the principle of self-determination of peoples.

23. Furthermore, the Commission, on the whole, had believed that the stand which it had taken in 1972 in respect of the theory of "contracting out" to which it referred in the 1972 draft in its commentary to article 12, in paragraph (5), had been approved by the great majority of Governments and delegations. He recalled that in 1972 the Commission had been unable to endorse the thesis that modern law did or should make the presumption that a "newly independent State" consented to be bound by any treaties previously in force internationally in respect of its territory, unless, within reasonable time, it declared a contrary intention. The Commission had continued to feel, on the whole, that a draft based on the principle not of "contracting out" of continuity but of "contracting in" by some more affirmative indication of the consent of the particular States concerned was more in harmony with the principle of self-determination.

24. The Commission had very seriously considered the question whether an exception should be made in respect

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2 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

of the so-called law-making general multilateral treaties, either by generally excepting such treaties from the "clean slate" principle or by according to newly independent States the possibility of contracting out from their predecessor's treaties of that type. That question had been raised in a more or less concrete way in the comments of several Governments, notably in those of the Netherlands, Greece, Spain, Canada, Morocco and the United Kingdom. The Commission had, of course, maintained its unchallenged position embodied in article 5 of the draft, that, like all States of the international community, newly independent States were bound by the generally recognized customary rules of international law.

25. However, the Commission had not accepted in 1972 the assimilation of law-making treaties to custom and had explained in detail, in the 1972 draft in the commentary to article 11 in paragraph (8), its position in respect of law-making treaties. As was stated in that paragraph, it was very difficult to sustain the proposition that a newly independent State was to be considered as automatically subject to the obligations of multilateral treaties of a law-making character concluded by its predecessor applicable to the territory in question. That question was treated also in the 1974 text in the commentary to article 15 in paragraph (8). The Commission held that, since other States were not bound to become parties to general law-making treaties, it would not be equitable to impose such an obligation on newly independent States. It would not be equitable to impose such an obligation on certain newly independent States on the mere chance that their predecessor States had become parties to such treaties while other newly independent States, because their predecessors had not participated in those treaties or in some of them, remained free from that obligation. When discussing that grave problem in connexion with articles 11 and 12 of the 1972 draft—articles 15 and 16 of the draft at hand—the Commission, on the basis both of principle and of the fact that the majority of the commenting Governments had not taken exception to the course taken by the Commission in 1972, had maintained its former position and had neither departed from the "clean slate" principle—as understood by it—in respect of general multilateral treaties nor introduced the "contracting out" system for the purpose of such treaties.

26. The question had come up again during the Commission's discussion of article 18 of the 1972 draft—article 22 of the present draft. Article 18 of the 1972 draft had given retroactive effect to a notification of succession by the newly independent State with respect to a multilateral treaty, even if the notification was delayed for a long period after the date of the succession of States. That could, admittedly, create an impossible legal position for the other States parties to the treaty, which would not know during the interim period whether or not they were obliged to apply the treaty in respect of the newly independent State. The latter State might make a notification of succession years after the date of succession of States, and in those circumstances another party to the treaty might be held responsible retroactively for breach of the treaty.

27. In order to avoid those inconveniences, the Commission had redrafted former article 18, and the present article 22 maintained the retroactive effect of the notification of succession but mitigated the situation of the other States parties. Thus, the treaty which was in force at the date of succession would be considered inoperative for the period between the date of succession and the date of notification unless the newly independent State and the other States parties otherwise agreed, either expressly or tacitly.

28. One member of the Commission had not found that solution satisfactory and, for that reason, had asked that his abstention in the voting on the draft articles as a whole be recorded. Late in the session, he had proposed the inclusion of an article 12 *bis*, the full text of which was reproduced in foot-note 54, with a reference in paragraph 76 of the Commission's report. That proposal would have introduced the "contracting out" system, at least for multilateral treaties of a universal character. The explanatory note to the proposal stated that it was of the utmost importance to the newly independent State and to the international community as a whole that such multilateral universal conventions as the humanitarian conventions, the conventions of the International Labour Organisation, the International Covenants on Human Rights, the Universal Postal Convention and the like, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, if they had already been applied in respect of the territory to which the succession related, should not cease to be in force for the newly independent State. On those grounds, the proposed article 12 *bis* would have maintained in force those treaties between the newly independent State and the other States parties to the treaty until such time as the newly independent State had given notice of termination of the said treaty for that State. The explanatory note emphasized that it was important not to impair the "clean slate" principle and said that that condition would be met if the newly independent State reserved the right to declare any such multilateral convention at any time within a reasonable time-limit terminated for that State.

29. That proposal had elicited sympathy among the members of the Commission on two counts: first, because it would secure the continuity of certain important general multilateral conventions on humanitarian and other important matters and, secondly, because it would automatically solve, at least with respect to those conventions, but not with respect to other multilateral conventions, the problems concerning the retroactive or non-retroactive effect of a notification of succession. If those multilateral conventions would automatically bind the newly independent States until the date they announced their withdrawal or "contracting out", then no problem would arise for the other States parties and there would be no interim period in which they were uncertain about the participation of the newly independent State. However, because of the lateness of the proposal and because it had seemed to the Commission that the "opting in" system which it had adopted in 1972 had received overwhelming support in the Sixth Committee and among the Governments which had submitted comments, it had decided to report that situation to the Sixth Committee.

30. The other sections of part III, on bilateral treaties of newly independent States, on the provisional application of their multilateral and bilateral treaties and the termination thereof, and on the position of newly independent States formed from two or more territories, consisted essentially of the same rules as the 1972 articles, in a redrafted, better elaborated and improved form.

31. Part IV, on uniting and separation of States was, unlike part III, based on the *ipso jure* continuity principle. On uniting of States, there were currently three new articles, articles 30-32, instead of the one in the 1972 draft–article 26. Apart from that amplification, the rules on the succession of States in the event of a uniting of States were in substance the same as those adopted in 1972. There was, however, one clarification which involved an important point of substance. Article 14 and articles 30-32 had been drafted so as to make it clear that, where one State was incorporated into another and thereupon ceased to exist, the case fell not within article 14 but within articles 30-32.

32. The two articles which in the 1972 draft had dealt with the case of a dissolution of a State and separation of part of a State–articles 27 and 28–had been completely redrafted in the light of Government comments.

33. Article 33 of the 1974 draft dealt with cases where a part or parts of the territory of a State separated to form one or more States, whether or not the predecessor State continued to exist, i.e., whether it was a case of dissolution or a case of separation. That article covered the situation from the viewpoint of the successor State. Article 34 dealt with the position of the State which continued to exist after separation of part of its territory. Article 33 maintained the provision that in cases where the separated part of a State became a State in circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State, the successor State was to be regarded for the purposes of succession of States in respect of treaties as a newly independent State.

34. Articles 35 and 36 regulated participation in multilateral treaties in cases of separation of parts of a State when such treaties were not in force at the date of succession of States or when, at that date, the treaties in question had merely been signed subject to ratification, acceptance or approval. Article 37 dealt with the question of notifications which had to be made in certain cases.

35. In part V, entitled "Miscellaneous provisions", the Commission had arranged in a more logical way the cases which were excluded from the scope of the draft articles.

36. Some members of the Commission had been of the view that the articles should be submitted to the Assembly with the addition of satisfactory provisions for the settlement of disputes. Several comments received from Governments had stressed the need for such provisions. One member had submitted a draft article based on article 66 of the Vienna Convention on the Law of Treaties with an annex which was identical with the annex to the Vienna Convention. Although several members had supported that move, the Commission had deemed it inadvisable to pursue the matter further without reference to the General Assembly. The full text of that proposal was to be found in foot-note 55, and the views expressed in the Commission were recorded in paragraphs 79-81 of the report.

37. As to further action on the draft articles, the Commission was unanimously of the view that they should be given the same status as the Vienna Convention on the Law of Treaties, and the Commission had recommended in paragraph 84 of its report that the General Assembly submit the draft articles to a conference of plenipotentiaries with a view to the conclusion of a convention.

38. Chapter III of the Commission's report, which dealt with the topic of State responsibility, contained a useful historical review of the work done hitherto by the Commission and general remarks concerning the form, scope and structure of the draft articles. The Commission's study was limited to the responsibility of States for internationally wrongful acts and did not extend to international liability of States for injurious consequences arising out of the performance of certain activities that were not prohibited by international law. The Commission had decided to place that latter topic on its general programme of work in accordance with the recommendation contained in General Assembly resolution 3071 (XXVIII), paragraph 3 *(c)*. The Commission would take up the study of that topic at a later date, when it had terminated some of the topics currently under consideration and had made further progress in the consideration of the topic of State responsibility. A more accurate title for the latter topic would be: general rules of the international responsibility of the State for internationally wrongful acts. On the topic of State responsibility, the Commission had adopted three new articles on the basis of the scholarly report of the Special Rapporteur. The Commission was proceeding with great caution on that topic, which belonged to the very core of international law and touched upon very sensitive interest of States.

39. Chapter IV of the report contained a review of the work done on the question of treaties concluded between States and international organizations or between two or more international organizations, as well as some general remarks concerning the draft articles adopted by the Commission. In view of the close relationship of the articles to the Vienna Convention on the Law of Treaties, the Commission had decided, at least provisionally, to follow the order of the Vienna Convention in so far as possible, so as to permit continuous comparison between the draft articles and the corresponding articles of the Vienna Convention. Hence, the draft articles bore the same number as the corresponding articles of the Vienna Convention. Although the work done thus far was only a beginning, important matters had been decided, such as the definition of the term "international organization". Attention should also be drawn to article 6 of the draft, on the capacity of international organizations to conclude treaties, which had been adopted after a long and lively discussion in the Commission.

40. As could be seen from chapter V of its report, the Commission had scrupulously complied with the recommendation of the General Assembly in connexion with the commencement of its work on the law of the non-naviga-

tional uses of interntional watercourses. A Sub-Committee had been set up to consider the question and to report to the Commission. The report (see A/9610, chap. V, annex), which the Commission had approved, formulated questions to be put to Governments in accordance with article 16 of the Commission's Statute. The Commission had unanimously appointed Mr. Kearney Special Rapporteur for the topic.

41. Chapter VI of the report was devoted to miscellaneous matters. It began by stating that two of the topics on the agenda, namely succession of States in respect of matters other than treaties and the most-favoured-nation clause, had not been considered by the Commission during its twenty-sixth session. Paragraph 164 of the report indicated that the Commission intended to take up those topics, among others, in the course of its next session. In the enumeration of the topics to be considered in 1975, in the second sentence of paragraph 164, those topics were not mentioned in the same order as in the previous report. That had happened inadvertently and could not be construed as if the Commission had taken any decision as to the order in which it wished to take up those topics during its twenty-seventh session. Commenting further on chapter VI, he drew attention to section E, concerning the Commission's co-operation with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. The reciprocal exchange of visits and documents served both the interests of the Commission and those of the regional bodies. The Commission's relationship with those bodies was becoming gradually closer. There was still room, however, for further expansion of their relations in the common interest of developing international law.

42. In the last days of its session, the Commission had had the unpleasant task of replying to certain suggestions made by the Joint Inspection Unit in a report on the pattern of conferences of the United Nations (see A/9795). The position of the Commission had been stated in paragraphs 192-212 of its report. After the closure of the Commission's session, the Chairman of the Joint Inspection Unit had addressed a letter to him which was reproduced in document A/C.6/L.979. That letter had been circulated by the secretariat among the members of the Commission, but of course the Commission as such had not had an opportunity to consider it. Commenting personally on the letter and trying to be as objective as possible, he could not help feeling that the indignation the Chairman had expressed was unjustified. The Commission's remarks had not been meant to attack the personal competence of the Chairman and the members of the Unit. The issues raised in document A/9795 concerning the Commission had been thoroughly considered by other bodies long before. The Commission had rightly believed that those matters had been settled to the satisfaction of all interested parties. The Commission was well aware that the importance of the economical use of the Organiation's conference facilities was of the highest order, but at the same time it believed that the revival of settled issues was not only uneconomical but counterproductive if it disturbed the peace of a body which was working effectively and efficiently.

43. What the Commission deplored most was that the Joint Inspection Unit, before preparing its report, had failed to discuss the matter with the Commission or its secretariat. Consulting some passages of previous reports of the Commission was not a satisfactory substitute for consultations with the Commission or its secretariat. Although the Commission had not been in session when the report had been prepared, its Chairman could have been consulted or, in his absence, questions could have been addressed to the Chief of the Codification Division or other members of the secretariat. The vague references in the report to consultations with the former Legal Counsel and a very kind administrative assistant did not relieve the Unit from the charge that it had failed to become fully informed on all relevant facts.

44. Concerning the seat of the Commission and the time of its sessions, the Joint Inspection Unit could have learned from the Commission, its Chairman or the secretariat that since 1950, with two exceptions, the Commission had held all its regular sessions at Geneva. In 1955 the General Assembly had adopted resolution 984 (X) amending article 12 of the Commission's Statute to read: "The Commission shall sit at the European Office of the United Nations at Geneva. . . ." The right of the Commission to hold its sessions at Geneva had likewise been recognized in General Assembly resolutions 2116 (XX) and 2400 (XXIII). The Commission had agreed in 1962 that the most convenient opening date for its regular annual session was the first Monday of May.[3] The Commission had therefore been surprised to read in paragraph 323 of the Unit's report that the Inspectors were not aware of any substantial justification for the Commission to hold all of its sessions in Geneva. In paragraph 210 of its report, the Commission had remarked that many of its members had made permanent arrangements in order to be present in Geneva. Four members of the Commission were permanent resident ambassadors in Geneva and a fifth member was resident ambassador in Bern, Switzerland. That alone saved the United Nations substantial amounts in travel expenses and *per diem*. At least four members of the Commission were university professors who were sometimes compelled to fly home to meet academic obligations. One member regularly commuted between Paris and Geneva. In the circumstances, if the conference facilities in Geneva were insufficient to cope with the ever-growing demands of proliferating new organs, the Commission's view would be that it would be preferable to concentrate on curtailing those demands and not disturb a smoothly functioning organ which, relying on the provisions of its Statute, had numerous and valid reasons for not changing the time and place of its sessions.

45. The Commission had also been asked to consider the possibility of a somewhat tighter schedule with a view to shortening the over-all duration of the session. In that connexion, he pointed out that the Commission held, as a rule, five plenary meetings weekly, and not four, as was erroneously stated in paragraph 503 of the Unit's report. In its 1957 report to the General Assembly, the Commission had stated the reasons for its practice of holding only one plenary meeting a day.[4] At its twenty-sixth session the Commission and its various subsidiary bodies had held a total of 86 meetings, which was more than 7 meetings a

3 See *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9*, para. 83.

4 *Ibid., Twelfth Session, Supplement No. 9*, paras. 26 and 27.

week, the figure cited by the Advisory Committee on Administrative and Budgetary Questions as the usual pattern of meetings for the committees of the General Assembly.[5] As his predecessor, Mr. Castañeda, had stated at the twenty-eighth session of the General Assembly (2186th plenary meeting), it was not equitable to assimilate the Commission in that respect with other United Nations bodies, among other reasons, because the members of the Commission, working in their personal capacity, could not be replaced by alternates or advisors.

46. The report of the Joint Inspection Unit revived the suggestion that the Commission should be divided into sub-commissions in order to increase its output. That again was an old idea which had been thoroughly examined by the Commission as early as its 1958 session, when the Commission, on the basis of an experiment made in 1957, had abandoned the idea. It had stated in 1958 that although there might be occasions in the initial stages of drawing up a draft on a difficult or complex subject when resort to the method of sub-commissions might be desirable, that should be done on an *ad hoc* basis.[6] References to the example of the United Nations Commission on International Trade Law were misleading, since the International Law Commission could not be compared with any other United Nations body, however distinguished, which consisted of Government representatives, i.e., of delegations where the chief delegate could be replaced by one or more alternates.

47. There was no need to explain that the status of the Commission, as a subsidiary organ of the General Assembly, was different from that of the International Court of Justice, one of the principal organs of the United Nations. The Commission, however, ventured to maintain that the importance of its work could be compared to that of the Court and that the work done by the Court at the judicial level was complemented by the Commission's work at the legislative level. The Commission was a basic pillar in the law-making structure of the United Nations, part of a system which worked smoothly and quietly and whose output had been found satisfactory both as to quantity and, more importantly, as to quality. The system was able to keep up the pace required by the international community and it would continue to do so, provided it was handled with sufficient care.

48. He drew attention to paragraph 165 of the Commission's report, which contained the recommendation that the General Assembly approve a 12-week session as the minimum standard period of work for the Commission, as from the next session. He hoped that that modest request would be favourably considered by the Sixth Committee, since an annual session of 10 weeks' duration was insufficient to meet the demands of the Commission's programme of work. He also noted that the International Law Seminar had been organized for the tenth consecutive year at no cost to the United Nations. Credit for that was due to Mr. Raton, Senior Legal Officer in the United Nations Office at Geneva. As in past years, members of the Commission had given lectures to and enjoyed meeting young scholars, recruited mostly from developing countries.

[5] *Ibid., Twenty-eighth Session, Supplement No. 8A*, document A/9008/Add.14, para. 3.

[6] *Ibid., Thirteenth Session, Supplement No. 9*, para. 62.

49. Mr. CASSESE (Italy) said that the report of the Commission bore witness to the highly skilled level of its activities and the first-rate quality of its drafts. The Commission made a decisive contribution to the codification and progressive development of international law, and was playing an increasingly important role in the peaceful evolution of international relations.

50. It was clear from the report that the Commission's greatest achievement at its twenty-sixth session had been the completion of the second reading of the draft articles on succession of States in respect of treaties and the elaboration of a final text. The Commission had managed to balance in a satisfactory manner the demands for freedom of action on the part of successor States with the somewhat conflicting need for stability and continuity in international rights and obligations, and certainty and clarity in treaty relationships. His delegation supported the Commission's solution of adopting, with a few qualifications, the principle of *ipso jure* continuity with regard both to successions resulting from the merger of two or more States (articles 30-32) and to cases of dismemberment or dissolution of an existing State or secession from such a State (articles 33-36). He further endorsed the Commission's solution, which was in keeping with long-established customary law, of making the principle of continuity applicable to treaties establishing boundaries (article 11) and to other so-called territorial treaties (article 12). Despite the possible misgivings of some States concerning article 11, his delegation considered that inasmuch as that provision governed only the possible impact of State succession on boundaries, it should be accepted. It merely provided that a succession of States as such did not affect a boundary established by a treaty.

51. His delegation supported the adoption by the Commission of the "clean slate" principle with respect to the succession of newly independent countries, whereby States emerging from former dependent territories could enter into international relations as sovereign and equal States. The "clean slate" principle was in keeping with the general principle of the self-determination of peoples.

52. Broadly speaking, the draft articles on succession of States in respect of treaties met the need for certainty and clarity in international relations. The Commission was to be commended for abandoning the system of retroactive application of the substantive provisions of treaties, which it had adopted in article 18 of its previous draft,[7] since that system would have raised many problems. The more satisfactory system of retroactive suspension had finally been adopted by the Commission in article 22, paragraph 2, of the latest draft which left no doubt that prior to the notification of succession, neither the newly independent State nor other States would be bound by the substantive provisions of treaties. The practical advantage of the solution chosen by the Commission outweighed the drawbacks, which derived from a twofold fiction: firstly, that treaties were considered in force from the date of succession and secondly that treaties were at the same time regarded as suspended in their operation.

[7] *Ibid., Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

53. His delegation regretted that the Commission had not had time to discuss the proposals submitted by two of its members concerning multilateral treaties of universal character and the settlement of disputes, reproduced in foot-notes 54 and 55 of the report. The first proposal, in foot-note 54, concerning multilateral treaties, was designed to remedy the lack of a greater number of provisions attenuating the wide scope that the "clean slate" principle was given in the draft articles concerning newly independent States. Of course, those draft articles had been tempered by the provisions of articles 11, 12, 26 and 27, yet the general interest of the international community in preventing successions of States from disturbing existing treaty relations required that stability be more firmly ensured when certain overriding community interests were at stake. To be acceptable, the wording of the proposal should be made more precise, but in any case the principle whereby the successor State continued to be bound by the treaties concluded by the predecessor State unless it decided to terminate them could apply at least to universal treaties relative to human rights and fundamental freedoms and to the Geneva Conventions of 1949 for the protection of war victims.

54. With regard to the second proposal, in foot-note 55, many provisions of the final draft made reference to the "object and purpose" of treaties in order to determine whether or not such treaties could apply to successor States, but given the imprecision of the term "object and purpose" those provisions could be correctly applied only if there existed a body responsible for interpreting them and settling any disputes arising out of their application. His delegation considered the establishment of such a body essential, and found considerable merit in the proposal set out in foot-note 55. That proposal referred only to conciliation and should arouse no misgivings among the States which were opposed to the judicial settlement of disputes. In view of the importance of the problems raised, he suggested that States should be invited by the General Assembly to offer their written comments not only on the final draft articles submitted by the Commission but also on the questions of the universal humanitarian treaties and the settlement of disputes.

55. He congratulated the Commission on adopting three more draft articles, namely articles 7, 8 and 9, on State responsibility, which spelt out the principle that any State was internationally responsible not only for the wrongful acts of its organs but also for the wrongful acts of persons, groups, bodies or entities which exercised governmental authority or acted under its control. As a result of that principle, no State could escape international responsibility by claiming that under its municipal legal order the authors of the international wrongful acts were not State organs. His delegation fully endorsed the three new draft articles and their underlying principle and noted that many provisions of the articles reflected the existing practice in inter-State relations. It was gratifying that some of the provisions of the articles clarified existing customary law or spelt out some of its implications. For instance, article 7 accommodated certain types of federal States where the component States could retain their own international personality, so that if the conduct of the organs of a component State was in breach of an international obligation incumbent on that State, then the wrongful act could not be attributed to the federal State, but only to the component State itself. Even in areas where State practice and judicial decisions were limited or lacking, the Commission had elaborated acceptable rules–as in article 8 *(b)*–that correctly relied on the relevant general principles and also took due account of the current demands of international society. He commended the intensive co-operation between the Special Rapporteur for the topic, the Drafting Committee and the Commission as a whole which had resulted in the unanimous approval of three new articles by the Commission. He expressed the hope that at its next session the Commission would consider the topic of State succession as a matter of priority.

56. His delegation supported the programme of work for the next session of the Commission and felt that special attention should be given to the most-favoured-nation clause, succession of States in respect of matters other than treaties, and the non-navigational uses of international watercourses. The final topic was particularly important in view of the current importance of the environment and the prevention of pollution.

57. His delegation endorsed the Commission's recommendation that, as from the next session, 12 weeks should be adopted as the minimum duration of the Commission's sessions on a permanent basis and agreed that it would seem inappropriate for the Commission to depart from its present method of work.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988)

58. The CHAIRMAN said that El Salvador, the Ivory Coast, Panama, Senegal and Somalia had joined the sponsors of working paper A/C.6/L.988.

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)* (A/C.6/L.987, L.989)

59. The CHAIRMAN said that the Ivory Coast had joined the sponsors of draft resolution A/C.6/L.989.

The meeting rose at 12.55 p.m.

1485th meeting

Friday, 25 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1485

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. YASSEEN (Iraq) said that the submission of the report of the International Law Commission to the Committee was an essential phase in the process of the codification and progressive development of international law. In the era of the United Nations, the codification of international law was a democratic process in harmony with a democratic international community where all States co-operated on the basis of sovereign equality. Clearly, all States must participate in the technical elaboration and political adoption of any instrument which was to govern international relations. Broader participation was particularly important as the international community became increasingly universal.

2. He paid a tribute to the memory of the late Milan Bartoš, who had served on the Commission and the Committee for several years.

3. He was pleased to note from the Commission's report (A/9610 and Add.1-3) that it continued to maintain relations with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, since such co-operation helped to keep the Commission fully informed of all the opinions of the various legal systems and forms of civilization throughout the world. Such full information was essential for the drafting of rules which would be acceptable to the entire international community. In its scientific and technical research, the Commission should seek to trace a line of demarcation in international law between the regional and universal aspects; an exchange of views between the Commission and the regional bodies should make it possible to determine to what extent a regionalism that was in harmony with the fundamental principles of the international community could usefully be pursued. According to the Commission's report, the representatives of the three regional bodies in question had provided valuable information to the Commission which would assist it in the codification and progressive development of international law.

4. The International Law Seminar held at Geneva during the Commission's twenty-sixth session had done remarkable work in propagating the achievements of the Commission. The Seminar ensured a link between the Commission and the younger generation of internationalists from all over the world, and he was gratified to note that students from earlier sessions of the Seminar currently held important posts in the international community. He paid tribute to the United Nations Office at Geneva, and, in particular, to Mr. P. Raton.

5. He endorsed the remarks on the report of the Joint Inspection Unit (see A/9795) in paragraphs 192-212 of the Commission's report and said that the recommendations of the Unit were unacceptable for reasons based on the nature of the Commission's work, the membership of the Commission and its Statute. It must be remembered, above all, that the Commission was a standing body which held regular sessions, and whose members served in a personal capacity and could not be replaced by an alternate or assistant as was the case in the great majority of United Nations organs; moreover, the Commission's Statute provided that its sessions should be held at the United Nations Office at Geneva, and the Commission had found in that city the necessary serene atmosphere for the discharge of its task, which called for painstaking research and analysis; there was no valid reason for changing that base. Furthermore, to continue to hold the Commission's sessions at the customary time of year would make it easier for several teachers who were members of the Commission to attend. Moreover, over the years, a close working relationship had been established with the library at the Geneva Office which was vital to the work of the Committee. Evidence of that relationship was to be found in paragraph 219 of the Commission's report.

6. He noted that except in the case of State responsibility, the Commission had set no order of priority for the topics for discussion at its forthcoming session. He believed, however, that the order of priorities had already been set, largely by resolutions of the General Assembly. The Commission should therefore allocate sufficient time for consideration of the topic of succession of States in respect of matters other than treaties.

7. He supported the Commission's recommendation that its regular session should be extended from 10 to 12 weeks. He appreciated the reasons for the sacrifice which the members of the Commission were prepared to make, and he therefore felt that attention should be given to their request so as to enable the Commission to work in the best possible conditions.

8. It was clear from the report of the Commission that it had heeded the General Assembly's recommendation that it should consider the draft articles on succession of States in respect of treaties in the light of the comments submitted by Member States. As a result, the final draft articles set forth in chapter II, section D, of the Commission's report were in principle acceptable to his delegation and should form the basis of discussion at a future conference of plenipotentiaries convened to adopt a convention on succession of States in respect of treaties. He welcomed the pragmatic principles underlying the draft articles, which

would provide a solution acceptable to the whole international community and meet the variety of situations arising in the succession of States. He supported one such principle which was already being applied in international practice, namely, the "moving treaty frontiers" rule whereby, if any State expanded as a result of annexation, or as a result of any means other than decolonization that did not raise the problem of the emergence of a new State, then the treaties of that State extended to the new portion of its territory. He also supported the "clean slate" principle, whereby newly independent States, in accordance with the principle of the right to self-determination, were free to decide which treaties to maintain and which to reject. That principle was particularly important because the former colonial Powers might have entered into treaties which would not be in the best interest of the newly independent State. The "clean slate" principle was a wise approach which effectively reconciled the interests of the new State with those of the international community and provided for the continuity of international relations.

9. A further question dealt with by the Commission was a principle which seemed incompatible with the "clean slate" principle, namely, the continuity of international treaties which were universal or general in nature. One member of the Commission had made a proposal that in such cases there should be a presumption of continuity until such time as the newly independent State gave notice of terminating the relevant treaty in respect of that State. He felt that the Commission should not venture onto such slippery ground; it was extremely difficult to define precisely which treaties came within that category. It would be preferable to show confidence in newly independent States and to say that treaties of a universal or general nature should continue to apply only if the newly independent State expressed a wish to that effect. Moreover, in many cases the essential rules laid down in such treaties were already rules of law by virtue of another source of international law, namely, international custom. An analogous situation arose also with regard to law-making treaties. He felt that the proposed exception should not be permitted because it might be incompatible with the right of newly independent States to self-determination and the management of their own affairs.

10. The other basic principle underlying the draft articles was the principle of continuity, which rested on the principle *pacta sunt servanda.* The Commission had reserved that principle for cases of union and separation where there was no question of decolonization. It was fully justified in that context, for States could not shirk their obligations by division or union. Accordingly, the Commission's conclusions had been wise, and, not wishing to impose that principle unconditionally even in that restricted context, the Commission had provided for certain exceptions, allowing for situations where union or separation created a total change and continuity would be inappropriate. Accordingly, where the circumstances of division or separation were such that they could be compared to the decolonization process, the "clean slate" principle should apply. In brief, the Commission had made great efforts to formulate detailed and varied solutions which could apply to the unlimited range of situations which might arise from cases of succession of States.

11. He found article 18 of the draft particularly commendable, since it afforded the possibility for a newly independent State to continue the work of the predecessor State in respect of treaties which had been signed but which still remained to be ratified, accepted or approved. That solution was in the interests of the progressive development of international law and reconciled the interests of States with the interests of the international community as a whole with regard to the continuity of treaty relations and efforts to elaborate new norms. The provisions of article 18 applied to all categories of succession of States, as was clear from articles 32 and 36.

12. Under article 22, unless a treaty otherwise provided or unless it was otherwise agreed, a newly independent State which made a notification of succession was to be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever was the later date. The representative of Italy in his statement at the preceding meeting had shown great talent in his comments on that article. The phrase "from the date of the succession of States" meant that the article had, in fact, retroactive effect. Since that might be prejudicial to the other parties to the treaty, the Commission had provided for suspension of the application of the treaty where appropriate. That might appear artificial, but it might also be regarded as acceptable in the light of practical considerations.

13. Article 25 specified the actual moment when the treaty became the concern solely of the newly independent State and the other State party and ceased to have any relationship with the predecessor State. In other words, no action taken by the predecessor State in respect of the treaty could affect the treaty insofar as the successor State was concerned; with the successor State the treaty began a new life.

14. The draft articles were, in principle, acceptable and could well form the basis for work by a plenipotentiary conference convened for the purpose of adopting a convention on the subject. He congratulated the Commission on the valuable work it had done and paid a tribute to the Special Rapporteur for his effective discharge of what had been no easy task.

15. The Commission had also dealt at its last session with the topic of State responsibility. It had worked on the question of acts attributable to States other than acts performed by official organs of States. Articles 7, 8 and 9 of the draft articles (see A/9610, chap. III, sect. B) referred, respectively, to "other entities empowered to exercise elements of the governmental authority", "persons acting in fact on behalf of the State" and "organs placed at" a State's "disposal by another State or by an international organization". The question arose of the dual loyalty of organs thus placed at a State's disposal, but article 9 was necessary because such organs might fail to comply with the rules of international law and might violate international obligations, thereby engaging the responsibility of the State at whose disposal they had been placed. He paid a tribute to Mr. Ago, Special Rapporteur for that topic.

16. With regard to the question of treaties concluded between States and international organizations or between

two or more international organizations, the link between the Vienna Convention on the Law of Treaties and the draft articles prepared by the Commission should not be ignored; on the other hand, the analogy should not be pressed too far. The further one studied the question, the clearer it became that numerous points justified separate treatment of the two questions. Although it had been hoped that the United Nations Conference on the Law of Treaties would have been able to envisage the possibility of preparing draft articles on the question of treaties concluded between States and international organizations or between two or more international organizations, the Conference had recommended to the General Assembly that it refer the study of that question to the Commission.[1] The work done at Vienna must be borne in mind while dealing with that question, but due respect must be paid to the special characteristics of the topic. There was a basic difference because an international organization was not a State.

17. He paid tribute to Mr. Reuter, Special Rapporteur for that topic, for his valuable efforts to assist the Commission in discharging its task. Article 6 of the draft articles (*ibid.*, chap. IV, sect. B) stated that the capacity of an international organization to conclude treaties was governed by the relevant rules of the organizations concerned. A State, by virtue of its sovereign nature, had the capacity to conclude treaties, but the same was not true of international organizations. Some might argue the existence of an international rule which granted that right to international organizations, but he did not feel that that thesis was tenable or could be so, at least until the distant future, particularly since international organizations were not *all* equal but constituted a whole spectrum of different types. All that could be maintained was that international law did not oppose the idea that international organizations should have the capacity to conclude treaties. However, the sole criteria must be the statute of the organization itself and its international practice. He felt that the Commission had chosen the right solution in referring to the pertinent rules of the organization.

18. He had listened with great interest to the introductory statement by the Chairman of the Commission (1484th meeting), and he paid tribute to his distinguished service to the cause of international law over the years. The celebration of the twenty-fifth anniversary of the opening of the first session of the Commission had been a memorable event, and on behalf of the Iraqi delegation, he congratulated the Commission. Using the language employed by the Secretary-General on the occasion of his visit to the Commission, he said that the Commission had made an admirable contribution to the codification and progressive development of international law and thus to the fostering of friendly relations and co-operation among States and to the strengthening of international peace and security. He hoped that the future of the Commission would be even more brilliant than its present and its past.

19. Mr. ROSENNE (Israel) expressed appreciation to the Chairman of the Commission for his statement introducing the report on the work of the Commission's twenty-sixth session. In paying a tribute to the memory of Mr. Milan Bartoš, he also congratulated Mr. Šahović on his election to the vacancy caused by the death of Mr. Bartoš.

20. Commenting on the report, he drew attention to the recommendation contained in paragraph 84 that the General Assembly should invite Member States to submit their written comments and observations on the Commission's final draft articles on succession of States in respect of treaties and should convene an international conference of plenipotentiaries to study those draft articles. In the past, the Sixth Committee had invited States to submit written comments and observations on the Commission's final drafts, as part of the preparation for a diplomatic conference; his delegation did not think that the Sixth Committee should depart from that practice on the occasion at hand. It would be premature at the current session for the Committee to commit itself on the recommendation to convene a conference of plenipotentiaries. The draft articles needed careful study, and the records of the Commission, which were essential to a full understanding of the difficult text, were not yet available. There seemed to be no sense of urgency to convene such a conference, as evidenced by the fact that not more than 14 Member States had submitted written observations on the draft articles and as further evidenced by the debate in the Committee in 1972. In paragraphs 62 and 63 of the report, the Commission had dealt with the difficult issues of the temporal implications of any convention on the topic, and had rightly stressed the importance of achieving general agreement and obtaining in respect of treaties. His delegation fully shared that view without, however, committing itself to the conclusions reached by the Commission. In that connexion, he recalled the history of the United Nations Conference on the Elimination or Reduction of Future Statelessness. The Commission had submitted a draft convention on the reduction of future statelessness[2] to the General Assembly at its ninth session, with a recommendation to convene a conference of plenipotentiaries. By its resolution 896 (IX), however, the General Assembly had expressed its desire that the conference be held as soon as at least 20 States had expressed their intention to take part in it. Consequently, the Conference was not convened until 1959, and the Convention, which had been completed in 1961, had still not entered into force. In order to avoid that kind of situation, it was essential to be assured in advance that a sufficiently large number of States would be willing to take part in a conference of plenipotentiaries based on the draft articles and that there was a reasonable probability that the convention would attract a sufficiently wide measure of general support.

21. His delegation continued to think that, while the Commission's practice of presenting its conclusions in the form of draft articles capable of constituting a convention was sound, that did not imply any automatic commitment on the part of the Sixth Committee, as a political organ, to transform the draft articles into a convention. In its view a flexible approach was to be preferred.

22. Turning to the topic of State responsibility, he welcomed the further progress made by the Commission

1 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/26, annex, "Resolution relating to Article 1 of the Vienna Convention on the Law of Treaties", p. 285.

2 See *Official Records of the General Assembly, Ninth Session, Supplement No. 9*, para. 25.

and noted with approval the Commission's remarks in paragraph 109 *et seq.* on the difficult question of liability without fault. In that connexion he recalled that at the recent session of the Third United Nations Conference on the Law of the Sea, held at Caracas, some quite far-reaching propositions had been advanced on the question of liability under international law for injurious consequences arising out of the performance of certain activities which were not prohibited by international law. Some of the ideas put forward might introduce quite new concepts of State responsibility, thus adversely affecting the substantive issues under discussion at that Conference. In his delegation's view, a conference on the law of the sea was not the place to adopt conclusions on such basic legal issues. As for the Commission, it would do best to confine itself to the responsibility of States for internationally wrongful acts. In his delegations's view, the topic of liability without fault did not fall within the scope of the Commission's examination of State responsibility.

23. He welcomed the progress made on the question of treaties concluded between States and international organizations or between two or more international organizations, and he endorsed the Commission's method of work on that topic. He approved of the Commission's intention, as stated in paragraph 136 of the report, to present the codification of the topic in the form of a set of draft articles capable of constituting a convention, without prejudice to what the ultimate decision might be. In addition to examining the articles of the Vienna Convention on the Law of Treaties, it would be useful for the Commission to bring within the scope of its investigation the draft articles on succession of States in respect of treaties. As his delegation had stated before, treaties between two or more international organizations were a separate category, and there was no urgency in their treatment.

24. On the question of the law of the non-navigational uses of international watercourses, he wished to reserve his delegation's position until the competent authorities of his Government had had the opportunity to examine chapter V of the Commission's report.

25. As to the programme of work for the next session, he hoped that the Commission would decide to complete the first reading of the topics of State responsibility and the most-favoured-nation clause in treaties before the current term of office of its members expired.

26. With regard to the International Law Seminar, he was pleased to confirm that his Government would be repeating for 1975 its fellowship in the sum of $1,200 on the usual terms.

27. Turning to the delicate matter raised in paragraphs 192-212 of the report, he saw no need to approach the issues in dispute in a spirit of confrontation, either between the Commission and the Joint Inspection Unit or between the Sixth Committee and the organs to which the Unit reported. He recalled that the Unit's report (see A/9795) had been prepared pursuant to General Assembly resolution 2960 (XXVII). There seemed to have been a general misunderstanding of what was involved. He agreed with the suggestion made by the Chairman of the Commission (1484th meeting) when introducing the report that it would be appropriate to convey the views of the Sixth Committee on the matter to the Fifth Committee. The increasing number of international conferences was a real and urgent problem and represented a burden for Governments as well as for the administrative services of the United Nations, and all organs of the United Nations were called upon to contribute to its solution.

28. One of the points mentioned by the Commission in support of continuing to meet at Geneva was the excellent library facilities available there. While the collections at the Palais des Nations could be equalled elsewhere, the quality of service and convenience was not easy to match. From his personal experience he could confirm that at Geneva it was possible to have necessary books and documents brought to meetings within a few minutes.

29. In view of the current difficulties regarding conference facilities and the suggestion in document A/C.6/L.979 that the Commission consider ways to modify its meeting programme, he recalled his delegation's suggestion at the twenty-eighth session (1404th meeting) that the Commission should appoint a special rapporteur to produce a completely independent study as to whether modifications in current budgetary and administrative practices were required. It would be better to examine in that context the Commission's request for a permanent extension of its annual session to twelve weeks.

30. In paragraph 47 of its report, the Commission touched on a matter of particular interest to his delegation, namely, the development of depositary practice and the collection and dissemination of information regarding treaty relationships. Keeping abreast of changes taking place in the pattern of multilateral treaty relationships was of great importance for Governments and many organizations. The basic material enabling Governments to do that was the information disseminated by the different depositaries. His delegation wished to suggest that the United Nations Secretariat should be invited to make a concise study of the feasibility of greater precision, completeness and promptness in the dissemination of treaty information by depositaries, including the submission by them of treaty information to the Secretariat for registration under Article 102 of the Charter. He would hope that such a study, to be conducted in consultation with other depositaries, could be completed in a year or two. The computerization of the treaty information, on which the Secretary-General had submitted a report at the preceding session,[3] would probably facilitate such a study.

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)* (A/C.6/L.987, L.989)

31. The CHAIRMAN announced that the Congo had joined the sponsors of the amendment proposed in document A/C.6/L.989.

The meeting rose at 12.30 p.m.

3 A/C.5/1566.

1486th meeting

Monday, 28 October 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1486

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)* (A/C.6/L.987, L.989)

1. Mr. WEHRY (Netherlands), introducing draft resolution A/C.6/L.987 on behalf of the sponsors, said that a rather large gathering of representatives from all the regional groups had held four lengthy and rather difficult internal meetings so that a sampling of sponsors from the various groups could submit a text truly reflective of consensus by compromise. He felt sure that the Committee as a whole would be grateful if the resulting draft resolution, which concluded five years of intensive and critical examination of one of the six principal organs of the United Nations, the International Court of Justice, could be adopted unanimously.

2. The participants in the informal consultations had sacrificed many of their views when they had finally agreed on the text of draft resolution A/C.6/L.987. The Netherlands, which hosted the Court with a pride deriving from that country's attachment to the ideal of universally harmonized adjudication of disputes between States, considered that text a severely pruned minimum of what it had originally had in mind. His delegation felt that the international community owed to the ideal incorporated in the Charter more constructive and more hopeful language. It recognized, however, that there was little advantage in papering over the realities of State practice at the current time. If the draft resolution could be adopted by consensus, the Committee would have completed a useful examination of the role of the Court.

3. Speaking for the Netherlands delegation only, since there had been no time to consult all the sponsors of draft resolution A/C.6/L.987, he expressed regret and concern at the amendment contained in document A/C.6/L.989. The sponsors of the amendment knew, from the informal consultations and many private talks on the subject matter of their amendment, that there could be no consensus but only very sharp and even passionate debate from the questions of principle raised by any admonition to the Court. The Netherlands considered the Court an independent organ and felt that it would be contrary to the Charter for the General Assembly to draft such an admonition to it. Whether the amendment was adopted or rejected, he reserved the right to describe in detail the three great dangers which his delegation saw in having the Sixth Committee and the General Assembly entertain such a text. At the current juncture, he would confine himself to appealing most earnestly to the supporters of the amendment not to press that most divisive issue to a vote. It was an issue which, in his delegation's view, would more properly be discussed under a separate agenda item or under an item such as that relating to the review of the Charter. He appealed to the understanding and goodwill of the sponsors not to breach a consensus that had been reached with such great difficulty.

4. Mr. GOMEZ ROBLEDO (Mexico), introducing amendment A/C.6/L.989 on behalf of the sponsors, said that it actually served to supplement draft resolution A/C.6/L.987. The sponsors fully endorsed the draft resolution, but, as had been reiterated both in the Sixth Committee and in the informal consulting group, they felt that it was improper for the draft resolution to make no reference to declarations and resolutions adopted by the General Assembly, which were unquestionably a reflection of the most recent developments in contemporary international law. The purpose of the amendment was to fill that gap. It was hardly conceivable that the main legal organ of the United Nations should show a total lack of interest in the proceedings of the most important organ of the Organization, namely the General Assembly.

5. He stressed that the amendment in no way altered or introduced any new element into Article 38 of the Statute of the International Court of Justice. In other words, it was not a question of adding another source of international law to those enumerated in that Article but rather of drawing attention to certain elements of legal interpretation to which the Court must inevitably have recourse when deciding in accordance with international law such disputes as were submitted to it—in strict implementation, of course, of Article 38 of its Statute. The Court unquestionably had to take account of international custom as reflected in the many resolutions and declarations adopted year after year by the General Assembly, whose very reiteration was irrefutable proof of the *diuturnitas* which had traditionally been recognized as one of the constituent elements of international custom. He mentioned by way of example the General Assembly resolutions condemning colonialism, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, and the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. Those and many other General Assembly declarations and resolutions of a similar type reflected the desire of Member States to promulgate juridical rule of unquestionable validity to which they all subscribed, in other words, the general *opinio juris*, which was the second traditional element of custom. The amendment contained in document A/C.6/L.989 was thus more conservative than its opponents might think, since it merely drew attention to an important element in the interpretation of Article 38, and particularly paragraph 1, subparagraphs b and c thereof.

6. It would be strange, to say the least, if the Court were to take into account the teachings of the most highly

qualified publicists as subsidiary means for the determination of rules of law and not also the unanimous and reiterated pronouncements of the international community as a whole, as represented in its most authoritative forum, the General Assembly of the United Nations. Moreover, the amendment was a selective one and did not accord the same value to all declarations or resolutions adopted by the General Assembly. It referred only to those which reflected developments in international law resulting from the agreed practice of States.

7. As he had said in the general debate (1470th meeting), his delegation had felt that it would be useful to amend the provisions of Article 38 of the Statute of the Court, as proposed by the delegation of Austria in its reply to the questionnaire of the Secretary-General[1] to include non-binding resolutions and declarations of international organizations among the subsidiary means for the determination of rules of law. Amendment A/C.6/L.989 did not go so far as to propose such a reform–which seemed, to his delegation, plausible although not viable at the present time–but merely aimed at adding an element for the interpretation of Article 38 in accordance with the function of the Court and the development of international law. It was designed, in its application, to rejuvenate Article 38, the formal origin of which went back over half a century and, as many scholars had said, had its roots in the classic international law of the nineteenth century.

8. It might perhaps be asked why there was no reference to declarations or resolutions of international organizations –or at least of their principal organs–in Article 38. The reason was simply that in 1920, when that provision had been adopted as a part of the Statute of the Permanent Court of International Justice, no such declarations had existed nor had they been envisaged. Moreover, the Permanent Court of International Justice had not been an organ of the League of Nations.

9. When Article 38 of the Statute of the International Court of Justice had been formulated at San Francisco on the basis of Article 38 of the Statute of the Permanent Court of International Justice, the latter text had been taken over as it stood, although it was clear that the international organization was currently quite different from what it had been 50 years earlier. Under the provisions of the Charter, the promotion of international law in its multifarious aspects was a duty of the principal organs of the United Nations. In that connexion, he drew attention to Article 13, paragraph 1, subparagraph a, of the Charter; the function of encouraging the progressive development of international law and its codification referred to therein should be entrusted to the International Court of Justice by virtue of the close relations which it maintained with other United Nations bodies.

10. The amendment contained in document A/C.6/L.989 represented an attempt to reconcile the old and the new or, in other words, to give the instruments in force a new spirit in accordance with the contemporary world.

11. He had taken note of the Netherlands appeal, but, speaking on behalf of his own delegation, he did not feel it possible to withdraw the amendment. There were legitimate grounds for hoping that a consensus might be reached if the amendment was adopted. His delegation would be open to any other amendment which might improve the draft, and he reiterated that the sponsors of the amendment were not trying to introduce any other source of law than was already covered by Article 38 of the Statute of the Court.

12. Mr. SA'DI (Jordan) said that he would appreciate further clarification concerning amendment A/C.6/L.989. The English text appeared incomplete. It was not made clear for what purpose the Court should take into account the developments in international law reflected in declarations and resolutions adopted by the General Assembly. The words "take into account" also seemed ambiguous.

13. Mr. GOMEZ ROBLEDO (Mexico), speaking on behalf of his own delegation only, said that the intended meaning was that the International Court of Justice, when determining applicable rules of international custom and the general principles of law recognized by civilized nations in respect of any case submitted to it, should draw upon United Nations declarations and resolutions.

14. The CHAIRMAN announced that Italy had joined the sponsors of draft resolution A/C.6/L.987 and that Kuwait had joined those of amendment A/C.6/L.989.

15. Mr. WEHRY (Netherlands) said that it was clear from the statement by the representative of Mexico, as it had been from the informal consultations, that the intentions of Mexico and the other sponsors of amendment A/C.6/L.989 were quite acceptable to many delegations, including his own. It was quite clear that no effort was being made to introduce a new source of international law. However, he did not feel that the intention behind amendment A/C.6/L.989 was duly reflected in its wording. The difference was one of form and not one of substance. Yet, if difficulties of interpretation arose at the present juncture, how much more likely was misinterpretation at a later stage. He proposed that the sponsors of draft resolution A/C.6/L.987 and those of amendment A/C.6/L.989 should meet with other interested delegations for further informal consultations before either document was put to the vote.

It was so decided.

16. Mr. PETRELLA (Argentina) drew attention to an error in the Spanish translation of the draft resolution contained in document A/C.6/L.987. In paragraph 6, the last part of the sentence should read as follows: "*. . . no debería ser considerado un acto inamistoso entre los Estados*". He asked the Chairman to request the Secretariat to bring the Spanish text into line with the English.

17. Mr. WEHRY (Netherlands) said that there were also some errors in the French translation of the draft resolution. In paragraph 3, the word "*constamment*" should be deleted. Also, in paragraph 6, the last part of the sentence should be amended to read as follows: "*. . . ne devrait pas être considéré comme un acte d'inimitié entre Etats*".

18. A slight correction should also be made in the English text. The first "by" in the sixth preambular paragraph, appearing in the phrase "by judicial settlement of dis-

[1] See A/8382, p.25.

putes", should be replaced by the word "for". The passage following "Rules of Court," would thus read as follows: "with a view to facilitating recourse to it for judicial settlement of disputes,".

19. The CHAIRMAN said he would ask the Secretariat to make the relevant changes.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

20. Mr. CASTRÉN (Finland) expressed appreciation to the Chairman of the International Law Commission for his excellent introduction of its report (A/9610 and Add.1-3). Despite its very full work programme, the Commission had succeeded in completing a large part of it, including what he regarded as the most important part, namely, its work on succession of States in respect of treaties.

21. He recalled that the Commission's first set of draft articles on the topic[2] had been well received in the Sixth Committee at the twenty-seventh session and that at that time (1320th meeting) his delegation had stated that the draft articles were based on sound principles that were accepted by a majority of States and of legal authorities. The new set of draft articles (see A/9610, chap. II, sect. D) was in many respects a considerable improvement on the earlier one. The substance and, in particular, the form of various provisions had been changed, generally for the better. The order of the articles had been changed, some articles had been combined and others divided up, and some new articles and supplementary provisions had been added to make the text clearer, although it had in places become rather cumbersome. The Commission had tried to take into account as much as possible the oral and written comments of Governments. The present text was, on the whole, very satisfactory and constituted a good basis for a future convention on the subject.

22. With regard to paragraph 81 of the Commission's report, his delegation felt that it would be desirable for a convention on succession of States in respect of treaties to contain provisions governing the settlement of disputes that might arise from the interpretation or the application of its articles; however, he proposed that that question should be left for a decision by the conference of plenipotentiaries.

23. His delegation had no comments to make on the first five articles of the draft, nor would it oppose article 6, although it seemed to go without saying that the articles of the draft would apply only to the effects of a succession occurring in conformity with international law. Article 7 seemed superfluous since non-retroactivity was a general principle of the law of treaties reflected in article 28 of the Vienna Convention on the Law of Treaties.[3] Article 8, paragraph 2, and article 9, paragraph 2, should be deleted since they added nothing, as should article 13.

24. The words "any territory, not being part of the territory of a State, for the international relations of which that State is responsible" in the introductory part of article 14 were not clear, and he suggested that the expression "territory under the . . . administration of a State", contained in article 10 of the 1972 draft, should be used instead. On the other hand, he supported the addition of the words "or would radically change the conditions for the operation of the treaty" at the end of article 14 *(b)*.

25. He supported the appropriate changes which had been made in articles 16-19 and also the more flexible wording given to article 20. Article 21 also differed in a number of ways from the corresponding article of the 1972 draft, and it would seem that the new paragraph 4 was superfluous. The new article 22 concerning the effects of a notification of succession was a significant improvement on the former article 18, and the three articles 26-28 concerning provisional application were a successful development of their counterparts in the 1972 draft.

26. The text of the new article 29 had become too long, but it was also more precise and more complete. It might be appropriate to insert in paragraph 1 of the article an explicit reservation taking into account the many exceptions contained in paragraphs 2 and 3 to the rule established in paragraph 1. He supported the modifications made in the text of article 26 of the 1972 draft, now article 30, including the distinction made between articles 14 and 30 and the deletion of former article 26, paragraph 3. The Committee had developed the rules governing the effects of a uniting of States in respect of treaties by adding two new articles, 31 and 32, both of which he supported. The Commission had been right to limit the application of those provisions to multilateral treaties by contrast with article 30, which also concerned bilateral treaties.

27. Article 27 of the 1972 draft had been criticized by his delegation (1320th meeting) when it had been examined in the Sixth Committee on the grounds that in State practice the principle of continuity with regard to succession to treaties was only valid in the case of the dissolution of a union of States whose members had possessed a certain degree of international personality, whereas in other cases of dissolution, where it was a question of the disappearance of a unitary State, it would be better to apply the "clean slate" principle. He was therefore pleased to note that the Commission had somewhat altered its position by deleting former article 27 altogether and replacing that and article 28 by two new articles, 33 and 34. However, the principle of continuity was still the point of departure in the new text, although there were many exceptions which could easily alter the presumption in State practice in favour of the "clean slate" principle. Article 33, paragraph 3, in particular, by its rather vague wording, allowed many possible interpretations in one way or another. It was probable that States would prefer freedom of action if it suited them. As in the case of the uniting of States, the Commission had rightly added two new articles, 35 and 36, to the provisions concerning separation of parts of a State.

28. A new draft article 37 governed notification under articles 30, 31 and 35. Since the provisions of that article were essentially the same as those contained in article 21 concerning notification of succession, the two articles could

2 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10,* chap. II, sect. C.

3 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

easily be amalgamated. Article 31 of the 1972 draft had been split in the new draft into two articles, 38 and 39. While an express reservation might be called for concerning the international responsibility of a State, the other two reservations in those two articles were not necessary, since military occupation and the outbreak of hostilities between States could never give rise to succession in respect of treaties. The analogy with article 73 of the Vienna Convention on the Law of Treaties did not apply, as was stated in the commentary on those articles, since the situations governed by that Convention and the present draft were not the same.

29. Chapter III of the Commission's report dealt with the question of State responsibility. Because of the lack of time, the Commission had been able to adopt on first reading only the three new articles 7-9. Like the six preceding articles adopted in previous years, the text of the new articles was acceptable. It appeared from the commentaries on the articles that the rules contained in them were corroborated by State practice and almost all theory. Article 7, concerning the attribution to the State of the conduct of other entities empowered to exercise elements of the governmental authority, was useful. The conciseness of article 8 *(b)* was complemented by the detailed commentaries which clarified the difference between subparagraphs *(a)* and *(b)*. He supported retaining article 9 governing the relatively rare case of attribution to the State of the conduct of organs placed at its disposal by another State or by an international organization. It should be emphasized that the expression "placed at its disposal" presupposed that the organs concerned could exercise their prerogatives only with the consent and under the exclusive direction and control of the territorial State, as stated in paragraphs (4) and (5) of the commentary. He hoped that the Commission would continue to prepare the draft articles on State responsibility.

30. Some progress had also been made on the question of treaties concluded between States and international organizations or between two or more international organizations. Those provisions adopted by the Commission were only the beginning of the whole set of draft articles (see A/9610, chap. IV, sect. B) and therefore only preliminary observations were called for. He agreed with the report concerning the draft's relationship to the Vienna Convention on the Law of Treaties and concerning the method to be followed in the preparation of the draft. At first sight, the text of the articles adopted seemed acceptable. The wording of article 3 was a little heavy and tautological, but the Commission had–rightly, he thought–preferred precision to simplicity.

31. He noted with satisfaction that the Secretariat had finished the supplementary report on the legal problems raised by the non-navigational uses of international watercourses (see A/9732) and that the Commission had designated a Special Rapporteur and established a Sub-Committee which had already submitted a report (see A/9610, chap. V, annex) to it on the matter.

32. The programme of work proposed by the Commission for its forthcoming session was acceptable, and the Commission had given sound reasons to extend its sessions to 12 weeks on a permanent basis.

33. The Commission had devoted several paragraphs of its report to rejecting the criticism of its methods of work made by the Joint Inspection Unit (see A/9795). He had not read that criticism, but was of the opinion that the Commission's composition, procedure, methods of work and organization were judicious, appropriate and efficient.

34. He was gratified to note that the International Law Seminar had again been successful and was pleased to announce that his Government had again offered a fellowship worth $2,000 for participants from developing countries in the International Law Seminar to be held in 1975 in Geneva.

35. Mr. ELIAN (Romania) congratulated the Commission on the positive results achieved during its twenty-sixth session, which constituted a valuable legal contribution to the development of détente and international co-operation.

36. The Commission had continued to study the question of succession of States in respect of treaties, and the 39 draft articles with their commentaries were a praiseworthy contribution to the future development of international law. On completing its work on that question, the Commission had singled out certain principles which were particularly applicable in international law. It had also given due attention to the importance of analogies with internal law for questions in international law. The Commission had also considered State practice, the concept of "succession of States", the relationship between succession in respect of treaties and the general law of treaties, and the principle of self-determination and the law relating to succession in respect of treaties. Its report indicated the scope and usefulness of the draft articles and the commentaries. In the modern world, with the definitive condemnation of colonialism and its gradual disappearance, new independent States were emerging, and the Commission's study was therefore of great current interest. The Commission's activities during the 25 years of its existence were of the greatest importance for the establishment of legal principles, definitions and standards for the modern organization of international relations; the definitions contained in article 2 were a good example. The Commission had made a good choice of models for certain articles and definitions by following the Vienna Convention on the Law of Treaties.

37. The Commission had taken into account the modern context of State practice with regard to succession. It had emphasized that the much greater interdependence of States in the modern world would make it necessary for successor States to maintain in effect the treaty relations of the territory to which they had succeeded, on the basis of the principles of the United Nations Charter. In that connexion, he drew attention to the Commission's concern with the question of recognition by the successor State of the obligations or rights of a predecessor State. The Commission had also been concerned to determine the necessary conditions under which a treaty was considered as being in force in the case of a succession of States. It should be emphasized that new States should be born and live in total independence. The principle of the independence of a successor State should be proclaimed in the draft articles, perhaps in one of the first of them. At the same time, there were sometimes obligations, mainly economic in

nature, which were based on the international agreements concluded by the predecessor State. International legality made it necessary in such cases to identify the moment when the obligations of the successor State began and to specify the principles and the method to be applied in order that a predecessor State or a territory that became a new State might continue its international life in the world community. The forthcoming conference which was to prepare a convention on succession of states in respect of treaties might wish to examine such problems with a view to expanding articles 15-19 and 24 of the draft.

38. The draft and the commentaries made a constructive approach to the questions concerning the effects of the uniting and separation of States. It might be preferable to put all the provisions concerning notification, which were somewhat scattered, in a single article—perhaps after article 37.

39. The final adoption of the draft by the Commission at its twenty-sixth session was very important, and the document could serve as a solid base for the future preparation of a convention, by a suitable international conference.

40. The Commission had also studied the question of State responsibility (see A/9610, chap. III, sect. B). His delegation supported the Commission's decision to give its study the form of draft articles, thus following the General Assembly's recommendations in resolutions 2780 (XXVI), 2926 (XXVII) and 3071 (XXVIII). The scope of the question should be emphasized, as should the need to specify the limits of civil as opposed to criminal wrongfulness in international law. The main problems of State responsibility were unquestionably of current interest, namely, responsibility for acts of aggression and for crimes against peace and humanity. The United Nations Charter continued to provide the legal base on which the Commission could prepare the final draft articles on State responsibility. The remedies for the possible prejudicial consequences stemming from certain wrongful activities should be based principally on the obligations of Members of the United Nations contained in the Charter. The rules set forth in the final draft should take those principles into account. The Commission had adopted that approach by referring to general principles rather than violations of specific international obligations; and the report clearly stated in paragraph 13 that the draft articles dealt with the general rules of the international responsibility of the State for internationally wrongful acts.

41. The Commission had adopted the first provisions of the draft concerning the question of treaties concluded between States and international organizations or between two or more international organizations, the importance of which had first been recognized at the Vienna Conference in 1969. The General Assembly had then recommended by resolution 2501 (XXIV) that the International Law Commission should study the question in consultation with the principal international organizations.

42. The Commission's study of the law of the non-navigational uses of international watercourses was at a similar stage. The progressive development and codification of that sphere of international law was of great interest. With regard to his own country, the Danube basin could be used extensively for industrial, commercial and agricultural purposes. An extensive hydroelectric project at the Iron Gates had been undertaken jointly with Yugoslavia, and other projects of a similar kind were at an advanced stage of study. The problem of pollution should be given priority in the Commission's study, but his delegation would give further thought to the question of creating a committee of experts to deal with that problem.

43. His delegation looked forward to the results of the study begun by the Commission on the most-favoured-nation clause. The uninterrupted expansion of world trade was highly necessary during the currently developing détente.

44. His delegation would like to make some suggestions regarding the Commission's long-term work programme. In the first place, the Commission might take up the juridical implications under international law of the measures envisaged in the historic documents adopted by the General Assembly at its sixth special session, particularly the Declaration and Programme of Action on the Establishment of a New International Economic Order (resolutions 3201 (S-VI) and 3202 (S-VI)). Both the Declaration and the Programme repeatedly mentioned the new rules that should govern future relations among States. Their juridical implications under international law did not concern trade alone, which fell within the competence of the United Nations Commission on International Trade Law. They would instead have far-reaching implications for the new relations and international co-operation that should be established between the developed and the developing countries.

45. In the second place, the wide variety of juridical sources and internal State systems in the world often led to serious problems in the establishment and development of juridical, economic and even political relations. In particular, the socialist countries and the States that had recently become independent had made their own contributions to development and international juridical life. Any effort at codification should therefore take into account their experience, their traditions and their needs. Some delegations had expressed the view that the International Court of Justice should apply more widely the principles of law of different juridical systems. His delegation agreed with the statement made in paragraph 208 of the report of the Commission to the effect that the Court was entrusted with the task of applying international law to controversies between States, while the Commission performed the task of formulating draft rules of international law.

46. The principles of international law were highly regarded by his country. The President of Romania had often stressed the importance of ensuring absolute respect for international legality, which was closely linked with the principles of sovereign equality, independence and the right of nations to self-determination. His delegation had therefore examined with special attention the report of the Commission and the results of its work.

47. Mr. GÖRNER (German Democratic Republic) said that consideration of the draft articles on succession of States in respect of treaties had undoubtedly been a matter of priority at the twenty-sixth session of the Commission. It was with great interest that his delegation had taken note of the final draft articles.

48. The codification of the succession of States in respect of treaties should achieve the following objectives.

49. On the one hand, it was in the interest of all States to ensure that cases of State succession did not disturb existing international treaty relations which had been established in accordance with the generally recognized principles of co-operation. On the other hand, the entry into international relations of the successor State should be facilitated so as to enable it to exercise its rights as a sovereign State and to examine critically the treaties concluded by its predecessor State in order to continue them, apply them provisionally or terminate them.

50. The draft articles adopted by the Commission were now based essentially on the "clean slate" principle, which, in accordance with the right of self-determination and the principle of sovereign equality, gave the successor State the right of free decision regarding the treaties concluded by its predecessor State, except for boundary treaties and a few other categories of treaties. His delegation gave its general support to the "clean slate" principle.

51. Draft articles 11 and 12, which stipulated that treaties establishing a boundary or a territorial régime were not affected by a succession of States, were in full harmony with State practice and the generally recognized principles of international law. His delegation agreed with the decision adopted by the Commission at its 1296th meeting on those articles—which appeared in part V of the 1972 draft as articles 29 and 30—whereby they were transferred to part I of the current draft, entitled "General provisions", for that would make it more obvious that they were applicable to all cases of State succession. For the maintenance of world peace and the strengthening of international security, it was of particular importance that a boundary or a territorial régime established by a treaty should not be affected by a succession of States.

52. His delegation regretted that in the final version of the draft articles the Commission had not included article 12 *bis* on multilateral treaties of universal character, contained in foot-note 54 of the Commission's report. His delegation held the view that it was in the interest both of the successor State and of the community of States as a whole that any multilateral treaty of a universal character which at the date of the succession of a State was in force in respect of the territory to which the succession related should remain in force until such time as the successor State might declare the said treaty terminated for that State. In the interest of peaceful international co-operation, it was indispensable that a future convention on the succession of States in respect of treaties should contain a provision which met the purpose set forth in article 12 *bis*.

53. The draft articles did not contain any provision concerning the relationship between recognition and State succession in respect of treaties. Apart from succession in respect of bilateral treaties, which could hardly be effected without mutual recognition, it would seem necessary to include in the future convention a provision that would make it clear that succession in respect of multilateral treaties occurred independently of the recognition of a State. That would also take account of the generally recognized principle of international law that the international personality of a State existed independently of its recognition by other States.

54. The draft articles dealt mainly with those cases of State succession which had emerged from the process of decolonization. His delegation held that the principles contained in the draft applicable to such States could also be applied to other cases where successor States had emerged in the exercise of the right of peoples to self-determination. In a successor State which had come into being after the destruction of the former German Reich by the anti-Hitler coalition, the people of the German Democratic Republic was shaping the developed system of socialist society. Today there existed a socialist State, the German Democratic Republic, in which the socialist nation was developing, and the capitalist Federal Republic of Germany, in which the capitalist nation existed.

55. It would be very helpful if the Commission would re-examine the draft on succession of States in respect of treaties, since that would greatly facilitate the work of a future conference of States on the codification of that important problem of international law. His delegation supported the proposal of the Commission to adopt a separate convention on the succession of States in respect of treaties; at the same time, however, it would like to point to the close relationship existing between succession in respect of treaties and succession in respect of matters other than treaties. The inseparable connexion in substance of the two fields of State succession should be especially taken into account when codifying the two topics in separate conventions.

56. His delegation noted with satisfaction that the Commission had adopted on first reading three new draft articles on State responsibility. The Commission's further work on that question, which was of primary importance for the observance and fulfilment of the obligations of States under international law, would undoubtedly be encouraged by the definition of aggression that had been completed (see A/9619 and Corr.1, para. 22).

57. Now that the definition of aggression had reaffirmed that a war of aggression was a crime against international peace, the Commission should not confine itself to stating that a breach of an international obligation of the State entailed its international responsibility. His delegation considered it to be essential from both a political and a legal point of view to go further and distinguish clearly between categories of breaches of international obligations. Thus, aggression as a crime against international peace, as well as colonialism and genocide, should, for example, not be regarded as ordinary violations of treaties. That was in keeping with existing laws and was of great practical importance for the legal consequences resulting from breaches of international obligations. His delegation felt that the inclusion of such different categories in the existing concepts of the Commission was possible and that it was not necessary to investigate or define the obligation violated or the so-called primary obligation.

58. It seemed more important to distinguish between such fundamentally different categories of breaches of international law than to cover special and very exceptional situations which related, for example, to the actions of *de*

facto organs or of insurgents. Today entirely different problems were at the centre of attention, e.g. the extent to which a State was held responsible if its organs promoted certain actions of multinational corporations directed against the sovereignty of other countries or if the organs of such States failed to hinder or prosecute such actions.

59. Articles 7, 8 and 9, adopted on first reading by the Commission, were in harmony with the principle of State sovereignty. It was an important result of the Commission's work that now only those acts which were performed by the organs of a State or by persons acting on behalf of the State or in the exercise of governmental authority were clearly defined as acts of the State. Thus it was also guaranteed that in accordance with international law the structure of the State was respected as its own internal affair and that at the same time the State was regarded as an entity in international relations.

60. His delegation felt that, in discussing article 9, the Commission should have explicitly asserted that a State could not evade international responsibility for breaches of international law committed by its organs because it had placed them at the disposal of another State. Article 3 *(f)* of the definition of aggression defined as aggression the action of a State in allowing its territory, which it had placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State. In harmony with that principle, the rules of international responsibility should establish that a State should not shirk international responsibility by saying that it had placed its organs which acted in violation of international law at the disposal of another State. The Commission had not contested that principle. In the light of its practical importance, it should be included in the draft convention on international responsibility.

61. His delegation appreciated the work done by the Commission in dealing with the question of treaties concluded between States and international organizations or between two or more international organizations. The five draft articles adopted by the Commission at its twenty-sixth session on first reading stood out for clarity and simplicity of expression. The wording of most of the draft articles did not give rise to discussions on fundamental problems. His delegation considered that the distinction made in article 1 between treaties concluded between one or more States and one or more international organizations on the one hand, and treaties concluded between international organizations on the other hand, was a correct point of departure for further work, because treaties between international organizations would have to be governed by specific and perhaps different provisions.

62. In its report, the Commission had pointed out quite rightly the great importance of article 6, which dealt with the capacity of international organizations to conclude treaties. It was well known that international organizations, unlike States, had only a limited capacity to conclude international treaties. The Commission's commentary on that article, in paragraph (5), pointed out quite rightly that the question of how far practice could play a part in the capacity of an international organization to conclude treaties depended on the highest category of the rules of the organization, those which formed, in some degree, the constitutional law of the organization and which governed in particular the source of the organization's rules. However, practice must in no case develop irrespective of, or contrary to, the constitutional documents on the founding of an international organization which had been agreed upon by the member States on the basis of sovereign equality. Therefore, his delegation approved the Commission's decision not to mention practice in the formulation of the draft article regarding the capacity of an international organization to conclude treaties.

63. At its twenty-sixth session, the International Law Commission had also discussed a programme of work and the method of study of the law of the non-navigational uses of international watercourses. His delegation deemed it essential to define precisely the meaning and the scope of the term "international watercourse" without conceiving it in too wide a sense. The question should be carefully studied whether the geographical concept of an international drainage basin, which the Sub-Committee set up by the Commission for the study of that question mentioned in its report, was the appropriate basis for the study of the legal aspects of non-navigational uses of international watercourses. In paragraph 37 of the report of the Sub-Committee, the question was asked whether a committee of experts should be set up to assist the Commission in dealing with the question of non-navigational uses of international watercourses. His delegation believed, however, that careful thought should be given as to whether it was necessary to establish such a committee.

64. His delegation could at present make only a preliminary comment on the problems raised in the report of the International Law Commission. As far as the future work of the Commission was concerned, his delegation endorsed the intention of the Commission, expressed in its report, to continue at its twenty-seventh session, as a matter of priority, its study of the topic of State responsibility and the preparation of the draft articles relating thereto. In the light of the extraordinary importance a convention on State responsibility would have for the observance and implementation of the norms of international law, it was imperative that the International Law Commission at its next session should centre its attention on that matter with a view to adopting all the draft articles for such a convention on first reading.

65. His delegation agreed that the Commission at its next session should also deal with other topics in its current programme of work on which a first set of draft articles had already been prepared. The work done by the Commission at its twenty-sixth session had shown that concentration on a few priority tasks was particularly appropriate for making the work of the Commission more efficient.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued) (A/9619 and Corr.1, A/C.6/L.988, L.990)**

66. The CHAIRMAN announced that Brazil had asked to be made a sponsor of working paper A/C.6/L.988.

The meeting rose at 12.35 p.m.

* Resumed from the 1484th meeting.

1487th meeting

Tuesday, 29 October 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1487

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. SETTE CÂMARA (Brazil) said that the twenty-sixth session of the International Law Commission had been one of the most fruitful periods of its history. The Commission had an impressive record of accomplishment during the quarter century of its existence and those who had spoken at the last session in commemoration of the Commission's twenty-fifth anniversary had rightly praised its achievements. In that connexion, he paid a tribute to the memory of Mrs. Bartoš and welcomed the appointment of Mr. Šahović to the vacant seat.

2. At its twenty-sixth session, the Commission, as could be seen from its report (A/9610 and Add.1-3), had devoted most of its time to the problem of succession of States in respect of treaties and, pursuant to General Assembly resolution 3071 (XXVIII), had completed the second reading of the draft articles on that topic (*ibid.*, chap. II, sect. D). His Government was happy to see that the second reading had not resulted in any radical changes in the previous draft. The Commission had retained the "clean slate" doctrine, which recognized the right of a newly independent State to decide whether it wished to become a party to any treaty by which the predecessor State had been bound. The Commission had also preserved another essential feature of the 1972 draft, namely, the principle of continuity *ipso jure* of treaties in cases of succession relating to territories which had previously enjoyed sovereignty. A new article had been added in part I, article 7 on the non-retroactivity of the draft articles, and the Commission had retained the generally accepted doctrine that devolution agreements were little more than a statement of intentions. A new manifestation of will on the part of the successor State was necessary if pre-existing treaties concluded by the predecessor State were to remain in force. In the new draft, the articles on "dispositive treaties" had been inserted in part I, as the Commission had reached a consensus that such treaties could not be governed by the rules of articles 10 and 11 of the 1972 draft.[1] Boundary treaties were an exception to the "clean slate" rule; the Commission had always regarded those treaties as not being affected by succession. Of course, boundary treaties could be challenged, but on grounds other than the "clean slate" rule. Newly independent States were not, however, bound to accept an inheritance of injustice; they were free to challenge the legality of a controversial territorial treaty by the normal means established in the Charter of the United Nations for the settlement of international disputes. The slight modifications that had been made in the articles in part I had considerably improved the language, the structure and the conciseness of the text, while maintaining the spirit and substance of the original formulation.

3. In part IV, the distinction between dissolution and separation of States had been eliminated and replaced by two hypotheses of separation. Those two cases were dealt with in the commentaries, thus duly covering the concept of dissolution of a State.

4. Part V retained the saving clause that the articles should not prejudge any question arising from the international responsibility of a State or from the outbreak of hostilities between States. The other saving clause, concerning military occupation, had been placed in a separate article.

5. Late in the Commission's session, two proposals had been submitted by its members which, for lack of time, had not been discussed. The first proposal, concerning multilateral treaties of universal character, could be found in foot-note 54 of the report. That proposal was in some ways similar to the suggestion for the exceptional treatment of "law-making treaties", which the Commission had rejected. The concept of a "treaty of universal character", like that of a "law-making treaty", would be very difficult to define. In his delegation's view, every member of the international community had the right to choose whether or not to be a party to a convention of any kind whatsoever. Automatic participation could not be imposed on certain States, and exceptions based on categorization of treaties were invalid. The other proposal not dealt with by the Commission suggested a machinery for the settlement of disputes (foot-note 55 of the report). The Commission had declared its readiness, if so required, to consider the question of the settlement of disputes for the purpose of the draft articles at its next session and to report thereon. His delegation preferred the solution of leaving the problem open for discussion at the time of the final elaboration of the convention by a conference of plenipotentiaries.

6. Chapter III of the report dealt with the problem of State responsibility. The progress on that topic had been limited to articles 7, 8 and 9. Considering the complexity and importance of the topic, the Commission was proceeding at a reasonable pace, and his delegation was pleased with the results that had been achieved.

7. Considerable progress had been made on the question of treaties concluded between States and international organizations or between two or more international organizations. The Commission had approved articles 1-6 proposed by the Special Rapporteur with no substantial difficulty. In article 6, the Special Rapporteur had taken a

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[1] See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

pragmatic approach to the problem of the capacity of international organizations to conclude treaties, which was an indisputable reality of international life. The text merely recognized the capacity of international organizations and did not attempt to attribute such a capacity to them. His delegation endorsed the decisions taken on the topic and hoped that a draft convention could be prepared in the near future.

8. He traced the history of the preparatory work underlying chapter V of the Commission's report and the report of the Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses annexed to that chapter. In its report, the Sub-Committee had included questions to Member States so as to enable the Commission to draw up the general lines of a working plan. The first set of questions dealt with the concept of international watercourses and the appropriate scope of a definition of an international watercourse, since there were doubts whether such a definition would also encompass international lakes and canals. Moreover, the questionnaire explored the meaning that should be attributed to the geographical concept of "drainage basin" in the definition of watercourses. It was a well-known fact that the concept of "drainage basin" had been given some prominence in recent research in law, but none of the many treaties dealing with the problem of non-navigational uses of rivers made any reference to a "drainage basin". The concept of "drainage basin" was important for studies regarding economic development, which were bound to take into account the system of waters forming a basin as a geographical reality. However, the inclusion of the several types of waters within the whole system forming such a basin would raise enormous difficulties in the field of law. Moreover, water was now envisaged as a natural resource, and if the uses of underground water extending from the territory of one country to the territory of a neighbouring country sharing the same basin were to be made subject to international legal rules, it could lead to an analogy for the treatment of other underground liquid national resources, such as oil, with all the problems that entailed.

9. The second set of questions drawn up by the Sub-Committee requested the views of Governments on the different uses of fresh water. Those questions were very comprehensive. The Sub-Committee also requested the opinion of Governments on whether the future study should consider flood control and erosion and whether the relationship between navigational uses and other uses should be taken into account. His delegation considered that flood control and erosion were important aspects of "fluvial law" and could not therefore be excluded from the future study. Similarly, a study of the possible concurrence and conflict of norms and principles intended to regulate navigation with rules on other uses should not be disregarded. He supported the inclusion of questions to Governments on the possibility of giving priority to the problem of water pollution in view of the world-wide outcry against the growing problems of river pollution. With reference to the final question dealing with the need for special technical, scientific and economic assistance in future studies, no Government would question the fact that the lawyers of the Commission required competent and permanent advice from specialized organs and individual experts in dealing with problems in which technical aspects were of paramount importance. The establishment of a committee of experts to provide the Commission with technical advice, as suggested by the Sub-Committee, could be the best solution since it would eventually comprise members specialized in each of the technical fields. Summing up, his delegation was gratified that the work of the Commission on the non-navigational uses of watercourses had made a sound and objective start. However, progress towards codification in that field should be made with care since there existed a satisfactory body of bilateral and multilateral relations based on conventional law.

10. His delegation was satisfied to note that the Commission had, in its co-operation with other bodies, heard statements by representatives of regional organs entrusted with the study and development of the Law of Nations. That useful practice permitted a better mutual knowledge and an exchange of views among jurists working for the common goal of promoting the rule of law in relations between States.

11. He regarded chapter VI of the Commission's report as an amply convincing reply to the findings of the Joint Inspection Unit (see A/9795) on the methods and organization of work of the Commission. He regretted that the Unit had chosen the year in which the Commission was commemorating its twenty-fifth anniversary to circulate a document full of unfounded criticisms. Moreover, the authors of the study had not tried to obtain the advice of members of the Commission or senior members of the Secretariat who participated in the work of the Commission so as to have a sound basis for an analysis of the current methods of work of the Commission before venturing to offer an opinion.

12. The report of the Unit had struck a jarring note amid the warm admiration expressed for the Commission's work of codification over 25 years at the twenty-eighth session of the General Assembly (2151st plenary meeting) by, among others, the Secretary-General, the President of the International Court of Justice and representatives of all the regional groups. Criticisms had been made in the sense that the current situation of the members of the Commission was far from being what the high quality of their work deserved, and the then Chairman of the Commission had made some suggestions for improving methods of work. However, the report of the Unit had ignored the results of the Commission's work, which was generally commended by the United Nations. The authors of the report failed to understand the special status of the Commission and, starting with an incorrect sample, made a series of false analogies with routine expert committees which worked for the achievement of certain specific goals. The report brushed aside the permanent character of the Commission, the indispensable continuity of its work, and the fact that its members were elected in a personal capacity and therefore could not be replaced by alternates and advisers. In view of the complex task of formulating rules of law which required investigation, drafting and an evaluation of Government opinion, the Commission could not organize its work on the basis of the suggestions made by the Unit. If it did so, it was doubtful that the goals of Article 13 of the Charter would be attained. It would be unwise to try to change the current methods of work for the Commission, which were based on a carefully established and proven

balance of continuous interaction of scientific expertise and governmental responsibility.

13. A curious analogy had been drawn between the Commission and the United Nations Commission on International Trade Law (UNCITRAL) both by the Unit in its report and by the Chairman of the Unit in a letter circulated as document A/C.6/L.979. The main difference between the Commission and UNCITRAL was that the latter was a body composed of representatives of States who were not elected in a personal capacity and could therefore be replaced by alternates at any time. Furthermore, concerning the relationship between the Commission and the International Court of Justice, it was difficult to point out that 15 judges of the Court had been former members of the Commission and currently 7 of the Court's judges were former members of the Commission. The report of the Unit had been drawn up not only without proper consultations but without enough information on the real role of the Commission in the United Nations and/or its accomplishments in accordance with Article 13 of the Charter, the resolutions of the General Assembly and the Statute of the Commission.

14. In view of the Commission's heavy agenda, which included some urgent topics, his delegation supported the recommendation to extend the Commission's annual session from 10 to 12 weeks. The General Assembly would thus be assured of much greater progress in the codification and progressive development of international law.

15. Mr. IGUCHI (Japan) said that his delegation supported the recommendation of the Commission that the General Assembly should invite Member States to submit their written comments on the Commission's final draft articles on succession of States in respect of treaties.

16. The difficult nature of the topic of succession of States in respect of treaties was borne out by paragraph 51 of the Commission's report. The difficulty was inherent in the complexity of the subject, in which there was an interplay of fundamental rules and principles of international law, such as the principle of consent and good faith, the principle of equality of States–whether a predecessor State or a successor State–and the principle of self-determination. The principle of equality of States should be fully taken into consideration in formulating rules on succession of States in respect of treaties, and also due respect should be paid for the interest of all States concerned to the principle of continuity of treaty relations, which promoted stability in international society.

17. He had been interested to note references in the Commission's report to treaty precedents where Japan had been one of the parties concerned. His Government had made a practice of respecting the stability and continuity of treaty relations but had also been willing to enter into negotiations on new agreements when those were desired by the newly emerging States. Since the practices of States were diverse and sometimes equivocal, work in the field of succession of States in respect of treaties had to be more in the nature of a progressive development of international law rather than a codification of existing practice. Careful deliberation was necessary to ensure that the outcome would not prejudice existing treaty relations among States. He therefore endorsed article 7, which confirmed the general rule of treaty law concerning non-retroactivity as defined in article 28 of the Vienna Convention on the Law of Treaties.[2] His delegation did not share the view that article 7 could deprive the draft articles on succession of States in respect of treaties of any practical meaning because almost every dependent territory would be independent before the articles entered into force. If a set of draft articles could be formulated which were just, reasonable and equitable and, therefore, generally acceptable, they would become an effective and useful guide for the international community even before their entry into force. A departure from the general rule of treaty law concerning non-retroactivity might plunge treaty relations in the international community into chaos. Moreover, the draft articles prepared by the Commission would serve as a useful basis for further consideration on the subject, especially in view of the Commission's interesting approach in attempting to draw a distinction between the case of a newly independent State, where the "clean slate" principle would apply–even in the case of the so-called law-making general multilateral treaties–and the cases of uniting and separation, where the principle of continuity would apply. However, he noted that the "clean slate" principle had a certain flexibility, as was clear from articles 19 and 29.

18. With regard to the definition of a "newly independent State" in article 2, paragraph 1 (f), he questioned the accuracy of the statement in paragraph (7) of the Commission's commentary on article 2, that the characteristics of the various historical types of dependent Territories–colonies, trusteeships, mandates, protectorates, etc.–did not today justify differences in treatment from the standpoint of the general rules governing succession of States in respect of treaties. In many instances, the process of accession to full independence was gradual, and before they achieved full independence dependent Territories might enjoy a certain degree of autonomy, a limited international status and limited responsibilities for their own international relations, and they might well be fully consulted in advance on whether they concurred in the conclusion of international agreements applicable to them. His delegation's concern was that if the "clean slate" principle was adopted, disregarding different stages of dependency, and the legal nexus was denied between dependencies and treaties in the conclusion or application of which the dependencies had freely concurred, a formula might be obtained which would lead to contradictory results and deny the self-determination of the dependencies prior to full independence. Such contradictions became more evident if the local authorities were entitled to provide–and had provided–local domestic legislation and budgetary appropriation for the implementation of such treaties. Therefore, the types of dependent Territories, the circumstances of the conclusion or application of treaties, and the nature of the treaties were relevant factors in determining the effect of the succession.

19. Although it was very difficult to define precisely which treaty rights and obligations would be inherited automatically, it might be worth-while to attempt to find

2 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

appropriate criteria to define the continuing rights and obligations of newly independent States for the sake of legal stability. Careful study should also be given to the difference between multilateral and bilateral treaties. In paragraph (8) of the commentary to article 23, the comment was made that the Commission was aware that State practice showed a tendency towards continuity in the case of certain categories of bilateral treaties, although it was also pointed out in paragraph (2) of that commentary that "If in the case of many multilateral treaties [the] legal nexus appears to generate an actual right for the newly independent State to establish itself as a party or a contracting State, this does not appear to be so in the case of bilateral treaties."

20. With regard to articles 11 and 12, his delegation agreed that succession of States as such did not affect boundary and other territorial régimes established by treaties because they were matters relating to the legal situations resulting from the dispositive effects of treaties. On the other hand, consideration should be given to the fact that treaties with dispositive effects were not necessarily confined to those relating to boundary and other territorial régimes. Consequently, it had to be borne in mind that, once it was decided that boundary and other territorial régimes were matters relating to a legal situation established by the dispositive effects of treaties, that would inevitably provide certain guidelines for future discussions on succession of States in respect of matters other than treaties.

21. With regard to the effects of a notification of succession as provided in article 22, there had been a constructive development on the question of the retroactivity of multilateral treaties. However, his delegation considered that more study was necessary before taking the legal position that the treaty was considered suspended unless or until it was applied provisionally by agreement; the method of provisional application and its termination required careful study. In that connexion, he noted in article 23 that, unlike multilateral treaties, bilateral treaties applied in the relations between the newly independent State and the other State party as from the date of the succession of States unless a different intention appeared from their agreement or was otherwise established.

22. Concerning the question of multilateral treaties of universal character, his delegation was of the opinion that the application of the principle of continuity to such treaties should be studied carefully in the light of the fact that the distinction between "law-making" and other treaties might not be easy to make. With regard to the question of the settlement of disputes, his delegation wished to emphasize the importance of including a provision which established certain compulsory procedures for settlement, because the rules on succession of States in respect of treaties were bound to be complex and difficulties might well arise in applying them.

23. He expressed the hope that at its next session the Commission would study two questions which it had lacked time to study fully at its twenty-sixth session, namely, multilateral treaties of universal character and settlement of disputes. After those studies had been completed, a plenipotentiary conference should be held for the conclusion of a convention on succession of States in respect of treaties.

24. The Commission had prepared three provisional draft articles, 7-9, on State responsibility (see A/9610, chap. III, sect. B). The texts were well drafted and contained definite improvements, but it was premature to make overall comments on each article. He noted that the Commission had decided to include in its general programme of work for its next session the topic of international liability for injurious consequences arising out of the performance of activities other than internationally wrongful acts. However, as his delegation stated at the previous session of the General Assembly (1403rd meeting), it was still premature to start drafting general rules on State responsibility for ultra-hazardous activities. Hitherto the problem had been solved by means of special international conventions and national laws in each particular field, and general international law in that area was still in the process of development. Careful study of international practice was therefore necessary before the Commission started to codify rules on that subject.

25. The Commission had prepared six provisional draft articles on the question of treaties concluded between States and international organizations or between two or more international organizations. It was a sound approach to consider the Vienna Convention on the Law of Treaties as the framework for the Commission's treatment of the subject.

26. His delegation supported the Commission's intention to give priority to the topic of State responsibility at its next session. It was to be hoped that substantial progress would be made in the study of succession of States in respect of matters other than treaties. The international community had need of the codification and progressive development of international law, and the Commission's role was all the more important in the current world, where relations of every kind among States were continually expanding. His delegation was therefore prepared to support the Commission's request to introduce the practice of a 12-week session, in the same spirit which had prompted it to endorse at the twenty-eighth session of the General Assembly a proposal for a 14-week session.

27. Mr. BROMS (Finland) said that his delegation had noted with satisfaction the measures which the International Law Commission had taken at its twenty-sixth session to begin its work on the law of non-navigational uses of international watercourses, pursuant to General Assembly resolution 3071 (XXVIII). His delegation also appreciated the important supplementary report[3] prepared by the Secretary-General on legal problems relating to that subject.

28. At its last session, the Commission had set up a Sub-Committee to prepare the item for its consideration. In its report (see A/9610, chap V, annex), which was adopted by the Commission, the Sub-Committee had proposed that before the Commission took up the substantive work of the item, States should be requested to comment on certain

[3] A/CN.4/274.

basic questions. That proposal was very useful, because it was important for the Commission to be aware of all points of view relating to the complex questions concerning international waters.

29. It was a well-known fact that some significant drafts, recommendations and rules relating to certain parts of the law of international watercourses, which had been prepared by competent international bodies, consisted of texts which could be used as a basis for codification, and that had been one of the reasons which had moved his Government to take the initiative that had led to the adoption of General Assembly resolution 2669 (XXV). That resolution noted that measures had been taken and valuable work carried out by several international organs, both governmental and non-governmental, in order to further the development and codification of the law of international watercourses and recommended that the Commission should take up the study of the matter. The Commission should therefore start by studying the existing texts, irrespective of the nature of the body that had prepared them, in order to avoid repeating studies already competently made by other organs. The answers to some of the questions currently under consideration by the sub-committee could be found by studying the existing texts.

30. The first question considered by the Sub-Committee was that of the meaning and scope that should be given to the term "international watercourses", which had been used in resolution 3071 (XXVIII) because it had been regarded as broad enough to cover all the problems that had to be considered and yet not too technical in nature. Its scope was wider than that of "international rivers", because it also covered lakes, but it might be regarded as a synonym for "international drainage basin" provided that the underground waters covered by the latter term were excluded. A study of the same terminological problem by the Economic Commission for Europe[4] had led to the acceptance of the expression "rivers and lakes of common interest". The term chosen should cover the range of problems relating to international watercourses which needed legal regulation. Two main factors had international legal relevance: the term should be understood as indicating that a watercourse or system of rivers and lakes (the hydrographic basin) was divided between two or more States and that the basin possessed a hydrographic coherence irrespective of political borders. Owing to that coherence, there was an interdependence of legal relevance between the various parts of the watercourse or basin belonging to different States, which concerned not only the different uses of the watercourse and its water but also problems of pollution. There was therefore no need to make a distinction concerning the scope of the definition with regard to the legal effects of fresh water uses, on the one hand, and of fresh water pollution, on the other.

31. A second question considered by the Sub-Committee concerned activities which should be included within the term "non-navigational uses". The systematic classification of uses provided by the sub-committee might be applied as a framework for codification. The term "non-navigational uses" was meant to comprise all kinds of uses of international watercourses with the single exception of navigation, which had been excluded because some States could not agree to its inclusion at the present stage. The exclusion of navigation did not, however, mean that all matters relating to it should be ignored by the Commission. The exception concerned only navigation in itself, its freedom and the rights and obligations of flag and riparian States as well as vessels. The fact that a watercourse was used for navigation was one of its characteristics, and the interaction between use for navigation and other uses of the watercourse could not be excluded from the work of codification.

32. His delegation considered that flood-control and erosion problems should be included in the Commission's studies. Flood-control and questions relating to regulation of water-flow of an international watercourse were among the most important of the matters requiring international legal regulation. The International Law Association had already carried out some of the important preparatory work on flood-control at its New York Conference in 1972. Although the work of the Commission should cover all kinds of non-navigational uses, it might already be necessary to consider how far into the technical details of different uses the study should go. The preparation of rules and principles of a general nature would be more useful than a circumstantial examination of all possible details. The Salzburg resolution of the Institute of International Law[5] and the Helsinki Rules adopted by the International Law Association in 1966[6] were examples of the type of provisions the new codification should contain.

33. The Sub-Committee had not considered it wise to accord priority to any specific use. His delegation shared that view in principle, although it might not be feasible to deal with all the complex matters simultaneously. Some parts of the codification might be ready earlier than others. That practical approach should also be adopted with regard to the question of whether the Commission should take up the problem of pollution of international watercourses at the initial stage of its study. His delegation acknowledged the great significance of the problem and the necessity of international legal regulation. However, it was also aware of the work which had been done on the national and international level in the field of pollution. Many attempts had been made by different international organizations to develop and codify rules relating to pollution of international waters, and there were also numerous bilateral and regional treaties on the same subject. The Commission was therefore expected to devote itself to selection and co-ordination with a view to establishing the basic principles and closing the gaps that still existed, e.g. with regard to State responsibility for pollution damages. In view of the many other important questions still requiring international legal regulation, his delegation would not like the problem of pollution to be given preference. The problem might best be studied in connexion with the general principles of the law of international waters.

4 See E/ECE/136 – E/ECE/EP/98 Rev. 1.

5 See *Annuaire de l'Institut de droit international, Salzburg Session, September 1961* (Basel, 1961), vol. 49, t. II, p. 381.

6 See *Integrated River Basin Development* (United Nations publication, Sales No. E.70.II.A.4), annex VII.

34. The last question raised by the Sub-Committee concerned special arrangements for ensuring that the Commission was provided with the necessary technical, scientific and economic expertise. Such expertise was, of course, important, and the establishment of a special committee of experts might be a suitable solution. Its terms of reference and working methods should, however, be carefully considered, because the work to be accomplished by the Commission was of a legal nature and should not be burdened by excessively complicated technical or scientific details.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990)

35. The CHAIRMAN announced that Morocco wished to be added to the list of sponsors of working paper A/C.6/L.988.

The meeting rose at 12.30 p.m.

1488th meeting

Wednesday, 30 October 1974, at 10.50 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1488

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. NYAMDO (Mongolia) congratulated the Chairman of the International Law Commission on his introduction of its report (A/9610 and Add.1-3) and Mr. Šahović on his election as a member of the Commission to fill the vacancy left by the death of his compatriot Mr. Bartoš. At its twenty-sixth session, the Commission had commemorated its twenty-fifth anniversary; during those twenty-five years, it had made a great contribution to the development and codification of international law.

2. His delegation was pleased to note that the Commission had completed its work on the 39 draft articles on the succession of States in respect of treaties *(ibid.,* chap. II, sect. D). On the whole, the draft articles reflected current theory and practice in the matter. The Commission had been right to follow the "clean slate" principle with regard to newly independent States. However, the draft articles contained a serious inadequacy with regard to the succession of States in cases of social revolution. When the draft articles had been studied by the Sixth Committee at the twenty-seventh session of the General Assembly, his delegation had stated (1325th meeting) that a specific reference should be made to the problem of succession of States in cases of social revolution; in such cases, the new State had the right to reject unacceptable treaties. It was unfortunate that the Commission had not made the appropriate changes. Social revolution was an instance of succession of States in respect of treaties, as the practice of many States showed. For example, after the 1921 revolution in Mongolia the question had arisen of succession in respect of treaties, and all unacceptable treaties had been rejected. Thus, it was stated in the preamble to the 1921 Agreement on the establishment of friendly relations between Mongolia and the Russian Soviet Federative Socialist Republic that all previous treaties between the former Governments of the two countries were null and void as a result of the new situation that had been created in both countries. The significance of that agreement was not limited to the solution of the problem of the law of succession of treaties and agreements. Its distinguishing feature was that it was the first international agreement concluded between qualitatively new subjects of international law, namely, two States in which power belonged to the people. From the juridical point of view, there was every reason to consider it as the first international treaty to lay the foundation for a new kind of international relations; that was its historical significance in his delegation's opinion.

3. His delegation considered that a new contribution had thus been made to international law. It could not agree with the arguments adduced by the Commission in paragraph 66 of its report for excluding social revolution, since ordinary changes of Government or revolts usually meant a social revolution.

4. His delegation agreed with the Commission that the "clean slate" principle should not apply to treaties relating to boundary régimes and other territorial régimes. The proposed article 12 *bis* in foot-note 54 of the report was of great interest, since all countries were directly affected by multilateral treaties of universal character. It was certainly in the interests of all countries that a treaty of that kind should remain in force until such time as the newly independent State gave notice of termination of the said treaty for that State. Thus, the principle of absolute continuity was rejected. His delegation therefore supported the proposed article 12 *bis* and would like to see it included among the draft articles. His delegation also supported the Commission's recommendation that the General Assembly should invite Member States to submit observations on the final draft articles.

5. He noted that the Commission had continued its work on the question of State responsibility and had adopted new articles 7-9 in that regard (see A/9610, chap. III, sect. B). His delegation agreed with the provision in article 5 that the conduct of any State organ having that status under the internal law of that State should be

considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question. Articles 6 and 7 were the logical consequence of, and supplementary to, article 5. They were explanatory rather than normative, and their purpose was to prevent a State from rejecting its international legal responsibility.

6. With regard to the attribution to the State of the conduct of persons acting in fact on behalf of the State, there was no doubt that the conduct of a person or group of persons should be considered as an act of the State under the conditions listed in article 8. There seemed to be no difference between article 9 and Mr. Ushakov's proposal in the Commission[1] except that the latter was clearer and more accurate and therefore preferable in the opinion of his delegation. In view of the urgency of the question, the Commission should give the highest priority to the question of State responsibility. The draft resolution to be adopted by the Sixth Committee on the item should contain a recommendation to that effect.

7. The Committee also had before it articles 1-6 adopted by the Commission on the question of treaties concluded between States and international organizations or between two or more international organizations (*ibid.*, chap. IV, sect. B). With regard to article 3, from the purely legal point of view agreements could be concluded only between subjects of international law, and his delegation therefore doubted the necessity of mechanically accepting article 3 of the Vienna Convention on the Law of Treaties[2] and incorporating it into the draft. Article 6 was of significance for international law, since it rightly generalized the practice of international organizations and formulated a new international legal standard.

8. The Commission had specific tasks which called for time and academic study, and its structure and methods of work reflected those tasks. Although it had achieved substantial successes, the conclusion should not be drawn that its structure and methods of work were ideal or complete; there was always room for improvement. The past work of the Commission should be carefully weighed, taking into account its special nature. The question required further examination on the basis of mutual understanding among the various organs concerned. Finally, his delegation saw no need to extend the length of the Commission's sessions.

9. Mrs. SLÁMOVÁ (Czechoslovakia) welcomed the progress made towards the development of international law and expressed appreciation for the work of the Commission in the 25 years of its existence, as a result of which a good many lacunae in international law had been filled. It was clear from the Commission's report that it had carried out the General Assembly's recommendation in resolution 3071 (XXVIII) that it should complete the second reading of the draft articles on succession of States in respect of treaties and continue its work on State responsibility. The draft articles adopted by the Commission derived from existing principles of State succession and could be a substantial contribution to the codification and progressive development of international law. It was clear from the report that the views of Member States had been taken into account, including those of her Government.

10. One major principle underlying the draft articles was the "clean slate" principle, which was a sound approach. However, since the principle had not been carried to its logical conclusion, ambiguities had arisen. That was particularly clear in respect of States formed as a result of separation of parts of a State, in which case the Commission proposed that the agreement should continue to have effect, i.e. it applied the principle of continuity, as laid down in article 33. Her delegation regarded the "clean slate" principle as essential in the case of States resulting from separation and offered the example of her country in 1918, which had come into being following the collapse of the Austro-Hungarian Empire. The Czech and Slovak peoples had had no opportunity to express their approval or disapproval of the treaties concluded by Austria-Hungary, and, as an independent State, Czechoslovakia had had every right to decide which treaties would be applied. Moreover, the "clean slate" principle did not run counter to the proposed article 12 *bis* on multilateral treaties of universal character.

11. Another important question which needed to be settled was that of notification. Notification should be retroactive to the actual date of succession of States. In article 22, paragraph 2, of the draft, the Commission had proposed as a solution the temporary suspension of a treaty as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession. The effects of such a suspension would be mitigated if provision was made for the possibility of temporary application, as was done in article 26 in respect of multilateral treaties. Such a solution would be fully in keeping with the underlying spirit of the draft as a whole.

12. The question of the period of notification also had a wider significance because of the danger that a lack of confidence in treaty relations generally would emerge. It would be advisable for the Commission to examine that issue more closely and to clarify precisely the concept of the moment of succession. The Commission might consider whether the determining factors should be purely objective, i.e. a declaration by the successor State, or whether other factors should be taken into account. Article 2, paragraph 1 *(e)*, did not provide a clear answer.

13. With regard to the question of State responsibility, her delegation could agree in principle with the three new draft articles produced by the Commission at its twenty-sixth session. However, further clarification was needed on certain points.

14. With regard to article 7, concerning attribution to the State of the conduct of other entities empowered to exercise elements of the governmental authority, her delegation welcomed the Commission's efforts to exclude from the draft any formulation which might in practice imply the responsibility of a State for acts committed by persons and groups other than those acting on behalf of the

1 A/CN.4/L.208.

2 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

State or exercising the prerogatives of State power. Not all social or other institutions were thus empowered. Article 7, paragraph 2, should be further clarified so as to make it plain that an organ which was not a part of the official State structure was only to be regarded as acting on behalf of the State if it was exercising the prerogatives of State power or customarily did so.

15. Article 8 demonstrated the Commission's wish to eliminate misunderstandings which might arise from ambiguous terminology, but her delegation felt that further clarification was required, particularly in subparagraph *(a)*, in order to prevent the application of that article to acts which were represented as acts of a State and which in fact were not.

16. The fact of the existence of two drafts of article 9 showed how complex was the point involved. Further clarification was needed in the definition of organs which came under the jurisdiction of States. The article could not cover persons not empowered to exercise the prerogatives of State power, such as doctors and technical assistance personnel. She felt that the article proposed by Mr. Ushakov was more adequate than that adopted by the Commission, because it contained most of the considerations which were set forth in the Commission's commentary to article 9 but not included in the Commission's text.

17. Her delegation welcomed the Commission's intention to examine questions such as failure on the part of States to fulfil international obligations, including, first and foremost, those relating to the maintenance of peace. There was also the question of the need to distinguish the degree of seriousness of obligations and violations thereof and the question of international crimes recognized as such in international law. Contemporary international law already accepted the concept of the exceptionally grave responsibility of States whose representatives or individual private nationals acting on the State's behalf committed acts constituting violations of peace. The question had already been dealt with during the drafting of the Statute of the International Court of Justice. She cited, among other instruments relating to the definition of international crimes, General Assembly resolution 260 A (III), which contained the Convention on the Prevention and Punishment of the Crime of Genocide, and General Assembly resolution 2621 (XXV) declaring the further continuation of colonialism a crime in violation of the Charter of the United Nations. Other General Assembly and Security Council resolutions and appeals similarly condemned racial discrimination and *apartheid*, acts against dependent peoples, the use of arms to promote and support racism, and acts of aggression against the sovereignty and territorial integrity of any State. The prohibition of such acts was enshrined in the Charter as a principle binding on all. It would be advisable for the Commission to examine those questions with a view to seeing how imperialist States might be prevented from committing acts under the cover of private enterprises such as international monopolies.

18. She expressed regret that the Commission had been unable to deal directly with the question of the most-favoured-nation clause at its twenty-sixth session. Her delegation felt that the draft articles on that topic should contain provisions which were not limited to the most-favoured-nation clause in agreements between States but extended as well to agreements between international organizations and States and perhaps even between international organizations. In its further work on that topic, the Commission should include provisions covering the principle of the unconditional nature of the most-favoured-nation clause unless otherwise provided, as proposed by the Special Rapporteur in his fourth report.[3] The draft articles should contain unambiguous provisions governing the period during which most-favoured-nation treatment was to be accorded and should provide that most-favoured-nation treatment should be extended *de facto* and not merely *de jure* to arrangements with third parties, unless otherwise agreed. The work done so far by the Commission and the Special Rapporteur on that topic formed a good basis for the eventual codification of that important sector of international law.

19. She welcomed the fact that in the near future the Commission would concentrate primarily on further issues of State responsibility and would prepare draft articles on the topic of succession of States in respect of matters other than treaties. In her delegation's view, questions of succession of States should be dealt with together on the basis of unified principles.

20. With regard to other topics, her delegation fully endorsed the Commission's proposed long-term programme of work. It did not, however, support the proposal to extend the Commission's session to 12 weeks. The intended aim of that proposal could be equally well achieved by organizational efficiency.

21. The importance of the codification and progressive development of international law for international co-operation was stressed in Article 13 of the Charter, and the Commission was making a major contribution to peaceful coexistence among States.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990)

22. Mr. GHAUSSY (Afghanistan) referred the Committee to his statement at the 1479th meeting. He thanked those representatives who had shown understanding for the cause of the landlocked countries.

23. The draft definition of aggression (see A/9619 and Corr.1, para. 22) which was the result of a compromise, possessed the merit of affirming the right of peoples to self-determination, freedom and independence. However, his delegation would have preferred a more complete definition covering other forms of aggression such as

3 A/CN.4/266.

economic aggression. None the less, the draft definition was a first stage in the process of defining aggression, which would contribute to the codification of international law.

24. He appreciated the delicate balance which had been achieved in the draft definition but wished to point out again the omission from article 3 *(c)* of any reference to the problem of landlocked countries. His delegation supported the trend in the United Nations in recent years to regard as desirable the adoption of decisions by consensus or without a vote. However, while seeking to reach a consensus through informal consultations, representatives must be aware of the true meaning of the word "consensus" or of a decision taken without a vote. It did not mean that all difficulties had been overcome or that reservations might not be in order. It was in that spirit that he was introducing working paper A/C.6/L.990, whose sponsors had been joined by Zambia. In submitting the working paper, which contained an additional clause designed to correct the omission in the definition, he observed that the special situation of the landlocked countries mentioned by his delegation the previous year had perhaps not been brought home with sufficient emphasis to the Special Committee on the Definition of Aggression in the final stage of its work.

25. The only difference between the case of a landlocked country which had been refused the right of access to and from the sea and that of a State whose ports and coasts were blockaded by another State, as laid down in article 3 *(c)*, was that the landlocked country had no coastline; the nature of the act and its consequences were the same. Article 3, subparagraphs *(f)* and *(g)*, mentioned indirect aggression, but surely the blockading of a landlocked country's routes of access to the sea was also a case of indirect aggression. Among the landlocked developing countries, his country was one of the least developed because, for a landlocked country to survive and develop, it must be able to use routes of access to and from the sea. Therefore, if such access was denied, an act of aggression was involved.

26. Out of respect for the consensus reached concerning the draft definition, his delegation and the other sponsors had submitted not a formal amendment but a working paper, and he hoped that a similar consensus could be reached through continued informal consultations so as to obtain a more comprehensive and therefore more acceptable definition for the international community.

27. Mr. GODOY (Paraguay) referred the Committee to the statement he had made at the 1483rd meeting. At the previous session, it had been suggested to the Special Committee that it should include the blockade of routes of access to the sea of landlocked countries in the definition of aggression. That suggestion had been based on the principles of justice and the sovereign equality of States.

28. States which had a coastline were sufficiently protected by the definition of aggression as drafted, in particular by article 3 *(c)*. However, it was wrong to disregard the 30 or so States without a coastline which required as much if not more protection than the others because of the many disadvantages to which they were subject.

29. He appealed to the Committee to adopt working paper A/C.6/L.990 by consensus and without further discussion, since it was not a formal amendment but merely a suggestion designed to correct an omission which could prove harmful to certain Member States.

30. Mr. MAI'GA (Mali) referred the Committee to his statement at the 1480th meeting. When a coastal State had its ports blockaded, the landlocked countries dependent on those ports were as seriously affected as the coastal State itself. Working paper A/C.6/L.990 corrected an omission in the draft definition. It had been drawn up in conformity with the spirit of the Charter of the United Nations, in particular Article 2, paragraph 4, and Article 74. It would not upset the delicate balance of the definition of aggression but would serve to prevent any ambiguity in the application of the definition to landlocked countries. It was a further contribution to the strengthening of peace and security in the spirit of the definition, and the Drafting Committee of the Special Committee should take it into account.

31. Mr. LEKAUKAU (Botswana) said his delegation was confident that the draft definition of aggression would result in improved international relations. However, working paper A/C.6/L.990 proposed a necessary amendment to the draft definition in order to correct an omission which landlocked States could not permit to pass unnoticed. His delegation's request for the incorporation of the amendment into the draft definition was founded on recent developments in the law of the sea. He referred the Committee to the statement by his delegation at the 33rd meeting of the Second Committee at the United Nations Conference on the Law of the Sea in Caracas and to the statement by the Chairman of his delegation at the 2261st plenary meeting of the General Assembly on 8 October 1974 concerning his country's rights as a landlocked State. The addition to article 3 *(c)* of the clause contained in working paper A/C.6/L.990 would make it clear that if access to the sea was impeded by a blockade of the borders of landlocked States, the action would amount to aggression. That was particularly important to countries like his own which had common borders with countries ruled by white minority régimes. His Government's attitude towards such régimes was well known to all United Nations organs, and States like Botswana should not be forced by a lack of protection under international law to forgo their right to criticize the policies of the minority régimes.

32. His delegation shared the desire to preserve the consensus reached on the draft definition and was aware that the latter was the result of a delicate compromise. However, the proposed addition did not disturb the draft in substance but merely amplified article 3 *(c)* and should be interpreted as referring strictly to coastal ports. He urged the Committee to adopt the working paper in order to guarantee the security of landlocked States.

33. Mr. SINGH (Nepal) said that, as a sponsor, his delegation joined earlier speakers in supporting the working paper introduced by the representative of Afghanistan; it hoped that the working paper would be adopted by consensus in the Committee.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued)** **(A/C.6/L.980, L.982, L.983, L.985, L.986)**

34. The CHAIRMAN informed the Committee that the representative of Democratic Yemen had expressed his regret at having been unable to be present at the Committee's 1481st meeting. He wished it to be recorded that, had he been present he would have voted against the Israeli motion for division and in favour of draft resolution A/C.6/L.980.

The meeting rose at 12.15 p.m.

* Resumed from the 1481st meeting.

1489th meeting

Thursday, 31 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1489

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. KLAFKOWSKI (Poland) congratulated the Chairman of the International Law Commission on his masterly presentation of its report on the work of its twenty-sixth session (A/9610 and Add.1-3) and stressed the quality of the various draft articles set forth in the report. The codification of international law was becoming an increasingly complex and difficult task. The emergence of a large number of States had created a new climate in the political as well as in the diplomatic, economic, cultural and legal senses, so that the codification of international law must meet new needs and aspirations. The Commission had achieved major successes in that field due to its method of work. As Mr. Suy, Under-Secretary-General and Legal Counsel, had said, before the Commission at its 1265th meeting, "The success of the Commission's method of work" was "undoubtedly characterized by the continuous interaction of scientific expertise and governmental responsibility throughout the preparation of a codification draft. Such interaction required much time . . .".

2. So far 10 multilateral conventions had been concluded on the basis of drafts drawn up by the Commission. The report under consideration made a particularly important contribution to international law, since it set forth draft articles for three different conventions and gave a preliminary outline of principles for another set of draft articles.

3. It should be noted that the work of the Commission was only one stage in the process of codifying international law. The annual consideration of the Commission's report made it possible to assess its scientific work in the light of the realities of international life, represented by governmental delegations. The codification process was highly successful because of such multilateral diplomacy.

4. With reference to the statement by the representative of Iraq at the 1485th meeting he stressed the importance of the democratization of the international community, which was particularly noticeable in the codification of international law. The work of the Commission was affected by that democratization process, and influenced State practice, legal scholarship and the teaching of international law. It should be added that in its work the Commission benefited on a permanent basis from the valuable assistance of the Codification Division.

5. His delegation considered that the draft articles on succession of States in respect of treaties *(ibid.,* chap. II, sect. D) were concise, well-drafted and supplemented by excellent commentaries. His country was one of the 14 States Members of the United Nations which had already submitted written observations on the draft articles (see A/9610, annex I).

6. The Commission had so far adopted only a few articles on State responsibility, but they were the outcome of a remarkable work of synthesis and laid down fundamental rules based on international practice and jurisprudence. Since the subject of State responsibility was highly controversial, it was too early, at the current stage of the Commission's work, to make even preliminary observations.

7. Chapter IV of the report on the question of treaties concluded between States and international organizations or between two or more international organizations was impressive in its clarity, precision and simplicity. That question was of great importance for multilateral diplomacy. The six articles already adopted were the result of a major research effort.

8. He stressed the value of the report on the law of the non-navigational uses of international watercourses already drawn up by the Sub-Committee established to study that subject (see A/9610, chap. V, annex).

9. He recalled that his delegation had always been in favour of updating the Commission's long-term programme of work.

10. Mr. QUENTIN-BAXTER (New Zealand) said that his delegation did not intend to discuss in detail the draft

articles set forth in the Commission's report, so brilliantly presented by its Chairman. It preferred to give its views on the general principles underlying those drafts, the working methods of the Commission and the value of the drafts for the lawyers of the United Nations.

11. The succession of States in respect of treaties was a particularly difficult branch of the law of treaties. However, it was a field which had given rise to few disputes and one in which States respected each other's interests.

12. Like all the other Special Rapporteurs, Sir Humphrey Waldock had regarded himself as being at the service of the Commission, not in order to put forward his own ideas, but to take into account legal scholarship. Legal scholarship had taken rather a different turn from that of his draft articles. That was why O'Connell, the New Zealand author of a vast study of State practice in the field of succession to treaties, and the International Law Association were in favour of continuity of obligations. Sir Humphrey had first followed another course, one seldom found in Anglo-Saxon scholarship but the starting-point of which was a right recognized in the United Nations, the right of self-determination. Basing himself on State practice, and the practice of the Secretary-General of the United Nations as the depositary of international treaties and unilateral declarations by newly independent States as to their attitude towards the treaty obligations incurred by predecessor States, the Special Rapporteur had come to the conclusion that the "clean slate" principle took precedence over that of continuity. That starting-point was not easy for lawyers in Oceania to accept, since they were used to regarding their countries as heirs to the rights and obligations of the United Kingdom and any other Power from which they originated. At the second reading of the draft articles, Tonga had called in question the relevance of the "clean slate" principle. His own country had often invoked old bilateral treaties concluded by the United Kingdom long before New Zealand's birth. It took time for a new State to conclude new treaties, and his Government knew by experience that a newly independent State should not be deprived of its place in international society from the moment it emerged. That was why the principle of continuity should be taken into consideration, even in the case of new States. One member of the Commission, Mr. Tammes, had pointed out that the rule of continuity should be applied at least to universal law-making treaties. However, the majority of the Commission members had considered that the right of self-determination should be the key to the draft articles, and had pointed out that State practice in respect of treaty succession had never been uniform. Another member of the Commission, Mr. Ago, had recalled that the principle of continuity had not been applied at the time of the unification of Italy. That had also been true in the case of the dissolution of the Austro-Hungarian empire. States showed consideration for each other and attached some importance to the attitude of the newly independent State itself.

13. As the draft articles were considered by the Commission, the anxieties of some of its members had been allayed when they had realized that the Special Rapporteur took sufficient account of the interests of newly independent States. In particular, the draft articles of 1972[1] enunciated in part III, section 2, the principle according to which a newly independent State had the right to become a party to a general multilateral treaty without the consent of the other parties to that treaty. A procedure was laid down whereby the newly independent State could indicate first in a preliminary way and later in a definitive way that it chose to succeed to the rights and obligations of the predecessor State.

14. The desire to give special preference to newly independent States was accompanied by a concern for third States. International practice, which was not uniform, seemed to suggest that in the case of a bilateral treaty or a limited multilateral treaty, the rights and obligations only passed to the successor State with the consent of both parties to the treaty.

15. The Commission had then taken into account the position of States other than newly independent States. It had recognized that in the case of the formation or dissolution of a union of States, it was desirable and in accordance with State practice that treaty rights and obligations should be maintained; it had also recognized that in some cases of the disruption of a State, where the part that had broken away did not regard itself bound by the agreements concluded by the predecessor State, the "clean slate" principle should be applied. That was when Sir Francis Vallat had replaced Sir Humphrey Waldock as the Special Rapporteur, and he too had effaced his own opinions in favour of the general view. In turn, Sir Francis had accorded some importance to the principle of continuity, and had drawn up the draft articles in consequence. His draft articles retained in essence all that had been proposed concerning newly independent States in the earlier draft; however, Sir Francis had elaborated on the part dealing with cases of succession not involving newly independent States. He had dealt in greater detail with cases of the formation and dissolution of unions of States and had provided for the case where a part of an independent State separating from it might regard itself as not being a successor to that State.

16. That glimpse of the Commission's work demonstrated clearly its working method. The time was gone when in every field of knowledge world opinion would crystallize around the views of a given theoretician, as was the case in international law for the theories of Grotius. The system of the Special Rapporteur, who was responsible only to the Commission and the General Assembly, was more complex. The Special Rapporteur did not work alone; he took into account the views, criticisms and questions of his colleagues and the members of the Committee as well as the commentaries of Governments. Such collegiality and sharing of responsibilities did not prevent the Rapporteur from taking initiatives. Moreover, the system of special rapporteurs, who were not responsible to their own Governments and whose work was, in the first instance, criticized by their colleagues, who also did not receive instructions from their Governments, was perhaps peculiar to the fellowship of the law. It was not found in other United Nations bodies, but it had some definite advantages. Since

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1 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10,* chap. II, sect. C.

they were independent, the members of the Commission could work in an atmosphere of impartiality and loyalty which was certainly a positive factor in the development of international relations.

17. At its preceding session, the Commission had also continued its study of the question of State responsibility and had added three articles to the draft being prepared (*ibid.*, chap. III, sect. B). That subject related to the philosophy of law and required a re-examination of certain basic principles which had been taken for granted. The Commission had therefore not adopted the conventional approach of determining State responsibility on the basis of the rights of aliens.

18. Under the guidance of Mr. Ago, who, like other special rapporteurs, had been assisted by a small but skilled secretariat, the Commission had adopted three articles on State responsibility after studying the concepts on which responsibility was based. Those articles were thus only one part of a much broader work, which could not be judged until it had been completed. Lawyers from different backgrounds, disciplines and systems of law would attach varying degrees of importance to each part of the draft. Thus lawyers trained in civil law would tend to see in the first of the three articles submitted the major rule and, in the others, additional rules covering exceptional circumstances. Others, trained in common law, would attach more importance to other concepts. Such differences should not, however, cause concern at the current stage in the preparation of the draft.

19. The Commission had also made some progress on the question of treaties concluded between States and international organizations or between two or more international organizations. At its twenty-sixth session, the Commission had dealt only with preliminary rules and therefore still had to consider the substance of the question, but his delegation considered that the topic was in the very best of hands because the Special Rapporteur, Mr. Reuter, had a knowledge of the law of international organizations which was unrivalled, was guided by international opinion, took into account the views of Governments and made his experience available to them. Governments had a considerable stake in that task of codification. To justify itself, the law must always meet two standards: it must take account of the wishes of States and of those of specialists throughout the world who established objective rules. That goal was far from being achieved, but it was one to which all aspired.

20. With regard to the Commission's methods of work, the Commission's arguments and the comments of the Chairman of the Joint Inspection Unit (see A/9795) should be seen in a broader context. His delegation was of the opinion that the Commission was not claiming any special privileges or any kind of treatment not based on a very modest assessment of its own needs so that it might carry out its duties to the General Assembly. During a 12-week session, the Commission had prepared a very large report, completed its work on the law relating to succession of States in respect of treaties and had made progress in its work on two other topics. It was therefore reasonable to conclude that, unless it could continue in that way, it would not be able to meet the General Assembly's requirements. The speed with which the Commission carried out its work did not depend on the number of its plenary meetings, which often had to be interrupted so that a drafting committee could meet and, sometimes, the drafting committee had to space its meetings so that the Secretariat could have time to do the necessary work. One of the many advantages the Commission enjoyed was that, in addition to the services of the New York Secretariat, continuous translation, interpretation and other services were available to it in Geneva. It was quite remarkable that, at a time when the demand for language services was such that it could not be met, the Commission still had the services of people whose language skills were matched by their knowledge and understanding of legal terminology and of the law itself. In addition to those advantages, the services provided by the library in the Palais des Nations were of great assistance.

21. The Commission achieved its objectives and fulfilled its tasks because of its members' esprit de corps and confidence in one another and because they were aware of their responsibilities and knew that they could not allow their standards to become debased. Since the Commission was composed of persons appointed on an individual basis, some of its members had professions which left them little freedom or held positions of such great responsibility in their own Governments that no one could replace them in their absence. If the Commission were requested to hold sessions of 12 weeks rather than 10, that would not mean that all its members would attend all the meetings during those 12 weeks, but, rather, that it would be able to proceed with its work at the same speed as at present and that the quality of its output would not be affected. If all those factors had been made clear, there would have been no conflict with the Joint Inspection Unit.

22. The methods adopted by the Commission were justified because it had in some ways the characteristics of an extremely well-organized voluntary institution where unpaid work was often done. His delegation did not consider that any change in the Commission's working conditions would be of benefit to the United Nations, and hoped that the Committee would request the General Assembly to encourage the Commission to continue its work in accordance with its usual methods.

23. Mr. HAGARD (Sweden) said that his delegation, too, greatly appreciated the outstanding work done by the Commission during its first 25 years of existence.

24. The report submitted to the Committee was devoted mainly to the question of succession of States in respect of treaties. The Commission had now prepared a final draft of 39 articles on that topic and, in view of the difficulty of its task, his delegation could easily understand that the Commission had not been able to respond to the initiative of the Swedish Government, which had suggested in the antepenultimate paragraph of its observations on the draft articles (see A/9610, annex I) that an alternative model should be prepared. In that connexion, he wished to stress that his country fully accepted the right of any newly independent State to decide in full sovereignty whether or not it wished to be bound by treaties concluded before its independence. There were several technical means of arriving at that result and his delegation was prepared to accept any solution which received the support of a vast majority of States. The report of the Commission showed,

however, that some members had expressed some concern about the effects of the "clean slate" principle in the case of humanitarian conventions and other multilateral treaties of universal character. Some members had even proposed that the Commission should apply to such treaties the system of *de jure* continuity combined with a right of denunciation. His delegation considered that that proposal, which the Commission had not been able to discuss because of the lack of time, should be given further study. Moreover, in view of the particular importance and complexity of the question of succession of States in respect of treaties, his delegation considered that Governments should be allowed ample time to study the articles and submit their observations, as recommended by the Commission in its report.

25. One general feature of the draft must be stressed. In practice, the application of the provisions of the draft would probably give rise to conflicting interpretations by the parties concerned. He noted, for example, that the rules applicable to newly independent States depended on whether the new State acquired independence or was created as a result of the separation of one or several parts of a State. A newly independent State was thus a State which had been a dependent territory before succession. The draft articles did not, however, contain a definition of the concept of a dependent territory and it might therefore be asked what legal criteria distinguished a dependent territory from a part of a State. The matter was further complicated by the fact that the draft also referred in article 33 to an intermediate category, namely "a part of the territory of a State" which "separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State".

26. Another example of a basic provision open to different interpretations was draft article 16, paragraph 1 of which contained a general rule which paragraphs 2 and 3 limited by exceptions giving legal effect to circumstances difficult to determine in any definite way. There was no doubt that the structure of the draft articles justified and even required the inclusion of provisions of that kind, but his delegation wished to stress that their interpretation might give rise to disputes between the parties concerned. It therefore seemed highly advisable to establish an effective procedure for the settlement of disputes arising from the application of the articles. The Commission was, moreover, aware that such a procedure might be needed and had offered, if such was the wish of the General Assembly, to consider the question at its twenty-seventh session and prepare a report on the subject. His delegation felt that that offer should be accepted and that the relevant instructions should be given to the Commission.

27. Those observations showed that it would be premature for the General Assembly to take a decision at the current session on the question of convening a diplomatic conference on the question of succession of States in respect of treaties.

28. Besides preparing the final draft on succession of States in respect of treaties, the Commission had been able to advance its work on several other subjects on its agenda. In particular, it had added a number of new articles to its draft on State responsibility. The Swedish delegation was gratified that the Commission intended to deal with that extremely important subject as a matter of priority at its twenty-seventh session. It also took note of the interesting report submitted by the Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses and trusted that his Government would have the opportunity at a later date to comment on the substance of the questions dealt with in that report.

29. During its 25 years of existence, the Commission had developed methods of work which were undoubtedly satisfactory, as was shown by the success of its work. It was essential therefore that the ILC should enjoy considerable freedom in organizing its work. It would be regrettable if administrative measures were taken which, in the judgement of the Commission, would seriously impair its conditions of work. Even if it should cause some inconvenience to the over-all planning of United Nations conferences, the Commission ought to be provided with the facilities which experience had shown to be productive.

30. Mr. KOLESNIK (Union of Soviet Socialist Republics) observed that the Commission had concentrated on three questions, namely, succession of States in respect of treaties, State responsibility, and the question of treaties between States and international organizations or between two or more international organizations. In paragraph 84 of its report, the Commission recommended that the General Assembly should invite Member States to submit their written comments and observations on the Commission's final draft articles on succession of States in respect of treaties and convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject. Such optimism was premature, since the draft articles were not yet ready to be taken as a working basis for a conference. However, the provisions of the draft were of considerable theoretical and also practical importance, since it seemed to be agreed that they reflected current international rules. Two questions were particularly important: boundary treaties and the "clean slate" principle.

31. Draft article 11 provided that a succession of States did not affect a boundary established by a treaty or obligations and rights established by a treaty and relating to the régime of a boundary. Boundary treaties established an objective régime which confirmed a *de jure* and *de facto* situation of great importance for the maintenance of peace and international security. The newly independent State inherited the situation, not the boundary treaty. Article 11 therefore reflected a strongly entrenched rule. However, the relationship between article 11 and articles 6, 7 and 13 was not clearly defined. Articles 6, 7 and 13 should be drafted in such a way as to avoid any ambiguity or any interpretation which might detract from the provisions of article 11. While the basic concept of article 6 was not open to doubt, his delegation was not satisfied with its wording. Article 7 corresponded to the law in force, and in that connexion he called to mind the historic period linked to the creation of some 10 independent States in Asia and Africa as a result of decolonization. He questioned whether article 13 should be retained, since questions relating to the validity of a treaty were the concern of the Vienna Convention on the Law of Treaties.

32. He recalled that at the previous meeting the representative of Mongolia had made an excellent analysis of the "clean slate" principle. Draft article 15 provided that a newly independent State was not bound to maintain a treaty in force, with the exception of boundary treaties. That thesis was not satisfactory because it did not distinguish between unjust treaties concluded in the framework of a colonial situation and contemporary treaties concluded between States with different social systems and based on the principle of peaceful coexistence. Furthermore, it did not take into account multilateral treaties regarding international peace and security and co-operation on a non-discriminatory basis. The evolution of international law had thus been ignored. Currently, many principles of contemporary international law were of a democratic nature; but the "clean slate" principle, as reflected in the draft, politically and theoretically weakened the role of international law and its influence on international relations. Instead of contributing to the progressive development of international law, the draft strengthened the tendency to limit treaty relations and ran counter to the development of international relations.

33. He pointed out that his delegation's attitude should not be construed as opposition to the "clean slate" principle, but only to the formulation of that principle in the draft. His delegation supported the "clean slate" principle inasmuch as it was based on the freedom of newly independent States to maintain a treaty in force or not. All treaties should not automatically lapse for a newly independent State, since treaties created not only obligations but also rights which might turn out to be indispensable. It would therefore be appropriate to adopt a different viewpoint in cases of unjust treaties and in cases of treaties which conformed to the Charter.

34. The "clean slate" principle and the question of the invalidity of unjust treaties were closely related to the legal consequences of social revolution. His delegation regretted that the authors of the draft articles had not concerned themselves with the problems raised in the case of social revolution, and it could not accept the argument contained in paragraph 66 of the report, which rejected the distinction between social revolution and coup d'état. If the Special Rapporteur and the Commission had analysed the experience of the social revolution of October 1917 and that of other countries, they would undoubtedly have reached a different conclusion. He remarked that the draft articles contained other lacunae and inadequacies, and could not therefore be submitted in its present state to a conference convened for the purpose of concluding a convention. The text of the draft would have to be submitted to States for their observations, and the Commission should re-examine it in the light of the comments made by Governments and by the Sixth Committee and of the proposals concerning multilateral treaties of universal character and methods for settlement of disputes concerning the provisions of the future convention.

35. With regard to the question of State responsibility, he considered that little and hesitant progress had been made in that field by the Commission, whereas according to General Assembly resolution 3071 (XXVIII) the Commission should have continued on a priority basis at its twenty-sixth session its work on State responsibility. It was odd that the Commission, in over 20 years of existence, had been able to study only nine articles, concerning general principles and purely theoretical questions, and had ignored the problems which were at the heart of the question. State responsibility for acts of aggression and international crimes was of great importance, and he expressed the hope that the Commission would give the problem all due attention.

36. His delegation wished to point out that the work of the Commission was not keeping pace with the evolution of the international situation. It should therefore speed up its work of codification. He stressed that the problem of increasing the efficiency of the Commission's work was a point on which the Joint Inspection Unit shared the opinions of his delegation, which could not approve the Commission's recommendation to the General Assembly concerning 12 week sessions, contained in paragraph 165 of its report.

37. The criticism made by his delegation did not mean that it underestimated the role of the Commission with regard to the codification and progressive development of international law, and he had deliberately not mentioned the achievements of the Commission: to do so would require giving due credit to its work regarding questions such as the law of the sea, diplomatic immunity and protection of diplomatic agents. It was on the basis of drafts prepared on those questions by the Commission that it had been possible to adopt conventions. Quoting the words of Aristotle, "Plato is my friend, but truth is dearer to me", he said that, subject to the observations he had made, his delegation would not oppose adopting the report.

38. Mr. MILLER (Canada) stressed the vital role played successively by Sir Humphrey Waldock and Sir Francis Vallat as Special Rapporteurs in the preparation of the draft articles on succession of States in respect of treaties.

39. The Commission had rightly given due attention throughout its study of the question to the practice of newly independent States, as recommended by the General Assembly. His delegation, however, had some doubt whether enough weight had been given, in the introductory portion of the report on that topic, to the many instances in which, without controversy, new States had continued to apply the treaties entered into by their predecessors. The report in paragraph 58 referred to the traditional "clean slate" principle as the underlying norm for cases of newly independent States or for cases that might be assimilated to them; and it went on to say in the following paragraph that the "clean slate" metaphor was merely a convenient and succinct way of referring to a newly independent State's general freedom from obligation in respect of its predecessor's treaties. The impression was thus conveyed that that represented evidence of State practice. As some Governments had noted in their observations on the draft articles, it was questionable whether a study of State practice led irresistibly to the "clean slate" conclusion. In many cases State practice in connexion with devolution agreements and with unilateral declarations appeared to demonstrate a presumption of continuity. That had been argued by some distinguished writers who saw in the high rate of treaty

succession during the decolonization era of the recent past and present substantial evidence of the continuity of rights and obligations. There were also some cases where the practice of newly independent States had been ambiguous. It therefore seemed somewhat misleading to speak of the "clean slate" theory as though it were derived from a study of State practice and amounted to a codification of existing law.

40. His delegation supported the general approach taken in part III of the draft, regarding newly independent States. In article 15 the so-called "clean slate" rule was not framed as a presumption against succession but simply as a denial of automatic succession. A newly independent State was not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of succession of the State the treaty applied to its territory. The option thus given to a newly independent State was without prejudice to the rights and obligations of the other States concerned as set forth in the relevant provisions of the articles. Those articles provided a balance between the protection of the interests of the new State and those of any interested State with regard to the so-called localized, territorial or depositary treaties dealt with in articles 11 and 12. The approach taken by the Commission corresponded to the practice of the Secretary-General as depositary, as noted in paragraph (9) of the commentary to article 15. In general, the articles appeared to make as flexible as possible the position of a new State which wished to continue to participate in a treaty.

41. With regard to the form of the draft, his delegation noted with interest the Commission's proposal, in paragraph 84 of the report, to the effect that after Member States had submitted their written comments and observations on the draft articles, an international conference should be convened to conclude a convention on the subject. Nevertheless, his delegation was not convinced that a convention would be the best type of instrument for advancing international law on the subject. First of all, as the Commission had pointed out, new States could only become parties to such a convention after they had acquired statehood. Secondly, it was unlikely a large number of further new States would emerge, so that to some extent such a convention might not be necessary. Thus his delegation was not persuaded that an early conference was necessarily the most desirable course to follow. An interval of three to five years could have certain advantages: it would allow for a thorough study to be made by scholars and Governments of all implications of the draft articles; the General Assembly could ask the Secretary-General to prepare a report on his depositary practice and experience in light of the Commission's draft articles, including the feasibility of greater precision and promptness in the dissemination of treaty information by depositaries; it might permit the Commission to study the question of the succession of Governments to treaties which were likely to be a recurring problem in the future; and it might allow a consensus to develop on whether the topic, as an ancillary to the law of treaties, should or should not be codified as a convention. It might be that a declaratory statement of principles formulated by the Sixth Committee would be just as effective as a guide to States. Should the topic be codified as a convention, provision for settlement of disputes would be desirable. Canada favoured procedures which would be compulsory rather than merely optional and would support a conciliation procedure followed, if unsuccessful, by compulsory recourse to either the International Court of Justice or to arbitration, with a decision to be binding on the parties.

42. The question of succession of Governments was a matter of obvious significance and one which in many respects could be the source of more problems than the succession of States. The present time was the twilight of the colonialist era and the succession of States would progressively diminish in importance, whereas the same could not be said of the question of the succession of Governments. Although the Commission had given priority to succession of States, his delegation recalled that the topic had originally been entitled "Succession of States and Governments". In 1963, the Commission approved the recommendation of the Sub-Committee on the Succession of States and Governments that the Special Rapporteur should study succession of Governments only to the extent necessary to complement the study of State succession.[2] Although the General Assembly in resolution 1902 (XVIII) had endorsed that decision, the question that might be asked was whether it might not be preferable to consider the codification of the entire question of succession with respect to treaties, including both the succession of States and the succession of Governments. His delegation suggested that such a possibility should be considered.

43. His delegation welcomed the progress made by the Commission in its study of the delicate question of State responsibility. The Canadian Government took a keen interest in the development of that particular branch of international law, which was of vital importance to the harmonious conduct of inter-State relations.

44. His delegation also wished to endorse the preliminary work of the Commission on the question of the non-navigational uses of international watercourses. That too was a subject of great importance to the world community and one in which Canada was particularly interested. His delegation also hoped that the Commission would be able to complete its work on the most-favoured-nation clause in the near future.

45. The Canadian Government was aware of the broad scope of the work done by the Commission and therefore had reservations regarding the observations of the Joint Inspection Unit contained in the Unit's report on the pattern of conferences of the United Nations (see A/9795). His Government had consistently supported initiatives to rationalize the workings of the United Nations and its subsidiary bodies whenever it felt such initiatives would render those institutions more efficient. It felt, however, that the Commission represented a special case. The Commission was a unique body, whose members served in their personal capacity, and was not comparable to other international institutions composed of governmental representatives. For that reason, his delegation believed that

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2 *Ibid., Eighteenth Session, Supplement No. 9,* annex II, para. 9.

the Commission should be given every consideration in terms of adequate facilities and sufficient time to enable it to discharge the important and urgent task assigned to it by the General Assembly. Therefore, if the Commission considered it desirable to extend its next session from 10 to 12 weeks, the Canadian delegation was prepared to support that recommendation.

46. The quality and importance of the work done by the Commission throughout the 25 years of its existence were worthy of recognition. The Commission had been quite right in refusing to make any categorical distinction between the two aspects of the task assigned to it. Codification, of necessity, involved the development of new laws, even if only in terms of filling the "gaps", and conversely, progressive development did not take place in a vacuum, but rather drew upon existing legal resources, at least in its initial stages. The scope of international law had expanded considerably since the Commission had opened its first session in 1949. The Commission had proved flexible enough to adjust to such new developments as the elaboration of the law relating to outer space and the environment, while at the same time maintaining the continuity of the carefully considered inquiries over the long term. The measure of autonomy it enjoyed contributed significantly to the effective results it produced. The role of the Commission was likely to be of ever increasing importance in the future, and he had no doubt that the next 25 years would see it make an equal contribution to the formulation of international law, which was the concrete manifestation of co-operation among States in the various spheres of international life.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990)

47. Mr. KASHAMA (Zaire) welcomed the delegations of Guinea-Bissau and Grenada.

48. In introducing working paper A/C.6/L.990, he said it was unfortunate that the Special Committee on the Question of Defining Aggression should have decided to limit the scope of its draft definition (see A/9619 and Corr.1, para. 22) to armed aggression. That attitude could, of course, be explained by the historical circumstances behind the creation of the Committee; it would, however, have been desirable to consider the problems posed by other forms of aggression, such as economic aggression. His delegation realized that the provisions of article 4 of the draft definition provided a reference to the powers of the Security Council in the event it might determine the existence of other acts of aggression, but it could not help being sceptical about the effects of the veto power enjoyed by the great Powers.

49. His delegation therefore proposed that the Sixth Committee should apply the adage *"qui peut le plus peut le moins"*, and approve working paper A/C.6/L.990. He asked that the views of his delegation should be reflected in the report of the Sixth Committee to the General Assembly.

The meeting rose at 5.45 p.m.

1490th meeting

Friday, 1 November 1974, at 3.30 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1490

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. VILLAGRAN KRAMER (Guatemala) said that the International Law Commission's report (A/9610 and Add.1-3) showed the complexity of the codification of international law in a changing world beset by conflicts. Those two factors perhaps explained why it was difficult to reflect in a legal instrument situations which were affected or even to a large extent created by economic or political factors. His Government tried each year to define legal norms which were useful in its relations with other States and international organizations.

2. There was no doubt that the Commission encountered problems in the course of its work. While codifying some rules of international law, it must take into account changes which States sought to introduce into the international legal order. It had been said, not without reason, that the development of international law required the participation of the developing countries; currently, their contribution was making itself felt in an increasingly active and dynamic way, and the practical results were evident.

3. The succession of States in respect of treaties and State responsibility were matters of great interest for countries which wished to define legal rules in those areas, taking into account the decolonization process which had begun in the 1950s. But it might be said that the other items on the Commission's agenda were just as important, if not more so.

4. With reference to the succession of States in respect of treaties, the Commission had pursued its study on two points which were closely related in so far as there was a legal bond between a territory and an international treaty. Therefore, that question covered both the succession of

States and the secession of one or several States. The "clean slate" principle held good in either case, so that the consensual element was of capital importance in both cases.

5. In studying boundary régimes, the Commission had not taken into account changes in the situation or the circumstances under which treaties establishing the boundary or boundaries might be signed. There had been cases where countries had been obliged to establish their boundaries under disadvantageous circumstances and, under pressure, to cede part of their territory which they would not otherwise have given up. In the case of both succession and secession, boundaries established by conventions were stable and caused no problems so long as the parties had freely consented thereto.

6. His delegation welcomed the fact that the Commission had excluded from its draft articles dealing with the uniting of States, associations of States having the character of intergovernmental organizations. There was, however, a difference between purely governmental associations and some communities based on economic or economic and political union, which thereby became new subjects of international law. Sometimes the States members of a community were obliged to terminate commitments which might prejudice the relations of the community with third States, so that the community would not be bound by a former régime. In other cases, by separating from a community, a State might or might not succeed to the community with regard to a legal régime relating to a territory or a boundary régime directly affecting the successor State. It would therefore be desirable to harmonize the various points of view on the question.

7. His delegation congratulated the Commission on its work on the draft articles on treaties concluded between States and international organizations or between two or more international organizations. Details should be included in article 6 of the draft (*ibid.*, chap. IV, sect. B) on the exercise of the powers inherent in the nature of international organizations. In view of current trends, it was sometimes difficult to determine whether a multinational public enterprise qualified as an international organization or not. The establishment by States of other subjects of international law also raised a whole series of problems, and among other things it would be appropriate to know whether the legal personality of an organization established within the framework of a regional or subregional economic integration plan should be recognized at the international level or not.

8. It was clear from the Commission's work on the non-navigational uses of international watercourses that it would take into account the unity of hydrographic basins. The Commission should consider to what extent the legal régime it was seeking to establish would apply only to strictly international stretches of watercourses and in what cases that régime would remain applicable when a watercourse ceased to be international in character. If the unity of hydrographic basins was recognized, it seemed that the theory of sovereignty was not fully applicable.

9. He regretted that the Commission had spent less time on the report of the Special Rapporteur on the most-favoured-nation clause than on the report of the Joint Inspection Unit (see A/9795). The most-favoured-nation clause was of great interest to the developing countries. It had given rise to negotiations between States on matters completely alien to trade relations, and the incorporation of clauses providing for exceptions in many treaties proved that there was a tendency to attenuate the effects of the most-favoured-nation clause, or in any case to limit them with as many stipulations as possible. One of the serious problems encountered by the developing countries in their trade relations with the industrial countries depended precisely on the operation of the clause. A study on the matter carried out in Latin America showed how defence mechanisms had been established in recent years, and the way in which the clause was applied within the framework of subregional economic integration plans.

10. He congratulated the Commission on the significant report it had submitted to the Committee.

11. Mr. ZEMANEK (Austria) stressed the quality of the Commission's report, which demonstrated the competence of its members and the efficiency of their methods of work. As stated in its written observations submitted in 1973 (see A/9610, annex I), his Government fully agreed with the structure of the draft articles on succession of States in respect of treaties (see A/9610, chap. II, sect. D) and their underlying principles. It would make known its position on individual articles at the conference of plenipotentiaries which should be convened by the General Assembly. For the time being, he would touch only upon the new elements in the draft.

12. At the twenty-sixth session of the Commission (see the report, foot-notes 54 and 55), two proposals had been made which had not been incorporated in the draft. One of them was the addition of article 12 *bis* concerning multilateral treaties of universal character. His delegation considered that that proposal seemed to derive from a misconception of the nature of a notification of succession; in fact, the latter was always retroactive to the date of independence. There was therefore no hiatus and article 12 *bis* was not necessary. If some States none the less felt that the text of the draft should be clarified on that point, they could put forward amendments at the conference of plenipotentiaries.

13. With reference to the other proposal, article 32, entitled "Settlement of Disputes", which it was also proposed should be added to the draft, experience showed that the formulation of such a provision usually required negotiation, and it would be better dealt with by the diplomatic conference.

14. He recalled that his Government, in its written observations submitted in 1973, had disagreed with the provisions of paragraph 2 of draft article 19–article 15 of the 1972 draft[1] –concerning the reservations which a newly independent State could formulate when making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty. However, in view of the reasons given by the Commission in paragraph 20 of its commentary on that article, it would reassess its position.

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[1] See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

15. In 1974, the Commission had undertaken a first reading of two other sets of draft articles. Three articles had been added to the draft on State responsibility (see A/9610, chap. III, sect. B) they were based on concepts which his Government supported. Moreover, articles 1-6 of the draft articles on treaties concluded between States and international organizations or between international organizations had been adopted (*ibid.*, chap. IV, sect. B), and his Government again supported the way in which the Commission had approached the subject. The Commission should, however, decide whether it could continue to base its work on the pattern of the Vienna Convention on the Law of Treaties. Given the general and provisional nature of those articles, they did not for the moment call for detailed comment, with the possible exception of article 6, concerning the capacity of international organizations to conclude treaties. To say that "the capacity of an international organization to conclude treaties is governed by the relevant rules of that organization" might suggest that an organization might extend its treaty-making capacity at will by adopting or developing through practice rules to that effect. It was his Government's understanding, however, that the power of an international organization to determine its capacity to conclude treaties was limited by the object and purpose of the organization as set forth in its constituent instrument.

16. The Commission had also taken up the topic of the law of the non-navigational uses of international watercourses. The report of the Sub-Committee set up study that topic (*ibid.*, chap. V, annex) contained a number of important questions which would be put to States. As a riparian State of one of the great European rivers, the Danube, Austria would study those questions with great care. His delegation wished to note at the outset that the "Helsinki Rules" on the uses of international rivers, adopted by the International Law Association in 1966,[2] did not always provide equitable solutions to the very complex problems which arose in that sphere. Moreover, his delegation, while recognizing the seriousness of the problem of the pollution of international watercourses, considered that it should not be taken up in the initial stage, as State practice in that respect was scarce. It would be better to study other uses first and to deduce from that study the underlying principles which could then be applied to pollution as well.

17. His delegation regretted the controversy which had developed over the report of the Joint Inspection Unit. The different viewpoints of the Commission and the Unit could easily have been reconciled if the latter had been willing to enter into a dialogue.

18. Mr. ALVAREZ TABIO (Cuba) said he recognized the importance of the work done by the Commission and considered that the draft articles on the succession of States in respect of treaties constituted a useful basis for the further consideration of the problem. As a whole the draft articles had been worked out carefully, taking into account both past experience and the current situation. It should not be forgotten that the established practice originated mainly from the traditions of the colonial Powers which had tried to make all countries accept the rules which they had imposed through pressure on small and weak States. Hence the importance of article 13, which provided that "Nothing in the present articles shall be considered as *prejudicing in any respect any question relating to the* validity of a treaty." That provision was closely related to article 52 of the Vienna Convention on the Law of Treaties,[3] under which "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations". Before the First World War, international law had not taken into account such acts of coercion exercised by one State over another to extort its consent. However, with the coming of the Charter of the United Nations the invalidity *ab initio* of any treaty whose conclusion had been procured through the use of force was enshrined as a principle of international law. In the opinion of his delegation the interpretation of the term "force" should not be restricted because, besides armed force, economic or political pressures constituted acts of coercion, as the Conference of Heads of State or Government of Non-Aligned Countries held at Cairo in 1964 had declared.

19. Turning to the draft itself, he noted that its principal merit was that it had taken into consideration the consequences deriving from the principles established in the Charter, in particular that of self-determination. The Commission had reached the conclusion, set forth in article 15, that a new independent State was exempt from any obligations in respect of treaties concluded by the predecessor State. According to article 16, the "clean slate" principle applied to all treaties, both bilateral and multilateral, with the exception of cases of treaties concerning boundary régimes and other territorial problems as envisaged in articles 11 and 12.

20. His delegation considered that the provisions of article 12 should be made clearer, because they could be interpreted to cover an infinite range of supposedly territorial treaties. Concerning transfer agreements, they clearly had no legal value unless they represented the freely expressed will of the successor State. Conventions of that type had sometimes been imposed by coercion and such a situation naturally invalidated the transfer agreement.

21. With regard to the meaning and scope of some of the terms used in the draft articles, his delegation did not share the idea that the concept "succession of States" meant "the replacement of one State by another in the responsibility for the international relations of territory", as stated in article 2, paragraph 1 *(b)*; the term "responsibility" had a special connotation in international law and it was not simply a matter of "international relations of territory" but of relations affecting sovereignty over a particular territory. Since the people of a given territory was called on to exercise its sovereignty and its right to self-determination, it was for that people to say whether or not it wished to assume the responsibilities deriving from the pre-existing conventional relations, which involved both rights and obligations.

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2 See *Integrated River Basin Development* (United Nations publication, Sales No. E.70.II.A.4), annex VII.

3 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

22. Concerning the expression "newly independent State", paragraph (6) of the commentary to article 2 in the Commission's report indicated that it signified a State which had arisen from a succession of States in a territory which immediately before the date of the succession of States had been a dependent territory for the international relations of which the predecessor State had been responsible. But the Commission, after studying the various historical types of dependent territories, such as colonies, trusteeships, mandates and protectorates, had excluded the categories of associated States from the concept of a newly independent State. However, the terms of free association often concealed what was purely and simply integration. Moreover, in order to achieve the progressive development of international law, it was necessary to include the new forms of colonialism in the concept of dependent territories. Liberation from neo-colonialism and the installation of a new régime which was fully independent both politically and economically also involved a succession of States.

23. Similarly, his delegation could not share the opinion expressed in paragraph 66 of the Commission's report on the subject of social revolution. A revolution which completely transformed the economic and social structure and which entailed the transfer of political power to the exploited classes did not involve a mere change of government alone but the birth of a new type of State. That was not a theoretical problem but a real problem and a phenomenon which had appeared with the Great October Revolution of 1917, the point of departure for profound transformations in the development of mankind and in the concept of a State and in law.

24. If the future convention was not to cover either the new forms of colonialism, or cases of social revolution, and if in accordance with article 7 it was to provide for the application of the principle of non-retroactivity, one could ask what purpose it would serve. It was clear that the draft articles did not correspond to the interests of either the new States which had emerged from the decolonization process or of those which would liberate themselves from new forms of colonialism in the future. His delegation reserved the right to make more detailed comments on the question.

25. Turning to the question of State responsibility, he considered it preferable to postpone the detailed consideration of that question but nevertheless wished to refer to article 8 on the attribution to the State of the conduct of persons acting in fact on behalf of the State. That article should be made clearer, particularly with regard to the case envisaged in subparagraph *(b)*. Indeed, any person who assumed power by force, against the will of the people and by abolishing all existing legal institutions, was simply usurping power, and his acts were unjustifiable. His delegation therefore had serious reservations about that rule, as it could not agree that such actions should be considered as acts of the State under international law.

26. In subparagraph *(a)* of article 8 the Commission had provided for the case of persons acting on behalf of the State. The case of transnational enterprises, which were not content with acting on behalf of the State but seized the machinery of the State for their own interests, illustrated that case. In the context of State monopolistic capitalism, which extended its tentacles over the underdeveloped world, the monopolies were not at the service of the State: it was the State which became a servile tool of the monopolies.

27. With regard to the organization of the Commission's work, his delegation, too, considered that the Commission should accord priority to the questions of State responsibility and the succession of States in matters other than treaties. But as the latter question was closely linked to the succession of States in respect of treaties, his delegation advocated the elaboration of a single convention or at least the establishment of uniform principles.

28. Mr. BRACKLO (Federal Republic of Germany) said that the Commission, in accordance with its established practice, had put the results of its work on the succession of States in respect of treaties into the form of draft articles. However, it had not done so without hesitation, and had first had to determine to what extent a convention on the succession of States would actually be applied in practice. Its doubts on that point had grown with the insertion of article 7 which precluded any retroactive application of the rules set forth in the articles. Nevertheless, his delegation agreed with the insertion of article 7–a provision that expressly precluded the retroactivity of the convention in respect of succession which had occurred before the entry into force of the convention. His delegation was also aware of the consequences arising out of article 28 of the Vienna Convention on the Law of Treaties which set out the principle of non-retroactivity of treaties. As the Commission had recognized in paragraph 62 of its report, participation by successor States would involve delicate problems relating to the method of giving consent to be bound by the convention and the retroactive effect thereof.

29. His delegation shared the view finally taken by the Commission that a convention on the subject had its own value irrespective of the possibility of any practical application. The consolidation of legal rules applicable to the succession of States was an important step forward in reaching international consensus in a most significant field of law. That progress was particularly to be welcomed because the draft articles were not simply an identification of existing rules, but also a progressive development of international law, given the fact that international practice in the field of the succession of States had produced few rules that were consistently applied. And yet the Commission's approach had enabled it to produce a text that could meet with a large measure of approval.

30. Despite its positive appraisal of the draft as a whole, however, his Government had some doubts on certain points. For example, the Commission had felt that the "clean slate" principle, which had been supported by many States, was a proper basis for dealing with the succession problems facing newly independent States. His delegation thought that the principle must be qualified and noted that the only exceptions in the draft concerned boundary and

territorial régimes. Apart from that, the draft did not differentiate between various categories of treaties. His delegation would have preferred to see an obligation of continuity stipulated in the case of certain treaties. In order to prevent too extensive an interpretation of the "clean slate" principle, it might be useful to incorporate a reference to the concept of continuity elsewhere in the draft, possibly in the preamble.

31. Subject to a more thorough examination, his delegation believed that the amendments to the draft submitted to the Sixth Committee were a considerable improvement on the 1972 text. In rewording articles 33 and 34—articles 27 and 28 of the 1972 text—and eliminating the question of the dissolution of States the Commission had rightly been guided by State practice rather than by theoretical concepts. On the other hand, certain terms that were not, strictly speaking, legal terms had been used in the provisions; they might not adequately cover the variety and complexity of future cases.

32. Several delegations had indicated, in connexion with article 33, paragraph 3, that the rules regarding newly independent States would also have to apply in cases where one part of a State had achieved independence in the course of a social revolution. His delegation did not feel that the analogy could be drawn in such general terms. It was an accepted principle of international law that no State could plead even revolutionary changes in its constitution or domestic structure as an excuse for evading treaty obligations.

33. The situation in Germany had been mentioned during the discussion of the draft articles. His delegation reminded the Committee of the position it had taken at the previous session (1402nd meeting). The divided States which had appeared after the Second World War were a relatively new phenomenon in international relations. They gave rise to extremely complex and special problems. The development in Germany had by no means yet ended. It was therefore hard to come to general legal conclusions. His delegation believed that definitive solutions could not be derived from existing practice in the field of succession of States or from an international convention of the type envisaged, which would in any case have no retroactive effect.

34. Regarding the two new articles proposed by Mr. Ushakov and by Mr. Kearney which the Commission had been unable to consider for lack of time and which were in foot-notes 54 and 55 of the report, respectively, he reminded the Committee of Mr. Ushakov's suggestion in the Commission that certain multilateral treaties of a universal character should remain binding on newly independent States, as an exception to the "clean slate" principle applicable in all other cases. The treaties involved would be certain categories of treaties of a humanitarian nature and treaties concluded for the purposes of maintaining international peace and security. His delegation could not support that suggestion, because it felt that the criteria proposed by Mr. Ushakov did not permit a clear delimitation of the categories of treaties contemplated and would be a source of uncertainty. Moreover, the proposed text did not contain any clause ensuring the continuation of the treaties in question: it was intended that new States should be free to terminate at short notice any treaty to which they had not originally acceded. There would be certain risks involved in that, because some of the agreements in question were by their nature not subject to denunciation and contained elements of customary international law.

35. His Government had noted with great interest Mr. Kearney's proposal for a mandatory procedure for the settlement of disputes, modelled on the conciliation procedure in article 66 of the Vienna Convention on the Law of Treaties. The draft articles should contain a provision of that nature. His Government welcomed the Commission's offer to consider the question of the settlement of disputes at its twenty-seventh session and to prepare a report. His delegation hoped that the General Assembly would adopt a recommendation to that effect. The most appropriate procedure for the further consideration of the draft articles seemed to be first to invite States to submit their views on the draft articles and subsequently to convene an international conference to elaborate a convention on the basis of the draft articles.

36. His Government was following with interest the progress of work in the field of State responsibility. The definition of principles of international law on wrongful acts would certainly have an effect on certain basic aspects of international life. One such aspect was the protection of human rights—a subject of particular concern to his country. During its discussions, the Commission had contemplated the possibility of making any convention that might be elaborated retroactive. Such a solution could lead to the resumption of long settled international disputes and be a source of legal uncertainty. Moreover, a large number of States would certainly consider the possibility of a retroactive application of the convention as a reason not to ratify it. It would therefore seem desirable that the Commission should add to its draft an article similar to the one included in the draft convention on the succession of States so as to exclude any retroactive application. Similarly, his delegation approved the Commission's decision to consider the liability of States for injurious consequences arising out of the performance of certain activities that were not prohibited by international law. It seemed reasonable to defer consideration of the subject until the Special Rapporteur had also dealt with the concept of injurious consequences in the report he was preparing. There should be identical definitions for that concept in both fields of State responsibility.

37. His delegation welcomed in principle the Commission's endeavours to codify and develop the law of treaties concluded between States and international organizations and between two or more international organizations. There were a number of considerable differences between those two categories of treaties. They included the capacity to conclude treaties, defects which could prevent a treaty from being concluded and the procedures for the conclusion of treaties. There was also the question of the principle embodied in the general law of treaties that

treaties between States applied only *inter partes*. It must be established whether that principle was equally valid for treaties concluded with international organizations "behind" which there were the individual member States. In view of the close relationship between the two subjects, the highest possible degree of homogeneity was required between the Commission's draft convention and the Vienna Convention on the Law of Treaties. Regarding the capacity of international organizations to conclude treaties, his delegation approved the wording of article 6 of the Commission's draft.

38. The study of the law of the non-navigational uses of international watercourses was of practical interest to his country, since it shared a number of waterways with other States. With regard to the question of whether to give priority to the study, his delegation's attitude was flexible. It wished, however, to point out that the increase in the use of water for other than navigational purposes would give rise to increasingly frequent clashes of interest on an international scale. The international community might greatly profit from speedy action on the problem; and his delegation appreciated the Commission's deliberations concerning the organization of work. The recommendation of the Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses that priority should be given to the question of pollution was justified. However, that should only be procedural priority, since, from the material point of view, the study of uses in general was equally important. Consideration of the aspects of the problem which were not related to pollution should not be delayed.

39. Another question raised by the Sub-Committee concerned co-operation between the Commission and other organizations. His delegation was of the opinion that all duplication of work should be avoided; it had in mind, in particular, the United Nations Environment Programme, the Council of Europe, the International Commission for the Protection of the Rhine against Pollution and other river commissions. Those special international arrangements would have precedence over the regulations to be formulated by the Commission. Practical arrangements concerning the use of international watercourses should be sought at the bilateral and regional levels, while at the universal level the emphasis should be on the formulation of general principles.

40. With regard to the Joint Inspection Unit's report and the unfortunate misunderstanding to which it had given rise, his delegation considered that the Unit deserved the Committee's confidence and support. On the other hand, it was clear that the Unit had not been able to consider the issues concerning the Commission from all angles. The members of the Commission were not Government representatives, and their work could not be measured by the same criteria as the deliberations of other bodies. Thorough research and informal talks were as necessary for the good quality of the Commission's work as plenary meetings. Therefore, when the competent bodies considered the report of the Unit, they should take into account the arguments of the Chairman of the Commission (1484th meeting) as well as the views expressed in the Sixth Committee on the question. His delegation considered that there was a good case for extending the Commission's twenty-seventh session from 10 to 12 weeks, since its programme of work was particularly heavy. However, it did not seem necessary to decide at the current stage whether all future sessions should be extended to 12 weeks.

AGENDA ITEM 93

Review of the role of the International Court of Justice *(continued)** (A/C.6/L.987/Rev.2, L.989)

41. The CHAIRMAN drew the attention of members of the Committee to draft resolution A/C.6/L.987/Rev.2, which was the result of consultations between the sponsors of the initial draft resolution (A/C.6/L.987/Rev.1) and the Mexican and Kenyan delegations, which had sponsored an amendment (A/C.6/L.989) to the initial draft resolution.

42. Mr. GOMEZ ROBLEDO (Mexico), introducing draft resolution A/C.6/L.987/Rev.2 on behalf of the sponsors, observed that the negotiations had made it possible to insert an eighth preambular paragraph in the initial draft resolution which contained the substance of amendment A/C.6/L.989. The Kenyan and Mexican delegations had therefore withdrawn that text and had become sponsors of draft resolution A/C.6/L.987/Rev.2.

43. He thanked the delegation of the Netherlands for having taken the initiative on the initial draft resolution and expressed his gratitude to the members of the Committee for the spirit of co-operation and goodwill they had shown.

44. The CHAIRMAN proposed that draft resolution A/C.6/L.987/Rev.2 should not be put to the vote until the beginning of the following week in order to give the delegations time to study it.

It was so decided.

Letter dated 7 October 1974 from the Chairman of the Second Committee to the President of the General Assembly concerning chapter VI, section A.6, of the report of the Economic and Social Council (continued)** *(A/9603, A/C.6/431)*

45. The CHAIRMAN recalled that at its 1475th meeting, the Committee had decided to set up a small working group to consider the text of a draft agreement between the United Nations and the World Intellectual Property Organization (WIPO), under which WIPO would become a specialized agency of the United Nations. Taking into account the consultations he had held in the meantime with the representatives of the regional groups, the Chairman proposed that the working group should comprise the representatives of the following countries: Austria, Bangladesh, Cameroon, France, Guatemala, India, Jamaica, Japan, Kenya, Netherlands, Poland, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America,

* Resumed from the 1485th meeting.

** Resumed from the 1475th meeting.

and that Mr. Gana (Tunisia), Vice-Chairman of the Sixth Committee, should be appointed Chairman of the working group.

It was so decided.

46. The CHAIRMAN invited the Chairman of the working group to convene it as soon as possible after consultation with the Secretariat.

The meeting rose at 4.50 p.m.

1491st meeting

Monday, 4 November 1974, at 11.00 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1491

Tribute to the memory of Mr. P. E. Nedbailo

At the invitation of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. P. E. Nedbailo, former representative of the Ukrainian SSR to the Sixth Committee.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) observed that because of the large number of questions on its agenda the International Law Commission had been unable to consider the problems raised by the succession of States other than in respect of treaties and by the most-favoured-nation clause.

2. The Commission had studied the question of the succession of States in respect of treaties for more than 20 years and it was a problem of immediate interest for all the new States which had appeared during that period of time. It was now a matter of urgency to complete that work. The draft articles submitted to the Sixth Committee (see A/9610, chap. II, sect. D) reflected the attention given to many aspects of the question such as the right of peoples to self-determination. It also showed the many analogies with the provisions of the Vienna Convention on the Law of Treaties.

3. The two fundamental concepts of the succession of States and of newly independent States should be unambiguously defined. The succession of States was the replacement of one State by another in the responsibility for the international relations of the territory. That succession was valid for all international relations and not only in respect of treaties; it also applied to all types of new States. Moreover, a newly independent State was a State whose territory had not been autonomous before succession and whose international relations had formerly been directed by another State. The concept therefore included all forms of accession to independence. The text of the draft clearly specified that the articles applied only to the effects of a succession of States occurring in conformity with international law, so that cases of aggression or occupation were excluded.

4. The Commission had ignored certain aspects of contemporary reality; for example, it had not stated its opinion on the elimination of certain colonial régimes. Nor had it tackled the question of the succession of States in cases of social revolution. That type of situation could constitute decolonization as the change of régime fundamentally modified the status of a subject of international law, and the new State must be able to reconsider its international relations. That was the road which the Soviet Union had followed after the revolution in October 1917 when it had annulled the treaties concluded by czarist Russia which were contrary to the interests of the workers. Other countries had found or would find themselves in the same situation and those countries must be able to make a free choice of the obligations which they wished to assume.

5. In its report the Commission sometimes rightly made a distinction between States and international organizations in respect of international law; but, in other cases, it seemed to make no such distinction. However, there was no doubt that the status of a subject of international law was not the same for States and for organizations. For example, in paragraph (4) of its commentary to article 32, the Commission seemed to consider the European Economic Community (EEC) as a community of States with the status of a subject of international law. However, the EEC was not a single State but an association of States, i.e. an international organization. In its studies of practice relating to treaties the Commission should have preferably confined itself to the institutions of the United Nations system.

6. The preparation of the draft should be completed by referring it to States for their views and thereafter resubmitting it to the Sixth Committee for a decision.

7. The work of the Commission on the responsibility of States was progressing slowly. Two comments could be made. Firstly, a State should be responsible for the actions of any institution on its territory, whether it was an organ of the State or any other kind of institution. The basis of such an affirmation was that a State could and should exercise its authority over any institution under its jurisdiction. It should also be determined which institutions were State organs. The examination of the constitution of a particular State should make that clear, as it indicated who could exercise the prerogatives of public power. There was no doubt that the study of those two aspects would bring

out more clearly the dimensions of the responsibility of States.

8. It was necessary to distinguish clearly between civil responsibility and State responsibility as such. It was also necessary to define the legal status of the acts of State organs. In some cases certain functions were temporarily entrusted to a body which was not a State organ but whose activity should nevertheless entail the responsibility of the State. In its report, the Commission appeared to approve such a distinction and to exclude the responsibility of the State when the damaging act was the work of a private law entity. That attitude was untenable because the State was indisputably responsible for the activities of its nationals when they violated international law and, more particularly, the Charter of the United Nations. A State was failing in its responsibilities if it did not prevent its nationals from engaging in illegal activities. Thus, for example, if the press or radio of the private sector conducted a racist campaign in a country, under the pretext of the freedom of speech, international law was being violated and therefore the responsibility of the State was involved.

9. In elaborating law on the responsibility of States, the Commission should take into account different types of actions such as crimes against peace, war crimes and crimes against humanity. The international instruments confirmed that need. The responsibility of States deriving from the nature of sanctions and the scope of international responsibility should also be studied. His delegation considered that it would have been easier to approve the draft on the responsibility of States if from the start it had been submitted as a whole rather than in successive parts.

10. On the subject of treaties concluded between States and international organizations or between two or more international organizations, his delegation stressed that the basis of the capacity of international organizations to conclude treaties lay in the relations which existed between the institutions of the United Nations system and the United Nations itself. The Commission did not seem to have paid sufficient attention to the question of whether the greater latitude allowed to international organizations in the conclusion of agreements or treaties was liable to lead to the establishment of conventional relations with racist régimes under instruments which would therefore be contrary to the Charter and to the interests of the international community.

11. The Commission felt that the tempo and nature of its work made it necessary to extend its twenty-seventh session from 10 to 12 weeks. His delegation was aware of the important work accomplished by the Commission. However, it did not believe that an extended session would suffice to enable the Commission to complete the work undertaken on the various items on its agenda. It could not accept the tendency, which it noted each year, to prolong sessions.

12. On the occasion of the twenty-fifth anniversary of the Commission, his delegation recalled that body's contribution to the codification of contemporary international law. If hoped that the Commission would be able to work more expeditiously in the future on the elaboration of instruments favourable to the progress of juridical rules which all States and all international organizations could apply effectively. The Commission must carry out more promptly the tasks assigned to it, by maintaining closer contact with Governments and by taking account of the opinions expressed by delegations to the General Assembly. Better co-ordination of the Commission's activities and related work by other United Nations bodies was also necessary.

13. His delegation approved as a whole the report submitted to the General Assembly.

14. Mr. JAZIĆ (Yugoslavia) said that he was gratified that the Commission had adopted and submitted to the General Assembly a final draft of articles on the succession of States in respect of treaties. It went without saying that the draft submitted called for detailed study by Governments, and his own Government would submit its views on the subject in due course. He therefore proposed to outline his delegation's general impressions, without prejudging the final position of his Government. A number of problems which had merely been touched upon in the original draft had been dealt with in a more detailed manner in the new draft articles, and in that regard he wished to lay stress on the role played by the Special Rapporteur, Sir Francis Vallat.

15. In elaborating the draft articles, the Commission had proceeded from two points of view: from the general law of treaties or from the Vienna Convention on the Law of Treaties, and from the various aspects that succession in respect of international treaties might acquire in practice. The Commission had endeavoured to implement the Vienna Convention as consistently as possible and had largely succeeded in doing so. Furthermore, it had elaborated more thoroughly the rules concerning succession through the uniting or separation of States. However, the question of succession of newly independent States in respect of international treaties continued to be at the centre of the discussions, since the liquidation of colonialism had made it necessary to adopt rules in that sphere. The Commission had based itself on the "clean slate" principle, which was in conformity with the principle of self-determination and applied fully to newly independent States, which was not the case of the principle of continuity *de jure*. His delegation welcomed the solution adopted by the Commission, as it saw in it a confirmation of the right of peoples to self-determination as a fundamental principle of contemporary international law in general. By the same token, taking into account the conditions in which devolution agreements had been concluded, especially in the case of newly independent States, the rules envisaged in article 8 relating to agreements transferring devolution of obligations or of treaty rights from a predecessor State, seemed to be fully justified. The rules concerning uniting and separation of States which established the principle of continuity, had been elaborated in greater detail than in the first draft articles,[1] which might have conveyed the impression that the Commission had been concerned primarily with the situation of newly independent States, which was now no longer the case.

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1 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

16. The draft articles could serve as a basis for the elaboration of a convention by an international conference of plenipotentiaries, and his delegation supported the recommendation by the Commission in paragraph 84 of the report in which it suggested that the General Assembly should invite Member States to submit their written comments and to convene a conference of plenipotentiaries.

17. Turning to the question of State responsibility, he welcomed the additional articles adopted by the Commission (*ibid.*, chap. III, sect. B). The current level of development of international relations made it imperative to accelerate the elaboration of rules in that regard. Moreover, the General Assembly had underscored that need in resolution 3071 (XXVIII), and it would be useful if the Commission could place before the Sixth Committee a number of more important articles, to enable it to form a clearer picture of the question.

18. With regard to the question of treaties concluded between States and international organizations or between two or more international organizations, he stressed the need to elaborate uniform draft rules, since the conclusion of treaties between States and international organizations and between international organizations themselves had become a normal practice in international life which called for a uniform solution. The United Nations itself needed to base itself on precise rules for the conclusion of treaties with States and other organizations. Since the Commission was merely embarking upon its work on the question, it would be premature to comment on the draft articles which it had adopted (*ibid.*, chap. IV, sect. B). However, his delegation commended it for linking the Vienna Convention on the Law of Treaties with its own work, which should consequently be facilitated. The Commission would have, in the future, to solve other extremely complex questions, such as those which were raised by the consideration of the capacity of international organizations to conclude international treaties and which the Commission had been able to resolve satisfactorily in article 6.

19. Turning to the problem of the law of non-navigational uses of international watercourses, he commended the Commission for its promptness in complying with the recommendation made at its preceding session by the Sixth Committee. The Sub-Committee set up by the Commission for the study of that question had revealed the complexity of the problem and shown the need to elaborate rules which would take into account not only legal aspects, but also geographical, technical and other aspects. His Government would carefully study the questions which the Commission would address to Governments on that subject.

20. His delegation wished to emphasize once again the importance of the Commission's work and to assure it of its support. The questions raised in relation to its methods of work should be viewed in the light of the results of its work. In order to contribute towards the progressive development of international law and its codification, as envisaged in Article 13, paragraph 1 *(a)*, of the Charter of the United Nations, the Commission should be able to continue its work in accordance with the methods and practices which had produced notable results in the past. For that reason, his delegation agreed with the view expressed by Mr. Ustor, the Chairman of the Commission (1484th meeting), that the role which the Commission, as a body composed of experts serving in a personal capacity, should play both within the United Nations and in the preparatory stage of the work on the codification and progressive development of international law. From the point of view of States, the doubts occasionally expressed with regard to that work were not justified, bearing in mind the Commission's contribution in strengthening respect for international law and in promoting application of the principles of the United Nations.

21. With reference to the long-term programme of work and the organization of the work of the next session of the Commission his delegation shared the views set forth in paragraphs 162, 163 and 164 of the report, while stressing that the Commission should give high priority to the question of the succession of States in respect of matters other than treaties in order to complete its work on the question of succession as a whole. His delegation also supported the proposal that the Commission should hold 12-week sessions, since it could thereby fulfil the tasks entrusted to it more easily. As in the past, the Commission had continued to co-operate with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, and it should further strengthen its relations with those bodies in future.

22. His delegation wished to thank the Commission for having devoted a meeting to the memory of Mr. Milan Bartoš, and having named after him the International Law Seminar which had been held during its twenty-sixth session.

23. Mr. ORREGO (Chile) said that the Commission had achieved its most important results in the field of the succession of States in respect of treaties. Owing to the remarkable studies made by Sir Humphrey Waldock and Sir Francis Vallat, the Commission had been able to complete its consideration of that very complex question. His delegation noted with satisfaction that the draft articles had as a general rule been based on the "clean slate" principle. Moreover, the draft also took into account the interest of the international community in facilitating the accession of a successor State to international treaties concerning it, especially in the case of multilateral treaties. The President of the Commission had drawn to the attention of the members of the Sixth Committee the problem of multilateral treaties of universal character, for which a different solution had been proposed, aimed at ensuring continuity of accession unless otherwise decided by the State concerned. But there remained a need to define exactly what was meant by multilateral treaties of universal character, since the lack of a definition could give rise to interpretations inconsistent with the "clean slate" principle.

24. His delegation also welcomed the progress made in the field of State responsibility, treaties concluded between States and international organizations or between two or more international organizations, and the law relating to non-navigational uses of international watercourses. Mention should be made of the great usefulness of the reference documents prepared by the Secretariat and those of the

legal department of the Organization of American States, since they represented an important source of information for the study in question.

25. With reference to the role of the Commission in the process of codification and the progressive development of international law, his delegation wished to express its concern at the fact that the Commission had focused its attention in the past few years on problems in the field of traditional international law. Despite their importance, there was little connexion between those problems and the questions currently facing the international community, and in particular the developing countries. The problems of the law of the sea or the law relating to outer space, the legal problems raised by the activities of multinational companies, both private and public, standards for the prevention of pollution or the improvement of the quality of the environment, and the problems of trade, development and international investments required international regulations. That was why it must be noted that the programme of the Commission had been incomplete. Some of those questions were under consideration by other United Nations bodies, but in most cases they were not dealt with from the point of view of international law. Thus, the Commission had considered the question of the most-favoured-nation clause, but he wondered why it had not also studied other principles, mechanisms and institutions of the international commercial system. In that connexion, the representative of Guatemala had made some interesting observations at the previous meeting. Agreements among producers, agreements on basic commodities, trade preferences, mechanisms of economic integration and State trade had been conceived precisely as alternative solutions to the most-favoured-nation clause, in order to ensure that in their international economic relations the developing countries would not enjoy only formal equality. Those solutions, no less than the most-favoured-nation clause, formed part of the system of international law.

26. The Commission should endeavour to include in its agenda questions of that kind, which, if they could not always provide a basis for codification, could at least lead to studies and analyses with a view to the progressive development of international law.

27. The Commission should also establish closer links with universities and other academic centres engaged in research and analysis in the field of international law. In that connexion, his delegation regarded as positive the initiative taken by the Commission to organize seminars during its session.

28. Another problem of concern to his delegation related to the politicizing of the election by the General Assembly of members of the Commission and also of the appointments made by the latter in the cases provided for under its Statute. His delegation felt that that was one of the reasons why the Commission, a functional body, was gradually losing its prestige. It was essential that bodies responsible for improving the international legal order, such as the Commission, should observe standards of seriousness, impartiality, efficiency and respect for the ideas forming the mainstreams of contemporary legal thought.

29. The observations of his delegation reflected its desire to see the Commission once again play its rightful role in the field of international law. But the Commission had also been subjected to criticism based not on the desire to improve its functioning, but on a lack of understanding which often characterized administrative bodies. His delegation deplored the fact that the Joint Inspection Unit, under the pretext of a *policy of administrative rationalization*, was attempting to direct the work of a functional body; and it could not agree with the ideas set forth in the report of the Unit (see A/9795), which were based on a partial view of reality and of the methods of work of the Commission, as shown by the fact that the Commission and the Secretariat had not been consulted.

30. His delegation wished to express its appreciation to the legal department of the Secretariat, and hoped that it would be able to strengthen its technical support to the Commission, the programme of which was becoming increasingly heavy; it was on the services of the Secretariat that the success of the work of the Commission largely depended.

31. Mr. ALKEN (Denmark) welcomed the fact that the report of the Commission was being taken up towards the middle of the session, which had given delegations time to familiarize themselves with it; he hoped that that would become a regular feature in the future.

32. At its last session, the Commission had completed the second reading of the draft articles on the succession of States in respect of treaties. Its work on those articles had been going on for a very long period of time, and the difficulties inherent in the whole matter of succession had been brought out, both in the reports of the Special Rapporteurs and the observations of member States and in the debate. The original intention of the Commission had been to relate the law of treaties to the phenomenon of succession, but the draft articles as they now stood proved the impracticability of that approach. The "clean slate" principle, on which the draft articles were based, was in accord with the political trends of the present period of decolonization. As it had stated in its written observations (see A/9610, annex I) and at the previous session (1403rd meeting), the Danish Government was in favour of that principle. The changes and additions made to the draft articles during the second reading showed, however, that the text would apply mainly to different problems from those which marked the period of decolonization. In the same written observations, the Danish Government had also said that the structuring and delimitation of the draft were acceptable; he did not wish to go back on that position, but he would like to comment briefly on a few points of detail.

33. Since the idea in articles 8 and 9 was the same—namely, that the draft articles should override devolution agreements and declarations of continuance—it should be possible to merge those two articles. In the view of the Danish delegation, any chance of simplifying the text of the draft should be seized, for it was still too complicated.

34. Article 10, paragraph 2, stipulated that for a successor State to be a party to a treaty, there must be an acceptance in writing, even if the treaty itself contained a provision for succession. The Danish delegation agreed with the Special Rapporteur that that stipulation lacked flexibility and that

there should be other ways in which the successor State could indicate its acceptance.

35. Article 18, on succession to treaties signed by the predecessor State, had given rise to a lengthy discussion in the Commission on the question of the inequality of treaties. The Danish delegation doubted whether it was worth while to retain that article, which had been suggested by the Commission as a trial balloon and which nobody seemed to favour very much.

36. The solution at which the Commission had arrived in article 22, on the problem of retroactivity, seemed to be a reasonable compromise. The Danish delegation appreciated the complications, which were mainly of a practical nature, that the implementation of the continuity principle would cause, and it supported the solution reached by the Commission.

37. His delegation had studied with interest the proposal, in foot-note 54 of the report, of a presumed continuity of multilateral treaties of a universal character, but it doubted whether the international instruments which would come into question could be defined with sufficient precision.

38. The compatibility test was frequently used in the draft articles. As the Danish Government had stated in its written observations, it was in favour of the addition of a provision on the settlement of disputes. The many questions left open by the compatibility test confirmed the need for such a provision.

39. Another thing that was clear from the written observations of the Danish Government was that it would prefer the draft articles to take the form of a convention. It would also prefer some codification conventions to be negotiated in the Sixth Committee rather than at a conference of plenipotentiaries.

40. The Danish delegation had noted the progress achieved by the Commission in the study of State responsibility. It hoped that the final form of presentation would be that of a declaration.

41. The energy crisis had generated renewed interest in the use of water resources for the production of hydro-electric power. Also, the increasing pollution of rivers had highlighted the question of the rights and duties of riparian States. That was why the Danish delegation welcomed the adoption of the report of the Sub-Committee set up by the Commission for the study of that topic (see A/9610, chap. V, annex), and the nomination of a Special Rapporteur. Codification would help to clarify the present state of international law on the subject and would form a general framework for the conclusion of bilateral treaties. The multitude of problems involved could hardly be regulated once and for all by a universal treaty.

42. The Danish delegation felt that the autonomy and the rhythm of work of the Commission should be respected, and it was in favour of a 12-week session. He announced that the Danish Government's contribution to the next International Law Seminar would again be $4,000.

43. Mr. SIAGE (Syrian Arab Republic) said that his delegation attached a great deal of importance to the Commission, which was responsible not only for codifying the old rules of international law but also for developing an international law that would meet the aspirations of the newly independent States which had not participated in the elaboration of the old rules.

44. Concerning the succession of States in respect of treaties, he welcomed the fact that the Commission had adopted the "clean slate" principle, according to which a newly independent State was free to accept or to reject commitments made in its name by the predecessor State. That principle was all the more important because some colonial Powers had concluded treaties which were not in the interest of the territories under their administration. On the whole, the Syrian delegation accepted the draft articles and considered that they constituted a useful working instrument for a conference of plenipotentiaries.

45. Regarding the Commission's study of State responsibility, some progress had been made but much still remained to be done. He emphasized the responsibility of States which committed acts of aggression or resorted to the use of armed force contrary to the Charter of the United Nations, and the responsibility of States which subjected a territory to military occupation or whose behaviour was contrary to international law, particularly if they plundered the natural resources or refused to pay compensation for the damage they caused.

46. The law of the non-navigational uses of international watercourses was of special importance. The adoption of the report of the Sub-Committee on that question and the nomination of a Special Rapporteur should speed up the work in that area. It was important that the Commission should take a certain number of principles into consideration, among which were the following: the right of all States bordering on a watercourse to use that watercourse to some extent, the geographical and hydrological characteristics of the expanse of water, past and present utilization of the watercourse and its importance from the social point of view and from that of the over-all development of the country, the present and future needs of each State with regard to the watercourse, the need to use other watercourses, what priority should be accorded to States whose economic development depended largely on a watercourse, and the possibility of paying compensation to settle disputes about watercourses.

47. The Syrian delegation welcomed the Commission's co-operation with other agencies, particularly the African-Asian Legal Consultative Committee.

The meeting rose at 12.20 p.m.

1492nd meeting

Tuesday, 5 November 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1492

AGENDA ITEM 93

Review of the Role of the International Court of Justice *(concluded)** (A/C.6/L.987/Rev.2, L.989)

1. The CHAIRMAN drew attention to draft resolution A/C.6/L.987/Rev.2, which was the result of prolonged consultations based on the initial draft resolution and the amendment submitted by Kenya and Mexico (A/C.6/L.989). If he heard no objection, he would take it that the Committee agreed to adopt the draft resolution by consensus.

It was so decided.

2. Mr. JEANNEL (France) said his delegation had not wished to oppose the adoption of the draft resolution by consensus, but if it had been put to a vote, it would have abstained.

3. Mr. SETTE CÂMARA (Brazil) said that the sources of international law were those listed in Article 38 of the Statute of the International Court of Justice, and those alone. If there was evidence of "general principles of law recognized by civilized nations" or of "international custom" reflecting "a general practice accepted as law", the Court, when considering a specific case, was bound by the provisions of its Statute to see that such principles and custom were applied. There were no limitations to the search for the existing law to be undertaken by the Court. The recognition that declarations and resolutions of the General Assembly might be taken into consideration by the Court was unnecessarily ambiguous and might be interpreted as an attempt to effect an indirect amendment to Article 38 of the Statute.

4. The competence of the General Assembly was primarily deliberative. Any attempt to give resolutions and declarations of the Assembly the force of law was tantamount to a subversion of the institutional structure of the United Nations. It was true that resolutions and declarations of the General Assembly might from time to time reflect the development of international law. But if points of law existed, they would be taken into account by the Court, whether or not they were reflected in resolutions and declarations of the General Assembly, in conformity with Article 38 of the Statute.

5. His delegation had not wished to create any obstacles to the consensus so laborously achieved on the draft resolution. For that reason, and that reason alone, it had accepted the text as adopted. But it considered it necessary for the records of the General Assembly to register Brazil's serious reservations concerning any interpretation of the eighth preambular paragraph that might constitute a first step in the introduction of a change in the legal concept that the resolutions and declarations of the General Assembly were merely recommendations.

6. Mr. ALVAREZ TABIO (Cuba) said that the mission of the International Court of Justice was to settle disputes between States that were submitted to it by the States concerned. The Charter of the United Nations left to the States the sovereign power of freely choosing the means for settling their disputes. To impose the compulsory jurisdiction of the Court would be tantamount to creating a supranational organ, in contravention of the principle of State sovereignty.

7. Therefore, his delegation could not accept without reservations the operative part of the draft resolution, particularly paragraphs 1 and 2 thereof. He wished it to be placed on record that if the draft resolution had been submitted to a vote, his delegation would have abstained.

8. Mr. ROSENNE (Israel) congratulated the sponsors of draft resolution A/C.6/L.987/Rev.2 and those who had worked with them on arriving at a compromise text. He had noted with interest the statement made at the 1466th meeting by the representative of the Netherlands introducing the original version of the draft resolution. He had also duly noted the statement by the representative of Mexico at the same meeting introducing the amendment (A/C.6/L.989) which, in its modified form, appeared in the eighth preambular paragraph of the draft resolution. The Mexican representative had particularly stressed that the amendment in no way altered or introduced any new element into Article 38 of the Statute of the International Court of Justice and that it was not a question of adding another source of international law to those enumerated in that article.

9. In that connexion he recalled that during the Committee's discussion of the item in 1971, a number of delegations had argued that the inclusion of the resolutions and declarations of the General Assembly among the sources of law to be applied by the Court would attribute a status to them which did not flow from the provisions of the Charter or the rules of international law concerning the creation of the legal norms applied in international relations. His delegation had been one of those which had shared that view and it continued to hold it. The eighth preambular paragraph of the draft resolution, which embodied the agreement reached on the amendment originally proposed in document A/C.6/L.989, seemed to conform to that point of view and it was in that sense that his delegation understood it.

10. Mr. FEDOROV (Union of Soviet Socialist Republics) said his delegation had not objected to the adoption of the

* Resumed from the 1490th meeting.

draft resolution, which did not entirely satisfy his delegation but which nevertheless represented a compromise between two policies on the role of the International Court of Justice. In particular, his delegation welcomed the fact that the draft resolution would put an end to nearly five years of discussion on the question in the Committee and would remove the item from the agenda of the General Assembly.

11. His delegation interpreted the second preambular paragraph as ending the discussion on the item. The paragraph did not create any precedent for resuming such a discussion in future. The question could be discussed by the General Assembly only to the extent that any other matter might be discussed by it under Article 10 of the Charter.

12. With regard to the eighth preambular paragraph, his delegation adhered to the view that in accordance with the Charter of the United Nations and the Statute of the International Court of Justice, particularly Article 38, resolutions and declarations of the General Assembly were not sources of international law. If there had been a separate vote on that paragraph, his delegation would not have supported it.

13. His delegation took the position that operative paragraph 1, concerning the compulsory jurisdiction of the Court, in no way predetermined either the ultimate outcome of the question or the advisability of States recognizing that jurisdiction. The paragraph represented an attempt to impose on sovereign States the compulsory jurisdiction of the Court. There was no juridical or political foundation for such a position, which contravened the principle of State sovereignty and the freedom of States to decide on the means for peaceful settlement of disputes they might wish to apply under Article 33 of the Charter.

14. Had it not wished to enable the Committee to reach a consensus, his delegation would have submitted amendments to operative paragraphs 2, 3 and 5. Nevertheless, despite the serious defects his delegation found in the draft resolution, it had wished to co-operate by refraining from objecting to its adoption by consensus.

15. Mr. STEEL (United Kingdom) said his delegation was, as he had previously explained (1468th meeting), prepared to refrain for the time being from pressing the view, which it still held, that the General Assembly should establish specific machinery for conducting a continuing review of the role of the International Court of Justice. Although it would have preferred a rather stronger resolution, it understood and respected the approach to the problem expressed by the draft resolution the Committee had just adopted. It was because his delegation regarded that approach as the most satisfactory one available at the current stage, and because of the importance it attached to securing an outcome on the item which would attract the widest possible acceptance, that his delegation had felt able to support the adoption of the draft resolution by consensus.

16. He wished, however, to comment on the eighth preambular paragraph. While it was true that General Assembly resolutions might reflect or be evidence of developments in international law, that was not the same as saying that General Assembly resolutions could themselves develop international law. His delegation could not accept the latter proposition and, indeed, the draft resolution adopted carefully refrained from making it. Even the evidential value of General Assembly resolutions must depend on their circumstances. Many resolutions were of such a nature and had such a content that they could have no relevance to the development of international law. His delegation had entertained considerable doubt about the appropriateness of including the paragraph, but in the interest of maintaining a consensus had not wished to press those doubts.

17. Mr. GARCIA ORTIZ (Ecuador) said that his delegation had not wished to oppose the consensus, but it could not accept operative paragraphs 1 and 2 of the draft resolution, for the reasons it had given during the general debate on the item *(ibid.)*. If the draft resolution as a whole had been put to the vote, his delegation would have abstained.

18. Mr. KABBAJ (Morocco) said his delegation had sponsored the draft resolution because it was based on the principles set forth in the Charter of the United Nations, especially those regarding the peaceful settlement of disputes, as stressed in the third preambular paragraph of the draft resolution. Article 33 of the Charter provided several means for the peaceful settlement of disputes and Morocco held all of them in due regard. However, the Charter itself attached greater importance to judicial settlement in the case of legal disputes.

19. His country had always made every effort to settle its disputes by peaceful means, particularly after it had achieved independence. In keeping with operative paragraph 3 of the draft resolution, his Government had proposed to Spain that the two Governments should jointly refer the case of the so-called Spanish Sahara to the International Court of Justice, in order that the Court might inform them, from a purely legal standpoint, whether the Western Sahara, when occupied by Spain, had been a territory without a ruler or whether, on the contrary, it had been under the sovereignty and authority of a State. That State could be none other than Morocco, as was attested to by various international and historical documents. In so doing, and in seeking a just and legal solution to its dispute with Spain, Morocco had been concerned with preserving the traditional friendship and long-standing good-neighbourly relations between it and Spain. As stated in operative paragraph 6 of the draft resolution, referral to the Court should not be considered as an unfriendly act between States.

20. In order to exhaust every possible means for settling the dispute peacefully and justly, if Spain did not accept joint referral to the Court, Morocco intended to ask the General Assembly or the Security Council to request an advisory opinion from the Court. Morocco was thus demonstrating its faithfulness to the principles of the Charter concerning the peaceful settlement of disputes and to the spirit of the draft resolution that had just been adopted.

21. His delegation was happy that agreement had been reached on the inclusion of the amendment submitted by

Kenya and Mexico in its modified form. His delegation had had no difficulty in accepting the amendment, because it merely stated a reality which the Court had to bear in mind.

22. Mr. SA'DI (Jordan) said his delegation could not accept the Arabic text of the draft resolution, which was not a correct translation of the English.

23. Mr. GÜNEY (Turkey) said that his delegation would have preferred a draft resolution which envisaged the establishment of a special committee to consider effective measures to enhance the authority of the Court, which was the principal judicial organ of the United Nations. If the draft resolution had been put to the vote, his delegation would have abstained. It would not have supported the eighth preambular paragraph if a separate vote had been taken on it. That paragraph was inappropriate in the light of Article 38 of the Statute of the International Court of Justice, which listed the sources on which the Court should draw its decisions in the settlement of disputes. General Assembly resolutions were often adopted for purely poltical reasons. It was impossible to consider them as a source of law. Consequently, nothing in the eighth preambular paragraph could in any way prejudice Article 38 of the Statue of the Court or should be interpreted as extending or reducing its scope in any way.

24. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said her delegation had not wished to oppose the adoption by consensus of the compromise text contained in the final draft resolution, but it did have certain reservations concerning the text. She noted with satisfaction, however, that the resolution would remove the item from the agenda of the General Assembly.

25. Her delegation found it difficult to agree with the second preambular paragraph of the draft resolution and had serious doubts regarding the eighth preambular paragraph. The latter should in no way be viewed as permitting an extended interpretation of Article 38 of the Statute of the International Court of Justice.

26. Operative paragraph 1, which recommended that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the Court, did not conform to the principles of the Charter regarding the peaceful settlement of disputes; the Charter left it to States to decide which means of peaceful settlement they wished to choose and expressed no preference for any one of the various means set forth in Article 33. There was no formal obstacle to the acceptance by States of the compulsory jurisdiction of the Court; the fact that very few States had done so showed that such a measure was not in their best interest.

27. If the paragraphs she had referred to had been submitted to separate votes, her delegation would not have supported them. Her delegation was not satisfied with operative paragraphs 2, 3 and 5, but in a spirit of compromise had decided not to object to their adoption. She wished to stress that the effectiveness of the Court and its role in the maintenance of international peace and security depended primarily on the extent to which the activities of the Court furthered the fulfilment of the purposes of the United Nations and the observance of the Charter.

28. Mr. ALVAREZ PIFANO (Venezuela) said the question of the review of the role of the International Court of Justice with a view to making it a more effective instrument for the peaceful settlement of disputes should not be understood as an effort to find a way to impose the compulsory jurisdiction of the Court on any State. The draft resolution just adopted placed too much emphasis on the desirability of seeking ways to accept that jurisdiction and on the advantage of inserting in treaties clauses providing for the submission of disputes to the Court. Operative paragraphs 1, 2 and 6 centred around those ideas.

29. His delegation considered that the Charter of the United Nations, in establishing the principle of the peaceful settlement of disputes, allowed States to choose the methods they deemed most appropriate. Referral to the Court was only one of those means, and States should be free to accept or reject its compulsory jurisdiction.

30. If the draft resolution had been submitted to a vote, his delegation would not have voted for it.

31. Mr. BOOH-BOOH (United Republic of Cameroon) said that his Government supported the principle that disputes between States should be settled by peaceful means in accordance with the provisions of Article 33 of the Charter. Ever since the judgement rendered by the International Court of Justice in the case concerning the Northern Cameroons *(Cameroon v. United Kingdom)*, his Government's position concerning the principal legal organ of the United Nations had embodied certain fine distinctions, particularly with regard to acceptance of the jurisdiction of the Court in pursuance of Article 36 of its Statute. If draft resolution A/C.6/L.987/Rev.2, which had been adopted by consensus, had been put to the vote, his delegation would have abstained.

32. Mr. YOKOTA (Japan) said his delegation had supported the draft resolution just adopted by consensus. It had done so because it felt that the Sixth Committee should register its unanimous support for an increased role for the principal judicial organ of the United Nations. He wished to express the appreciation of his delegation for the untiring efforts of the Netherlands delegation and of the sponsors of amendment A/C.6/L.989, who had worked hard to reach the compromise text that had been adopted. The amendment, had it been maintained, would have caused serious difficulty for his delegation because, in its view, the sources of law enumerated in Article 38 of the Statute of the Court were exhaustive. The Court, as an independent organ, should decide contentious cases strictly in accordance with the provisions of its own Statute, and the General Assembly should not attempt to issue directives regarding the sources of law which the Court should take into account. His delegation did not subscribe to the view that resolutions and declarations of the General Assembly as such, constituted sources of law, because they were essentially recommendations and not legally binding.

33. His delegation appreciated the substantial improvement made in the original draft resolution with the addition of a new eighth preambular paragraph. His delegation had

supported the draft resolution in the belief that the wording of the eighth preambular paragraph provided sufficient flexibility to accommodate its position.

34. He wished to place on record the great importance which his delegation attached to the second preambular paragraph of the draft resolution.

35. Mr. YASSEEN (Iraq) said that according to the Statute of the Court and the Charter of the United Nations, the Court was the most appropriate forum for the settlement of legal disputes. Moreover, his delegation felt that the adoption by consensus of draft resolution A/C.6/L.987/Rev.2 was the most suitable way of terminating the consideration of the agenda item.

36. The draft resolution struck a balance which was based on the Statute of the Court and the Charter of the United Nations and which took into consideration the political will of States. It also had the merit of respecting the independence of the Court under its Statute. He recalled that the Court was not an organ of the General Assembly; by virtue of Article 7 of the Charter it was, like the General Assembly, one of the principal organs of the United Nations.

37. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) said his delegation did not agree with the second preambular paragraph of the draft resolution because it felt the question of the review of the role of the International Court of Justice had already been sufficiently discussed over the past five years. There was no need to review the role of the Court, which was clearly set out in the Charter of the United Nations and the Statute of the Court.

38. Operative paragraph 5 did not conform to the terms of Article 96, paragraph 2, of the Charter, concerning advisory opinions of the Court. Furthermore, in operative paragraph 1, the draft resolution recommended that States should study the possibility of accepting the compulsory jurisdiction of the Court. That was not in keeping with the sovereign right of each State to choose the means for peaceful settlement of disputes it considered most appropriate. Article 33 of the Charter and Article 36 of the Statute of the Court should be strictly observed.

39. His delegation could not support the eighth preambular paragraph of the draft resolution, as the declarations and resolutions of the General Assembly could not be sources of international law.

40. If a separate vote had been taken on the paragraphs he had mentioned, his delegation would have abstained. Nevertheless, his delegation had agreed to the adoption of the draft resolution by consensus because the question would now be removed from the agenda of the Committee.

41. Mr. ROSENSTOCK (United States of America) welcomed the adoption by consensus of the draft resolution and expressed gratitude to the representative of the Netherlands who had played a central role in making the text more widely acceptable. His delegation would have preferred a stronger resolution but had accepted the text of the present revision in the interests of a consensus, particularly since the second preambular paragraph affirmed the utility of further discussion of the role of the Court, when and as appropriate. With regard to the eighth preambular paragraph, his delegation shared the views expressed by the representatives of Brazil and Israel. Concerning operative paragraph 1, his delegation agreed that it was highly desirable that States should study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the International Court of Justice. Since States had accepted the consensus and pledged themselves to study the matter, a small step had been taken forward towards the withering away of anachronistic doctrines of State sovereignty. Paragraph 2 was also an important provision and should apply with equal validity to multilateral and bilateral treaties and States and the International Law Commission should bear it in mind. The remaining operative paragraphs were likewise significant, in particular paragraph 6.

42. Mr. PRIETO (Chile) said that his delegation had not wished to oppose the adoption of the draft resolution by consensus, although it had reservations with regard to the eighth preambular paragraph. Declarations and resolutions of the General Assembly could not; in his delegation's view, be considered as sources of international law, particularly in view of their increasing political content which was often at variance with international law.

43. Mr. BOULBINA (Algeria) said that his delegation had gone along with the consensus in the hope that the adoption of the draft resolution would end the debate on the question of review of the role of the International Court of Justice. He had welcomed the incorporation in the draft resolution, as a result of the amendment by Kenya and Mexico (A/C.6/L.989), of a new eighth preambular paragraph, which represented a valuable contribution to the further development of international law. His delegation's acceptance of the draft resolution should not be regarded as prejudicing in any way his Government's position with regard to the compulsory jurisdiction of the Court or the freedom of States to choose among the methods for the pacific settlement of disputes set forth in Article 33 of the Charter.

44. Mr. FÖLDEÁK (Hungary) noted with satisfaction that the item under discussion had been brought to a conclusion by the adoption by consensus of a draft resolution. The greater part of the resolution was quite acceptable to his delegation; however, certain parts of the resolution could only be accepted with reservations. In particular, the second preambular paragraph seemed to interpret Article 10 of the Charter too broadly. As his delegation understood it, Article 10 did not empower the General Assembly to constantly keep an eye on other principal organs of the United Nations. His delegation also had reservations with regard to the eighth preambular paragraph, which might be interpreted as attributing to the General Assembly powers which were not within its competence. With regard to operative paragraph 1, his delegation found it difficult to understand how representatives of States which in their great majority did not accept the compulsory jurisdiction of the Court were still in a position to recommend to each

other that they should study the possibility of accepting compulsory jurisdiction.

45. Mr. WISNOEMOERTI (Indonesia) said that his delegation had gone along with the consensus although it had serious reservations with regard to operative paragraphs 1 and 2 of the draft resolution. As it had stated during the general debate on the item (1470th meeting), it could not accept any effort to impose on States the compulsory jurisdiction of the Court. If the draft resolution had been put to the vote, his delegation would have abstained.

46. Mr. MAI'GA (Mali) said that his delegation had joined in the consensus because it regarded the draft resolution as a mere recommendation of the General Assembly. His delegation's acquiescence in the consensus should not be interpreted as implying acceptance of the compulsory jurisdiction of the Court.

47. Mrs. SLÁMOVÁ (Czechoslovakia) said that her delegation had accepted the draft resolution in a spirit of co-operation and mutual understanding. If the draft resolution had been put to a vote, her delegation could not have supported the second and eighth preambular paragraphs or operative paragraph 1.

48. Mr. BOJILOV (Bulgaria) said that his delegation was not entirely satisfied with the draft resolution but had gone along with the consensus. Had there been a vote, his delegation would have abstained on the second and eighth preambular paragraphs, as well as operative paragraph 1.

49. Mr. GÖRNER (German Democratic Republic) said that his delegation had not objected to the adoption of the draft resolution despite its misgivings on certain provisions of the text. In view of the adoption of the draft resolution, no further discussion of the role of the Court would be warranted. His delegation understood the second preambular paragraph to mean that, in accordance with Article 10 of the Charter, the General Assembly could discuss the powers and functions of any organ provided for in the Charter. With regard to the eighth preambular paragraph, his delegation did not consider declarations and resolutions of the General Assembly as in themselves constituting sources of international law. The language in operative paragraph 1 did not affect the sovereign right of States to determine their positions with regard to the compulsory jurisdiction of the Court.

50. Mr. BARARWEREKANA (Rwanda) said that, in a spirit of compromise, his delegation had not opposed the adoption by consensus of the draft resolution. If the text had been put to a vote, his delegation would have abstained for the reasons it had stated in the general debate *(ibid.)*.

51. Mr. PEDAUYE (Spain), speaking in exercise of the right of reply, said that the question of the Spanish Sahara to which the representative of Morocco had referred would be taken up in the Fourth Committee, since it was a matter of decolonization. He appreciated the kind remarks the representative of Morocco had made about Spain and, responding in the same friendly spirit, would refrain from discussing the question of the Spanish Sahara.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

52. Mr. GOMEZ ROBLEDO (Mexico) expressed deep regret at the demise of Mr. Milan Bartoš, former Special Rapporteur of the International Law Commission.

53. His delegation welcomed the draft articles on succession of States in respect of treaties (see A/9610, chap. II, sect. D). For more than a century, his country had had no problems of that type, since the situation had been completely resolved in 1836 with the signing of the Treaty of Peace and Friendship with the former metropolitan country. However, his Government realized that the problem was highly topical for many States which had recently achieved sovereignty, most of which had freed themselves from colonialism. In the draft articles, a balance had been achieved between the principle of observing boundary agreements and other territorial situations, the subsistence of which was essential to the maintenance of peace, with the "clean slate" principle, whereby newly independent peoples were from the outset masters of their own destiny.

54. As was clear from the statements made by his delegation in previous years, his Government had a vital interest in the topic of State responsibility. That interest was due to the fact that between 1821 and 1923 the sovereign acts of his Government had been subject to review by successive joint claims commissions which had not completed their work until the 1940s. At that time his Government had been unable to oppose the interventionist policy of the great Powers and had had to defend itself before those joint commissions in an effort to avoid the international responsibility those Powers had sought to attribute to it for applying internal legislation to foreign residents, as was normally done by any sovereign State. His country believed that such a situation belonged to the past, but in order to prevent any possible recurrence, it would be useful for the international community to have a set of rules which defined clearly State responsibility and which took equal account of human rights on the one hand and the sovereignty and independence of States on the other. Those rules would also be useful for dealing with any eventual claims in a friendly manner through the diplomatic channel. In view of the slow pace of the Commission's work on State responsibility, the Commission should give that topic the highest priority at its next session. Pending the completion of the draft as a whole he wished to make some preliminary comments on the articles currently before the Committee.

55. With reference to article 6 of the draft articles on State responsibility (*ibid.*, chap. III, sect. B), his delegation agreed with the general principle that the acts of State organs, in accordance with the conventional division of powers, were equally attributable to the State itself. But the application of that principle in practice, particularly international practice, was subject to certain prerequisites without which the State could not incur international responsibility. The first was the existence of effective damage to property or other assets governed by international law. For example, as long as a law which was

regarded as violating international law was not effectively applied, no international responsibility had been incurred by the State. In that connexion he referred to the judgements of the Permanent Court of International Justice concerning effective damage in the Chorzów factory case.[1] The second prerequisite for State responsibility was the exhaustion of local remedies. The judiciary—at least in the democratic liberal tradition of the West—was responsible for remedying irregular acts by the executive and legislative powers and for restoring constitutional order when it was violated. Therefore, no act of any State power could be definitively attributed to a State until the act in question had been brought before the courts and judged at the highest level. In other words, an international claim could arise only from a miscarriage of justice. The rule of the exhaustion of local remedies formed an integral part of general international law, and the Latin American community was particularly attached to that rule as was clear from the many resolutions, declarations and conventions adopted at regional conferences in the Western hemisphere. His delegation therefore hoped that in due time the relevant rules would be incorporated into the Commission's draft, for otherwise, his delegation could not support article 6, which at first sight seemed to establish the international responsibility of the State for acts committed by any of its organs, without due distinction and with no reference to the exhaustion of local remedies and the judicial process.

56. Article 8 was likewise a source of concern to his delegation, since it seemed to extend the scope of State responsibility. According to subparagraph *(b)* of that article, the conduct of any person or group of persons "exercising elements of the governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority" would be attributable to the State. The Special Rapporteur explained in his commentary that such a situation might arise in cases of natural disaster or situations such as the armed invasion of a territory, when the local authorities fled before the invader. In such circumstances, it was quite understandable that private individuals would provisionally assume, in the collective interest, the management of public affairs, but the Special Rapporteur recognized that there was "no formal or real link with the machinery of the State or of one of the entities entrusted by the internal law of the State with the exercise of elements of the governmental authority" (see A/9610, paragraph (10) of the commentary on article 8). That being so, it was hard to see why, once order had been re-established, the acts of persons who had not been entrusted with any task whatsoever by the State authorities should be attributed on the State. Moreover, it would not be just to attribute to the State the acts of those who for personal gain took advantage of the situation and violated the rights normally respected by the community. Such an interpretation seemed possible in the light of article 8 and his delegation regarded it as contrary to the fundamental principles of justice.

57. His delegation fully supported the Commission's response (*ibid.*, paras. 192-211) to the recommendations of the Joint Inspection Unit (see A/9795) concerning the Commission's method of work. The comparison which the Unit had sought to establish between the work of technical experts in other fields and that of the eminent jurists entrusted by the United Nations with the codification and progressive development of international law was completely inappropriate. The work of the Commission by its very nature had to be shared by all its members and could not be done by a number of sub-committees or working groups. Moreover, a "nomadic" existence would impede the Commission's valuable work. His delegation had complete confidence in the Commission and in its methods of work, which would enable it to continue making a valuable contribution to international peace and security.

58. Mr. KABBAJ (Morocco) said his delegation associated itself with the tribute paid to the Commission for the contribution it had made in its 25 years of existence to the codification and progressive development of international law and, hence, to the promotion of friendly relations and co-operation between States and the strengthening of international peace and security. His delegation also paid a tribute to the memory of the late Mr. Milan Bartoš, former Special Rapporteur of the Commission.

59. By adopting the draft articles on succession of States in respect of treaties, the Commission had taken another step forward in the codification and progressive development of international law. The question of succession of States was particularly important for the international community, because of the interests involved and the changes in international society caused by the emergence of new States. His country, on achieving independence, had had to face complex problems of succession and therefore welcomed the Commission's approach to the problem, particularly the distinction it made between the succession of newly independent States and other types of succession. It had rightly rejected the theory that it could be presumed that a newly independent State consented to be bound by a former international treaty relating to its territory unless it expressed the contrary intention within a reasonable period of time. Although the principle of continuity should generally be applied in order to ensure the stability of treaty relations, the Commission had been well advised to adopt the traditional "clean slate" principle for newly independent States, since that was the only principle which was in harmony with the principle of self-determination. It would be unjust and contrary to the principle of the sovereign equality of States if newly independent States were bound, by virture of the principle of continuity, by treaty obligations which they had not themselves contracted directly and which more often than not had been to their detriment.

60. It had been proposed that the "clean slate" principle should not apply in the case of nominative or universal treaties, since such treaties contained fundamental rules of international law. That exception, however, would merely have caused confusion, since it would be difficult to determine which treaties could be placed in that category. The Commission had rightly considered that the fundamental rules of international law contained in those treaties existed by virtue of another source of international law, namely international custom.

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[1] *Case concerning the factory at Chorzów* (Jurisdiction), Judgment No. 8 of 26 July 1927, P.C.I.J., Series A, No. 9, p. 21 and *idem* (Merits), Judgment No. 13 of 13 September 1928, *ibid.*, No. 17, p. 29.

61. However, his delegation wondered why the Commission had not made a distinction between those newly independent States which had been subject to a colonial régime proper and those which had known some other form of colonization, such as protectorates. Of course, such a distinction would not affect the "clean slate" principle, but was of interest because of the status of some countries such as his own, which had been part of international life before the establishment of the colonial régime and had consequently taken part in international conferences and concluded important international conventions. It would be interesting to know what fate would be reserved, in the context of succession of States, for such conventions, whose provisions had often been violated by the colonial Powers.

62. The situation was even more obvious in the case of territorial treaties. However, in articles 11 and 12 the Commission had provided an exception to the "clean slate" principle with regard to such treaties. In so doing, the Commission had not taken into account any consideration that would keep that exception within reasonsable limits. The reasons it had given for so doing were not completely convincing and were based mainly on the declarations and practices of former colonial Powers. Unjust treaties whose object was to divide a territory into zones of influence could not be regarded as surviving into the era of State independence. The same was true of treaties concluded among the colonial Powers to divide a country into different zones under different administrative systems. In accordance with the principles of law and justice, such treaties must be treated in the same way as those to which the "clean slate" principle was applied simply because the administering Power had possessed only limited competence and had therefore had no right to dispose of a territory. Such treatment was all the more justified when such treaties ran counter to the provisions of other treaties concluded earlier, as was often the case. His delegation therefore hoped that the concept of a territorial treaty would be revised in the light of the observations of Governments.

63. His delegation welcomed the progress the Commission had made on the other items it had taken up at its twenty-sixth session and, with reference to its future work, considered that the Commission's recommendation that its annual session should be extended to 12 weeks was fully justified and should be endorsed.

64. The report of the Joint Inspection Unit must have been the outcome of a misunderstanding. The work of the Commission had its own rules based on considerations relating to its membership and the nature of its work. Therefore, the recommendations of the Unit should be rejected. The Commission should continue to work in accordance with its own methods and should be permanently based at Geneva.

65. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) expressed appreciation to the Chairman of the Commission for his brilliant introduction of its report (A/9610 and Add.1-3). The discussion of the Commission's report each year in the Sixth Committee afforded an opportunity to promote the codification and progressive development of international law. The Sixth Committee should endeavour not only to analyse the results of the most recent session of the Commission and the progress it had made in the codification of particular topics but should also compare those results with the problems of codification still needing attention. Such an approach would lead to a more realistic assessment of the Commission's work and contribute to a better understanding of the tasks before the Commission. In view of the current positive developments in international relations, the role of international law was becoming increasingly significant. The statements made in the Sixth Committee and in the General Assembly confirmed the importance of the codification, progressive development and enhancement of the effectiveness of international law for the strengthening of security and the solution of such problems as disarmament and environmental protection, the prohibition of nuclear weapons and the utilization of marine resources.

66. The greater part of the Commission's current report was taken up with the draft articles on succession of States in respect of treaties, a topic on which the Commission had worked for many years, studying a vast amount of information relating to State practice. As the Commission had correctly observed in paragraph 45, the case of newly independent States was the commonest form in which the issue of succession had arisen during the past 25 years and the stress laid on it needed neither justification nor explanation. However, as was pointed out in paragraph 46, the era of decolonization was nearing its completion and in the future problems of succession were likely to arise in connexion with other cases. The value of the Commission's work would thus depend to a considerable degree on the breadth of the sphere of application of the articles. In that regard, her delegation shared the views expressed in the general debate by the representative of Canada (1467th meeting) to the effect that the future convention should cover a broader range of cases of succession.

67. A particular problem of succession in respect of treaties arose in the case of social revolution. Her delegation could not agree with the views expressed by the Commission on that subject in paragraph 66 of the report. The Commission wrongly identified social revolution with a change of government and claimed, without sufficient justification, that the problem of the effect of a revolution, as regards the question of succession in respect of treaties, fell within the scope of "succession of Governments" rather than within that of "succession of States". The practice of succession in the Soviet Union and other socialist States indicated that a socialist revolution gave rise to a historically new form of State and a qualitatively new subject of international law. That was a succession of States, not of Governments. Her delegation therefore fully shared the views expressed in that regard by the representative of the Soviet Union (1470th meeting) and Mongolia (1488th meeting) and supported suggestions made by the representatives of the German Democratic Republic and Czechoslovakia in the written observations on the draft articles (see A/9610, annex I) to the effect that the corresponding provisions of the draft articles should be reformulated so as to cover a broader range of cases of succession, including cases of social revolution.

68. With regard to articles 11 and 12, her delegation endorsed the Commission's decision to include them in

part I of the draft, entitled "General provisions". Her delegation entirely agreed with the Commission's conclusion that a succession of States as such did not affect boundaries. That was a firmly established and generally accepted norm of international law. Those articles rightly recognized that territorial treaties constituted a special category of treaties which were not affected by succession.

69. Having noted the relationship between succession in respect of treaties and the general law of treaties, the Commission had stated that it would endeavour to avoid re-stating in the present draft articles general rules applicable to treaties. That decision was fully warranted and the Commission should not have deviated from it in connexion with articles 7 and 13, which raised general problems relating to the law of treaties. The brief and insufficiently clear exposition of those general rules in connexion with succession could lead to confusion and misinterpretation. Her delegation therefore felt that articles 7 and 13 should be deleted from the draft. Article 6 could also give rise to erroneous interpretations and should, in her delegation's view, be deleted. If the articles she had referred to were not deleted, they should at least be reformulated so as to exclude any possibility that they would be used in a restrictive and incorrect interpretation of article 11.

70. Her delegation endorsed the Commission's decision to adopt the "clean slate" principle in questions of succession relating to newly independent States. The importance of an adequate formulation of the "clean slate" principle was unquestionable, and her delegation supported the general rule laid down in article 15. In specific cases, however, it was necessary to maintain a distinction between unjust treaties concluded during the period of colonialism and multilateral treaties of universal character which enunciated generally accepted norms of international law. It was in the interest of the international community as a whole, including newly independent States, to maintain stability with regard to such multilateral treaties. The Commission had not yet found a proper balance between the "clean slate" principles and the need to maintain stability with regard to multilateral treaties of universal character. The Commission had not had time to discuss a new draft article on that subject submitted to it at its twenty-sixth session (see A/9610, foot-note 54). That article had been referred to by a number of delegations in their statements in the Sixth Committee, and she hoped that the Commission would take those comments into account when reviewing the draft.

71. Since the short-comings of the draft articles involved fundamental principles, her delegation could not support the Commission's recommendation in paragraph 84 of the report that a conference of plenipotentiaries should be convened. The Commission should be asked to review the draft articles once again in the light of the comments of Governments and the discussion in the Sixth Committee.

72. The problem of the responsibility of States for international crimes was unquestionably of the greatest interest for the maintenance of peace and the enhancement of the effectiveness of international law. The Commission's work on the topic of State responsibility was progressing very slowly and should be speeded up. The general principles which the Commission had set forth in the nine articles adopted thus far had not given rise to any serious objections or critical observations. A great deal of work remained to be done, however, to elaborate those principles in application to specific cases. Her delegation therefore urged that the Commission should give top priority to the topic of State responsibility at its next session.

73. In view of the growing importance of codification problems, careful consideration should be given to improving the Commission's methods of work and making fuller use of its possibilities. Those problems could scarcely be solved simply by extending the length of sessions. Her delegation could not, therefore, support the recommendation made by the Commission in paragraph 165 of its report.

74. Her delegation would be in favour of adopting the Commission's report, subject to the reservations she had stated with regard to paragraphs 84 and 165.

75. Mr. SA'DI (Jordan) expressed his delegation's appreciation of the contribution the Commission had made to the codification and progressive development of international law as a result of the progress it had achieved at its twenty-sixth session with regard to the items on its agenda, particularly the one relating to succession of States in respect of treaties. With respect to the draft articles on that question, his delegation subscribed to the "clean slate" principle for newly independent States, deeming it harmonious with the situation of a newly independent State and consistent with the principle of self-determination. It accepted the exceptions made to that rule in articles 11 and 12. However, although treaties of a territorial character constituted a special category and for practical reasons should not be affected by a succession of States, the wording of article 13 was salutory and complementary to articles 11 and 12. His delegation also supported an additional exception to the "clean slate" rule, since a distinction could be made between multilateral universal conventions on the one hand, and bilateral or limited multilateral treaties on the other. While conventions in the first category were obviously in accordance with the Charter of the United Nations, treaties in the latter category could be concluded in accordance with power politics or might be colonial in nature, and could therefore be prejudicial to the dependent State. His delegation therefore favoured the "contracting out" principle for newly independent States in respect of multilateral universal conventions.

76. Concerning the uniting and separation of States, his delegation supported the principle of continuity as expressed in the draft articles. With reference to succession of Governments, a change of régime should not be treated in the same way as the emergence of a newly independent State, unless the circumstances of the change of régime were essentially the same as those existing in the case of the formation of a newly independent State. His delegation supported the position that the draft articles should incorporate satisfactory provisions for the settlement of disputes and in that context noted operative paragraph 2 of draft resolution A/C.6/L.987/Rev.2 just adopted on item 93.

77. Mr. MASUD (Pakistan) said that the topic of succession of States in respect of treaties had been of great concern to his country. His Government had submitted observations on the question (see A/9610, annex I). His delegation had also noted that the Commission had taken into consideration some of the treaty precedents to which his country was a party.

78. His delegation considered that in the case of succession of newly independent States, the "clean slate" principle adopted by the Commission was appropriate. However, that principle could not be applied to "territorial", "dispositive", "localized" or "real" treaties. Territorial treaties were binding on the successor State as well as on the other State party in relation to the successor State. Moreover, there was a need to prevent the complete rupture of treaty obligations on account of the application of the "clean slate" principle in respect of newly independent States. In cases where succession was the result of uniting or dissolution of States, the prevailing principle of continuity was to be maintained in the interest of peaceful international relations and security.

79. In the case of multilateral treaties which were constituent instruments of international organizations, there was no automatic succession. The current practice of States was that the successor State which had obtained the benefit of public loans by the fact of taking over the territory was responsible for the public debts of the predecessor State relating to the territory that had passed. That principle of responsibility was well established under international law. The same principle should apply where the visible benefits of a loan were directly associated with the territory that had passed. In the case of multilateral treaties which were not constituent instruments of international organizations, the current practice was that the new State to whose territory the multilateral convention applied could notify its succession. That practice should be continued.

80. With regard to State responsibility, his delegation supported the Commission's approach whereby a gradual transition would be made from general to particular questions. It suggested that the notion of "abuse of rights" be given a place in the study of that question. In studying that question, the Commission should give special consideration to questions relating to the maintenance of international peace and security; particular attention might be paid to the problems arising out of responsibility for acts of aggression.

81. Concerning the most-favoured-nation clause, the interests of the developing countries should be safeguarded. With regard to the study of non-navigational uses of international watercourses, he felt that the Sub-Committee set up by the Commission should consider, as a matter of priority, the question of flood control and erosion caused by international rivers, since those matters were of grave concern for some developing countries. A year previously his own country had suffered an unprecedented tragedy on account of floods which could have been minimized if there had been some regulation of the uses of international rivers.

82. His delegation regretted the controversy which had arisen between the Commission and the Joint Inspection Unit. It believed that a balance would be struck between the need to maintain the Commission's integrity, its independence with regard to its internal methods of work, and the quality of its work, on the one hand, and the desire to see it accomplish a greater quantity of work, on the other.

83. Mr. JEANNEL (France) associated himself with the tribute paid by earlier speakers to the memory of Mr. Milan Bartoš.

84. The quality and quantity of the work done by the Commission at its twenty-sixth session would make a substantial contribution to the codification and progressive development of international law. His delegation none the less regretted that the Commission had not been able to consider some topics in which it took a great interest, such as the most-favoured-nation clause, and hoped that the Commission would make progress with those topics at its next session.

85. With reference to succession of States in respect of treaties, his delegation agreed that, as suggested by the Commission in paragraph 84 of the report, it would be useful for Member States to submit written observations on the Commission's final draft articles. Such observations should deal not only with the substance of the draft articles, but also with their final form. It would be premature to contemplate convening a conference of plenipotentiaries, as recommended by the Commission, and his delegation had its doubts about the appropriateness or even the feasibility of giving the draft articles the form of a convention. In that respect, paragraph 62 of the report was highly pertinent. His delegation questioned the advisability of codifying the law relating to succession of States in respect of treaties in the form of a convention, since under the general law of treaties a convention could be invoked only if the State concerned was a party to it, and then only from the date on which it became a party. Moreover, according to the rule of customary law incorporated in article [illegible] of the Vienna Convention on the Law of Treaties,[2] the provisions of a treaty, in the absence of any intention to the contrary, did not bind a party in relation to any act or fact which had taken place before the date of the entry into force of that treaty with respect to that party. Therefore, the contemplated convention could be invoked against the new successor State only if it became a party to it and from that time only. The convention would not be binding on it in respect of acts which took place before the date on which it became a party and other States would not be bound with respect to the successor State before that date. It might therefore be preferable to give the draft articles another form, for instance, that of a resolution.

86. Despite the painstaking work of the Commission on the draft articles on succession of States in respect of treaties, his delegation did not find those draft articles completely satisfactory in their conception. His delegation had no objection to the Commission's approach, which was based on the principle that there was no automatic succession of States but provided for exceptions. However, in the current state of international law, it could not be maintained that international law laid down absolute rules in respect of succession to treaties, and his delegation had doubts about the way in which the Commission had arrived

2 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

at its conclusions. The Commission seemed to consider that the adoption of the "clean slate" principle would constitute a codification of existing international law, that theory being based on State practice and confirmed by the principle of self-determination. In that respect, he felt bound to refer the Committee to the written observations of the Swedish Government (see A/9610, annex I). Opinions and practice on that topic were far from consistent. Moreover, as his delegation had observed at the twenty-seventh session (1318th meeting), the positions that depositories might adopt could not be the source of a customary rule or be binding on States parties to treaties, since their role was purely administrative. Furthermore, it seemed difficult to base the "clean slate" principle for succession to treaties on the principle of self-determination. His delegation saw no obvious link between the two. Moreover, his delegation noted that according to draft article 33 it seemed that the maintenance or disappearance of a treaty obligation would depend on subjective assessments. The rule in question was therefore difficult to accept. Above all, it illustrated the difficulties the Commission had encountered as a result of introducing into the draft the distinction between "newly independent States" and States emerging from the separation of parts of a State. By so doing, it had introduced a political concept which had no place in the draft articles and had led it to adopt solutions which might give rise to contradictions.

87. In the light of the foregoing, while accepting the "clean slate" principle as a working hypothesis, his delegation wondered whether the Commission had fully considered all the exceptions which should be made to the rules it laid down in order to make them acceptable. First, concerning the right of the successor State to maintain the multilateral treaties of its predecessor, the Commission had not sufficiently contemplated, taking current practice into account, all the possible situations where that right was subject to the express or unequivocal tacit consent of the other parties. In particular, if the idea that the successor State had no general obligations in respect of its predecessor's treaties was to be admissible, it was essential that some types of treaty should be regarded as necessarily binding on the successor State. In that connexion, the Commission had mentioned only boundary régimes and certain territorial régimes established by treaties; it should also have considered, for example, treaties involving financial burdens. It was to be hoped that the problem would be dealt with in the study on succession of States in respect of matters other than treaties undertaken by the Special Rapporteur for that topic. It would be advisable to know the outcome of that study before taking any definitive position on the question. While appreciating the ingenious solutions set forth in some of the draft articles on succession of States in respect of treaties, his delegation considered that in view of the complexity of the question concerned, those draft articles were not quite ready for adoption, whatever the form.

88. His delegation would comment on the draft articles on State responsibility when the work on that draft reached a more advanced stage, but it was already clear that the draft would constitute an important step forward for international law.

89. His delegation was glad that the Commission had been able to discuss the question of treaties between States and international organizations in a fairly substantial manner, despite the short time available to it. It had rightly excluded from its study agreements to which entities other than States or intergovernmental organizations were parties. Although some such agreements might be international in character, their characteristics were very different from those of treaties in the proper sense of the term. His delegation supported article 6, since it considered that international organizations had the capacity to conclude treaties only in so far as such capacity was conferred on them by the rules of the organization in question.

90. Concerning the law of the non-navigational uses of international watercourses, his delegation had some reservations about the fact that the Commission had begun its study with the problem of the pollution of international watercourses, which was an inevitable consequence of the use of waters. Above all, it hardly seemed appropriate to study at the world-wide level a problem which had very different aspects depending on the latitude involved and the economic development of the country concerned. Moreover, the problem was being dealt with in other forums, such as the Council of Europe and the Organization for Economic Co-operation and Development. Consideration of the problem by even a limited number of countries with similar concerns had shown the difficulty of identifying common legal principles in connexion with a question which was only now beginning to be studied. A study at the world-wide level could lead only to agreement at the level of the lowest common denominator, and might prejudice regional efforts. Furthermore, the problem of pollution could lend itself to specific approaches; for example, a draft convention on the protection of the Rhine against chemical products and another concerning salts were being elaborated at Koblenz through the International Commission for the Protection of the Rhine against Pollution. The basis for study proposed by the Sub-Committee on the Law of the Non-Navigational Uses of Watercourses (see A/9610, chap. V annex) seemed acceptable *a priori*, although touristic uses should perhaps be added to it. The study of the non-navigational uses of watercourses should deal with international watercourses. The concept of the hydrographic basin should be used only when it was a question of limiting flooding, since the concept of the drainage basin, which included ground water, had been excluded from the study. It might be worth noting that a river commission could have power over the affluents of an international watercourse.

91. Concerning the administrative matters dealt with by the Commission in its report, his delegation found it difficult to take a decision of principle to extend the annual session of the Commission to 12 weeks. The duration of the session could vary depending on the importance, number and urgency of the topics for discussion. Moreover, the budgetary implications of such a decision should be considered.

92. His delegation was satisfied with the way in which the Commission had organized its work in the past and found the arguments that some of its members had put foward for maintaining its permanent base at Geneva perfectly convincing.

The meeting rose at 6 p.m.

1493rd meeting

Wednesday, 6 November 1974, at 3.15 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1493

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. EUSTATHIADES (Greece) congratulated the Chairman of the International Law Commission on his brilliant introduction of the Commission's report on the work of its twenty-sixth session (see A/9610 and Add.1-3) and expressed sorrow at the death of Mr. Bartoš, who had devoted his life to the progressive development and codification of international law. He was confident that Mr. Šahović would prove a worthy successor to Mr. Bartoš.

2. The progress which the Commission had made on the topic of succession of States in respect of treaties was largely due to the outstanding preparatory work of the Special Rapporteurs, all of whom were outstanding British jurists. Some of the articles adopted by the Commission might appear to be not entirely necessary: for example, articles 5 and 7 (see A/9610, chap. II, sect. D) overlapped to some extent with articles 43 and 28 of the Vienna Convention on the Law of Treaties.[1] However, it might be useful to retain articles 5 and 7 of the Commission's draft, since some States which were not parties to the Vienna Convention might wish to participate in the future convention on the succession of States in respect of treaties. In general, the draft articles sought to strike a balance between two fundamentally opposing principles: on the one hand, the principle of continuity of treaty relations and, on the other, the "clean slate" principle, according to which the successor State was not bound by treaties concluded by its predecessor. The Commission had examined a great variety of situations in which one or the other principle should apply and had achieved a remarkable degree of agreement among its members. It would of course be much more difficult to reach agreement on such complicated matters in a larger body such as the Sixth Committee. On the other hand, discussion in a larger forum offered the advantage that a wider range of States could make their views known. His delegation looked forward to the opportunity to set forth its own views in detail at the stage of a plenipotentiary conference. Commenting in a preliminary way, he was pleased to note that in dealing with territorial régimes (articles 11 and 12) the Commission had rightly given preference to the principle of continuity. There were, however, still some divergencies of views, and certain draft articles should be worded in more precise language in order to avoid disputes arising out of their interpretation.

3. In part III of the draft articles, which dealt with questions relating to newly independent States, the Commission had given greater weight to the "clean slate" principle which it had felt to be more in conformity with the right to self-determination than the principle of continuity. Articles 15 and 16 should be read together. The emergence of a newly independent State did not necessarily imply the disappearance of all treaty relations. While a newly independent State had no obligation to continue the treaty régime of its predecessor, it retained the option to continue its participation in multilateral treaties. The wording of paragraphs 2 and 3 of article 16 was not sufficiently clear and could give rise to serious differences of interpretation because of the use of general concepts or expressions. In view of the practical significance of the participation of newly independent States in multilateral treaties, he hoped that a greater effort would be made to achieve maximum clarity in the drafting of articles 16, 17 and 18. It should also be borne in mind, as the representative of France had noted in his statement at the preceding meeting and as the Government of Sweden had indicated in its observations on the draft articles (see A/9610, annex I), that the era of decolonization was coming to an end and that the case of newly independent States would not be the commonest form of succession in the future.

4. Part IV of the draft articles, which dealt with uniting and separation of States, also suffered from imprecision.

5. His delegation agreed on the need for some procedure for the settlement of disputes which might arise out of the interpretation and application of a future convention based on the draft articles. The draft article proposed by Mr. Kearney (see foot-note 55 of the report) would meet that need only minimally. In his delegation's view, the proposed conciliation procedure should be supplemented by a clause providing for arbitral or judicial settlement in the event of failure to settle a dispute through conciliation. It was not necessary, however, to refer the matter of settlement of disputes back to the Commission, which already had a very heavy workload. That problem could be resolved by a plenipotentiary conference if it was decided to convene one. For the time being, the best procedure might be to refer the draft articles to Governments for their comments.

6. The Commission has also made progress on the other major topic before it at its last session, i.e., State responsibility. The Special Rapporteur on that topic was to be commended on the high quality of his work. As in the case of the draft articles on the succession of States in respect of treaties, he hoped that the Commission would aim for maximum clarity in drafting. The meaning of the articles should be as self-evident as possible, without relying on extensive commentaries for elucidation. With regard to article 7 (see A/9610, chap. III, sect. B), his delegation agreed with the Commission's observations in paragraph (11) of the commentary to that article that a component

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[1] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

state of a federal State could, in certain circumstances, emerge as a subject of international law separate from the federal State. In that case, the conduct of the component state automatically fell outside the scope of article 7. He was pleased to note that the Commission intended to consider that aspect in another article of its draft. There were a number of other aspects relating to the problem of federal States that could appropriately be dealt with in separate articles. As the Commission had noted in paragraph (18) of its commentary, the choice of criteria for designating the entities to be covered by article 7, paragraph 2, was not easy. He agreed with the representative of Czechoslovakia (1488th meeting) that further work was needed to clarify the scope of application of that paragraph. He could not, for example, entirely agree with the Commission in paragraph (18) of the commentary to article 7 that the conduct of an organ of a railway company to which certain police powers had been granted could be regarded as an act of the State concerned under international law. With regard to article 8, his delegation would prefer to reserve its position, since the full implications of the text adopted by the Commission were not yet clear. Article 9 also raised a number of complex issues which it would be premature to consider in detail, in view of the preliminary nature of the draft articles in their present form. The topic of State responsibility was one of the most important being dealt with by the Commission, and he hoped that everything possible would be done to increase the rate of progress on the draft articles.

7. Another question which should be considered was the fundamental issue of the implementation of international responsibility. That question was not merely related to State responsibility but an essential supplement to it, because the rules governing international responsibility were firmly placed between, on the one hand, the rules whose violation entailed the international responsibility of the State–or the whole body of international law–and, on the other, the procedure for the implementation of responsibility. It was true that the Commission stated in its report (see A/9610, para. 114) that it "might possibly decide whether a third [part] should be added" to the draft, for the purpose of dealing with "certain problems concerning the 'implementation' of the international responsibility of the State". The fact nevertheless remained that the fundamental issue of implementation–including, firstly, the rules governing the exhaustion of internal remedies–had been left aside. His delegation reserved the right to speak again on the question of the omission. In any event, the question of the implementation of the international responsibility of the State could not be disregarded. In order that that supplementary subject might also be covered, therefore, the Commission's work on the topic of responsibility should be accelerated and given strict priority.

8. Turning to the question of treaties concluded between States and international organizations or between two or more international organizations, he congratulated the Special Rapporteur, who was a great expert on the subject, on his report,[2] which was a fine one, and on the draft articles on the subject (see A/9610, chap. IV, sect. B).

9. He welcomed the appointment of Mr. Kearney as Special Rapporteur for the question of the law of the non-navigational uses of international watercourses. The report of the Sub-Committee set up by the Commission for the study of the question (*ibid.*, chap. X, annex) was one of the most valuable contributions that had been made to the work of the Commission.

10. He regretted that the Commission had not been able to resume consideration of the question of the most-favoured-nation clause, because of lack of time. The problem of time was a very serious one. Again and again, the Commission had had to stop its work on a particular item in order to take up other matters for which it likewise did not have time. The Commission must be given sufficient time to carry out its work if it was not to be criticized for making slow progress. He was glad, however, that the Commission had stated in paragraph 164 of the report that it would take up the question of the most-favoured-nation clause at its forthcoming session.

11. He noted with satisfaction that the Commission had co-operated in its work with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. He further noted that the tenth session of the International Law Seminar had been one of the most successful of those seminars. He paid a heartfelt tribute to Mr. Raton. He hoped that other Governments would follow the examples of the Governments of Denmark, Finland, the Federal Republic of Germany, Israel, the Netherlands, Norway and Sweden, which had made fellowships available to participants from developing countries.

12. He wished to congratulate the members of the United Nations Secretariat who had been responsible for doing research on international responsibility and the law of treaties. The International Law Commission was fortunate in having the highest quality of Secretariat assistance in all its work. However, a high-quality secretariat was not enough. Other elements also had a bearing on the Commission's work. Unfortunately, the election of the members of the Commission had over the years acquired a political character and the General Assembly had sacrificed the criterion of competence to other considerations, such as rotation. The Assembly could have met the requirements of having the main legal systems of the world represented on the Commission without neglecting the criterion of competence.

13. In connexion with the work of the Commission, he also wished to comment on the report of the Joint Inspection Unit (see A/9795), to which previous speakers had already referred, particularly the representative of Brazil. The Unit was made up of people who were competent in the field of finance but not in the very different field of international law. The members of the Commission themselves were in the best position to decide on the place and duration of its sessions. As for the financial problems faced by the Commission, if they were really insurmountable, then instead of criticizing the Commission, it would be better not to overburden it with too many items. It was significant that an important part of the codification of international law had been entrusted to a commission which met only a few weeks a year. The

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[2] See *Yearbook of the International Law Commission*, 1974, vol. II, document A/CN.4/279.

General Assembly must realize that it was quality and not quantity that mattered in the work of the Commission. Fortunately quality had so far remained at a very high level. The Commission's twenty-fifth anniversary was a milestone in its brilliant career. He suggested that the speeches made by the Chairman of the Commission, the Legal Counsel of the United Nations, Sir Humphrey Waldock, Mr. Yasseen and others should be published in a brochure for widespread dissemination.

14. Mr. FREELAND (United Kingdom) said his delegation noted with satisfaction that the Commission had adopted a final text of draft articles on the succession of States in respect of treaties which appeared fully to maintain the Commission's high standards. His Government would need further time to study carefully the draft articles and the Commission's commentaries before reaching considered conclusions on them and on the procedure which should be adopted to follow up the work of the Commission. He referred members to the written observations submitted by the United Kingdom on 29 October 1973 (see A/9610, annex I). For the time being, he only wished to comment on two points of detail.

15. The first point concerned the Commission's conclusions on the so-called "clean slate" principle. The United Kingdom Government doubted whether, in its assessment of the implications of State practice in that field, the Commission had given sufficient weight to those many cases where, without difficulty or controversy, States concerned had continued to apply treaties after a succession of States had taken place. In those few such cases which had given rise to controversy, a solution had not been too hard to find. When the attempt was made to determine where the balance of advantage lay, it should be recognized how great an interest all States had in maintaining the stability of the framework of treaties, particularly multilateral treaties of a law-making nature, which was so important a part of the whole structure of international relations.

16. The other point concerned the settlement of disputes. His Government strongly favoured the inclusion of provisions for the settlement of disputes arising out of the application or interpretation of a convention on the topic. Such procedures should be compulsory rather than merely optional. His Government had reached no firm conclusion regarding the particular procedures which might be chosen and thought that the question was one which merited further study: different settlement procedures might indeed prove to be desirable in relation to different kinds of questions which might arise from the draft articles. Not least in view of operative paragraph 2 of draft resolution A/C.6/L.987/Rev.2, which the Committee had adopted at its previous meeting on item 93, his Government would expect that recourse to the International Court of Justice would be among the procedures to be considered. He was pleased to see from paragraph 81 of the Commission's report that it was willing to consider at its next session the question of the settlement of disputes for the purposes of the draft articles and to prepare a report on that question for the General Assembly. His delegation would certainly urge that the General Assembly should request the Commission to proceed accordingly.

17. On that part of the recommendation in paragraph 84 of the report which proposed that the General Assembly should convoke an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject, his delegation shared the view that it would be premature to take a decision in that sense at the current session of the General Assembly. The General Assembly should go no further than the course which it had followed in 1971 in relation to the draft articles on representation of States in their relations with international organizations. It seemed preferable to postpone a decision on the further handling of the draft articles until the General Assembly had had the benefit of written comments and observations from States not only on their substantive content but also on the procedure to be adopted for the elaboration and conclusion of an eventual convention.

18. The course of the debate so far, and in particular what had been said on the one hand about the draft articles on succession of States in respect of treaties and, on the other, about the methods of work of the Commission, had given rise in his mind to a question about the working methods of the Sixth Committee. Following a long-standing tradition in the Committee, many speakers had made comments of great authority on the content of the draft articles. Yet as a matter of working efficiency, he wondered whether that was the most suitable way for the Committee to proceed in those cases when the Commission had included in its report a recommendation that written comments and observations on a particular subject should be invited from Governments. In those cases, there might be advantage in an arrangement under which, unless there was some special reason to the contrary, detailed expositions of the views of Governments would be confined to such written comments and observations. He suggested that, where the Commission had made a recommendation of that kind, the Chairman of the Sixth Committee might at the outset of the Committee's debate on the report of the Commission draw attention to that fact and inquire whether any delegation objected to the inclusion in the Committee's eventual draft resolution of an invitation to Governments to submit written comments and observations. If there was no such objection, he might then inquire whether the Committee was in agreement that, since there would be the opportunity to submit such comments or observations subsequently, delegations would not enter into points of detail on the subject-matter in question in their statements to the Committee. Of course, if any delegation insisted on the exercise of its right to comment orally, it should be free to do so. But, if not, the Committee would proceed on the understanding that detailed comments would be reserved until the written stage. The adoption of such a practice could significantly save the Committee's time. His delegation made no formal proposal on the question, but would be interested to hear views from others on the matter. It was certainly incumbent on the Committee to consider whether it could impose its working methods.

19. Having said that, he felt under a special obligation to detain the Committee no longer than strictly necessary, particularly in commenting on topics where Governments had an opportunity to express views in writing. He proposed also to refrain from a detailed commentary on the topic of the law of non-navigational uses of international watercourses. The Sub-Committee which the Commission

had set up to consider the question had made a useful beginning by raising a number of preliminary questions concerning the scope of the work. These would presumably be circulated to Governments with a request for written replies. At the current juncture he wished only to make two points. First, his delegation had been among those which had favoured the exclusion of navigational uses from the study to be undertaken by the Commission. The United Kingdom Government attached importance to the notion of freedom to navigate on international rivers and were unable to agree that further work on the question should be based on a more restrictive approach such as that embodied in the Helsinki Rules.[3] That did not mean that the United Kingdom Government would necessarily wish to return a negative answer to the question whether the Commission should take into account in its study the interaction between use for navigation and other uses. He merely wished to indicate that his Government would have to study the implications of the question carefully.

20. Secondly, there was a question whether Governments were in favour of the Commission's taking up the problem of pollution of international watercourses at the initial stage of its study. Without anticipating or prejudging the answer which the United Kingdom Government might give on the question, he wished to remind the Committee that, during the debate at the previous session (1406th meeting), his delegation had acknowledged the force of the view that the Commission's study on the topic might fit in very well with the attention which the international community was currently giving to the problems of the environment and the prevention of pollution. The British representative had also referred to the desirability of the Commission's taking into account, in pursuing its own study, the work being done in other international organizations, particularly the Council of Europe.

21. Turning to the topic of State responsibility, he welcomed the progess which was shown in chapter III of the Commission's report. He also welcomed the Commission's intention, as expressed in paragraph 164 of the report, to continue at its next session, as a matter of priority, its study of the topic and the preparation of its draft articles. On the draft articles, he only wished to remark that article 7, paragraph 2, as at present drafted, might go too far in attributing to a State the conduct of entities which were not part of the formal structure of the State or of a territorial governmental entity. There must be doubt whether a provision in the wide terms of the paragraph was likely to be acceptable to the United Kingdom Government.

22. On the topic of treaties concluded between States and international organizations or between two or more international organizations, he welcomed the evidence of progress shown in chapter IV of the report. His delegation would follow with close interest the further work of the Commission on the subject and was sure that it could not be in better hands than those of Mr. Reuter, the Special Rapporteur.

23. In connexion with the comments made by the Commission on the points at issue between itself and the Joint Inspection Unit, his delegation believed that at the present time of extreme financial stringency for the United Nations, it was only right that the working methods of all United Nations bodies should be subjected to the closest scrutiny. The Sixth Committee itself should be prepared to examine its own working methods to see what contribution it could make. His delegation believed, however, that the work of the Commission was of a very special kind and that its working methods, including the timing and place of its meetings, were by and large well suited both to the nature of the Commission's work and to the composition which the General Assembly had thought it right that the Commission should have. The special circumstances of the Commission should be taken fully into account and comparisons with other bodies, not similarly situated, might be misleading. He had no doubt that when the Fifth Committee considered the report of the Joint Inspection Unit on the pattern of conferences (see A/9795), it would have full regard to the comments which the Commission had made on the relevant part of that report and to the comments which had been made by delegations during the current debate in the Sixth Committee.

24. He had some doubt, however, about one recommendation which the Commission had itself made in that field in paragraph 165 of the report, that a 12-week session should be adopted as the minimum duration of its annual session on a permanent basis. His delegation agreed that the 12-week session of 1974 had been fully justified by the results achieved. On the other hand, having regard to the financial stringency to which he had referred earlier, it would be inadvisable to fix 12 weeks as a minimum standard duration. The burden of work confronting the Commission, although it was likely always to be heavy, would vary from year to year, as it had in the past. It therefore seemed preferable that the General Assembly should not tie its hands by stipulating any standard duration on a permanent basis.

25. He wished to express the confidence of his delegation that the high standards which the Commission had set for itself and achieved in the past would be followed in the future.

26. Mr. NJENGA (Kenya) said that reorganization of the draft article on succession of States in respect of treaties and the rephrasing of some of the provisions, including the addition of a number of new articles, constituted significant improvements on the 1972 draft.

27. He wished to make a few comments on the articles dealing with general provisions. His delegation saw no need for the inclusion of a non-retroactivity clause, as contained in article 7, in a treaty of that nature. Non-retroactivity was a general principle of the law of treaties which had become enshrined in article 28 of the Vienna Convention on the Law of Treaties and therefore it would, as a principle, be generally applicable to all treaties. The emphasis on non-retroactivity in that particular kind of treaty would tend to weaken the codification aspects of the proposed treaty on succession of States. Such a treaty, to be of any use, particularly in so far as it concerned the emergence of new States, should be taken as declaratory of the law on that important subject as it currently existed, and thus help to clarify the rights and duties of States, in view of

[3] See *Intergrated River Basin Development* (United Nations publication, Sales No. E.70.II.A.4), annex VII.

conflicting State practice on the subject. Taken that way, the treaty, when concluded, would have a much broader impact as a concise statement on the law on the subject, an impact which would not be limited only to States parties. Such an impact would be similar to that achieved in the Vienna Convention on the Law of Treaties, which was considered to be law by a great majority of States—many more than those that had signed or ratified it. In that context, therefore, to emphasize non-retroactivity of the draft convention would only have a negative effect.

28. His delegation was particularly satisfied with articles 8 and 9 which resolved the controversy about the effect of devolution agreements entered into on the achievement of independence and unilateral declarations made by newly independent States. By themselves such agreements or declarations could not in any way create obligations or rights binding on successor States or on third parties. The "clean slate" principle, which provided the new State with the opportunity of exercising its right of self-determination, was unaffected by the conclusion of devolution agreements or unilateral declarations.

29. One major improvement over the 1972 draft was the incorporation of articles 11 and 12 dealing with boundary régimes and other territorial régimes. That arrangement made it more evident that in the Commission's view those régimes remained unaffected by the succession of States as such, irrespective of the type of succession involved. His delegation shared the conclusion reached by the Commission concerning boundary régimes in article 11. His Government's view had been stated in the Committee during the twenty-seventh session (1324th meeting), and its observations on article 11 were set forth in annex I of the Commission's report. However, his delegation was not satisfied with the formulation of article 12, which assimilated "dispositive", "real" or "localized" treaties to the régime of boundaries. He quoted the first part of article 12 and said that the second part of that article dealt with the same type of treaties where obligations or benefits were created for the benefit of a group of States. Article 12 was too categorical and extreme. A State in exercise of its sovereignty might confer any benefit or undertake any obligations it so desired with respect to its territory by treaty. It was for the State to judge for itself what it should receive in return. Once such a choice was made the States concerned must respect their mutual undertakings. It was, however, going too far to say that a newly independent State should, with respect to the enjoyment of its territory and use of its resources for the benefit of its peoples, be permanently fettered by servitudes imposed on the territory by the former colonial Power for the benefit of other States in consideration of motives which might have been satisfactory to the predecessor State but not consented to by the successor State. Such a proposal could hardly be consistent with the principle of self-determination. The Commission, in its commentary on article 12 (para. 23), had given instances of recent treaties alleged to have created such localized treaties, including the Belbases Agreements of 1921 and 1951 creating a lease in perpetuity for a nominal rent over the port facilities at Kigoma and Dar es Salaam in Tanganyika. Contrary to the understanding of the Commission, those agreements had been rejected by the United Republic of Tanzania and were in the process of being substantially modified. Another example given in that commentary (para. (27)) was the Nile Waters Agreement of 1929 concluded between the United Kingdom and Egypt. That Agreement purported to restrict the exercise of permanent sovereignty over the upper riparian State's water resources and to subject any use of such waters for irrigation, industrial or power works to the prior consent of the lower riparian State and as such was not one to which a successor State could in fairness be asked to submit. Therefore, the States affected by the 1929 Nile Waters Agreement had insisted on negotiations among interested Governments to ensure equitable regulation of the use of Nile waters. Moreover, regular machinery for consultations between the countries concerned had been established.

30. His delegation considered that in cases of localized treaties a newly independent State did not inherit the territorial régime created but it did inherit an obligation where necessary to re-negotiate the provisions of such a treaty so as to achieve the protection of the vital interests of a beneficiary State while not jeopardizing the successor State's independence.

31. His delegation had no objection to the saving clause, article 13, although it regarded it as superfluous. His delegation was in general agreement with part II of the draft articles. Concerning part III, his delegation endorsed the Commission's decision to adhere to the "clean slate" principle, which was now supported by an overwhelming majority of States. With respect to a dependent Territory in a colonial status, the peoples of such Territory had been denied the capacity to give consent to the treaties by the metropolitan Power and could not therefore be bound by any treaty concluded by the metropolitan Power after attainment of independence. The principle of "contracting out" would be inconsistent with the principle of self-determination. Apart from the lack of clear definition of what were law-making treaties, no State was obliged to become a party to them irrespective of their content, and there was no reason why a newly independent State should be treated differently.

32. His delegation found it difficult to reconcile article 19 with the "clean slate" principle. If a new State had a "clean slate", then logically that should be applicable not only to the treaty itself, but also to any reservations made by the predecessor State. Should it wish to be bound by existing reservations, the new State should make its views clear on becoming a party to a convention either by expressly adopting the reservations of the predecessor State or by formulating its own specific reservations.

33. His delegation was in general agreement with the provisions of parts IV and V of the draft articles. It endorsed the recommendation of the Commission in paragraph 84 of the report.

34. According to the usual practice, the draft articles should be submitted to Governments for comments, such comments to be considered together with the draft by the future conference of plenipotentiaries. In view of the heavy schedule of conferences already agreed to, Governments should consider the possibility of submitting the draft articles to the Committee in the same manner as for the Convention on Special Missions.

35. His delegation had noted with appreciation the text of articles 1 to 9 of the draft articles on State responsibility. Progress had been slow, particularly in view of the importance of the subject, which should be given the highest priority in the future. No study on State responsibility could be complete without consideration of international liability for injurious consequences arising from performance of lawful activities as well as for internationally wrongful acts. He referred the Committee to the recommendations of the General Assembly in resolution 3071 (XXVIII), paragraph 3 *(c)*.

36. His delegation was gratified that the Commission had begun work on the question of treaties concluded between States and international organizations or between one or more international organizations and endorsed the Commission's decision to prepare a set of draft articles capable of constituting the substance of a convention. It also welcomed the Commission's decision to follow closely the Vienna Convention on the Law of Treaties and thought that when work was completed on the new convention, it might be necessary to examine how the two conventions could be merged or harmonized in view of their close relationship.

37. His delegation had consistently supported General Assembly resolutions taken since 1970 requesting the Commission to study the law of the non-navigational uses of international watercourses as a priority subject. It was thus gratifying to note that the Commission had begun work on that subject during its twenty-sixth session and had set up a Sub-Committee on the matter. The report of the Sub-Committee, reproduced as an annex to chapter V of the Commission's report, was being carefully studied by his Government together with the 1963 report of the Secretary-General on the legal problems relating to the utilization and uses of international rivers[4] and it would submit written comments in due course.

38. The Sub-Committee's report had brought out the great complexity of the issues involved and the need for thorough study. Since the navigational and non-navigational uses of international watercourses impinged on each other, the Commission would be well within its mandate to examine navigational uses within that context. It should also maintain close contact with all international bodies, particularly the United Nations Environment Programme (UNEP), which were currently dealing with that subject and should request their co-operation. At the current stage, however, the Commission should take up the study of water uses in general and formulate general principles for the equitable utilization of water resources. The problem of pollution should be left to UNEP and other international and regional organizations currently dealing with it.

39. His delegation commended the collaboration of the Commission with other regional legal bodies, particularly the Asian-African Legal Consultative Committee. He thanked the Commission for organizing the International Law Seminar and said that those countries which were in a position to assist should emulate the example of some of the developed countries which had made generous donations enabling students from developing countries to participate.

[4] A/5409.

40. The General Assembly should accede to the Commission's modest request to extend the duration of its future session to 12 weeks.

41. Mr. FUENTES IBAÑEZ (Bolivia) congratulated the Commission on the work it had accomplished during its twenty-sixth session. His delegation considered the Commission's report a most valuable contribution in promoting the systematic codification of international law. The draft articles on three of the four main topics considered by the Commission at its twenty-sixth session were a solid compendium on the subject-matters and a positive contribution for their study and subsequent application in the international community. The subject which had been most fully treated was succession of States in respect of treaties while the work done on the remaining topic had been of a preliminary nature only. The subjects dealt with were extremely difficult and the preliminary texts should be regarded as working documents which would be amended in the light of Government consultations and the Commission's own reviews.

42. Succession of States in respect of treaties and State responsibility were related topics. The emergence of a State had not always come about of itself. It had not been the consequence of the self-determination of a people but a result of a series of coinciding interests which did not necessarily seek to satisfy the inhabitants of the territory involved. Therefore, the succession of States had not required explicit legislation as was the case today where, together with political independence, new States also won the right to accept or reject the obligations contracted by other States on their behalf by virtue of the "clean slate" principle. The "clean slate" principle might have conflicting effects, but automatic succession would also give rise to serious difficulties for its proper application, even in the case of a State seeking to obtain membership to international organizations, since that status could not be acquired by succession but only by admission in accordance with the machinery established by the relevant regulations. The Commission in that case based itself on the body of legal decisions established in recent years. As a result of decolonization, new types of associations had arisen which had nothing to do with succession but which had received international endorsement on the basis of the political will enjoyed by States in formation which were recognized as being almost as representative as fully fledged States.

43. The Commission had excluded from the scope of the draft articles on succession of States problems of succession arising as a result of changes of régime brought about by social or other forms of revolution, since in its view, in the majority of cases, a revolution or coup d'état brought about a change of government while the identity of the State remained the same. That was the usual procedure, since otherwise, in the period of consolidation of a recently formed State, there were almost always changes in which the alternatives of power could produce real or apparent radical changes in the predominant political trends, but which did not of necessity alter the identity of a State or affect its duties to the community to which it belonged.

44. The preliminary report of the Commission on the law of the non-navigational uses of international watercourses was properly supplemented by the report of the Secretary-

General in document A/9732. It was interesting to learn from paragraph 334 of that report, under the heading "The need for an adequate legal framework", that for more than half of the approximately 170 international drainage basins identified in the world there were no international agreements in force. If one bore in mind, however, that at the level of Latin America, for example, legislation on the use of watercourses for agricultural or energy purposes was largely outdated, it was not at all surprising that international régimes were insufficient, requiring as they did means of quantitative identification and careful regulation which had not always been achieved by Governments. That explained the importance of the item for the developing countries. His delegation therefore endorsed the Commission's recommendation that the item should be given priority at its next session which, he hoped, would be extended to 12 weeks. The topic of international watercourses was gaining in importance because of the interest aroused in the international community concerning the need for increasingly integrated legislation on hydrographic basins in the formation of large water reserves, since one of the most pressing aims for the rational management of natural resources for the benefit of humanity was the equitable use of water.

45. The chapter on State responsibility offered a wide field of interest for research, since it laid down general rules to determine internationally wrongful acts. His delegation endorsed the Commission's opinion in paragraph 115 concerning the circumstances in which the conduct attributed to the State must be considered as constituting a breach of international legal obligation and thought that the criterion should be made unequivocably contemporary, since what might be lawful at one time might subsequently become detrimental to a whole people.

46. His delegation also shared the view that economic unions of various types with community machinery for specific purposes did not constitute the creation of a State and there could be no succession to the treaty obligation of all or some of its constituent States if it had not been expressed constitutionally, as in the case of the union of two or more States.

47. His delegation pledged its support to the Commission as the law was an instrument for the achievement of peace between peoples.

48. Mr. MAKEKA (Lesotho) congratulated the Commission on the work it had accomplished during its twenty-sixth session and expressed appreciation to the Chairman of the Commission for his eloquent and lucid introduction of the Commission's report. He paid a tribute to the memory of Mr. Bartoš, who had served the Commission with dedication and zeal, and congratulated Mr. Šahović on his election to membership of the Commission.

49. His delegation attached great importance to the question of succession of States in respect of treaties and commended the draft articles prepared by the Commission. The adoption of the "clean slate" principle represented a progressive development of international law and was a direct outcome of the principle of self-determination. His delegation was particularly gratified that the Commission had rejected the proposal that there should be a presumption that a newly independent State consented to be bound by treaties previously enforced in its territory unless it declared a contrary intention within a reasonable time. It was unfortunate that some members of the Commission and of the Sixth Committee found it difficult to go along with the generally accepted "clean slate" principle, which recognized that all States were equal and sovereign and thus must enjoy the same sovereign rights. There was no reason why independent States should be burdened by obligations which were not in their national interest, while their predecessors had had a free hand in exercising their sovereign power of consenting to be bound. Those who attacked the "clean slate" theory might be suspected of trying to impose a new form of colonialism on newly independent States. It scarcely needed to be pointed out that, in most cases, treaties concluded under colonialism served the interests of the colonial Powers, not the interests of the rightful inhabitants of the Territories.

50. His delegation was not convinced by the arguments adduced in favour of making boundary treaties an exception to the "clean slate" principle. While it was true that all countries must respect the existing boundaries, that did not mean that newly independent States should automatically be presumed to have succeeded to treaties establishing those boundaries. His Government did not accept the boundaries imposed on Lesotho by colonial Powers, nor did it regard itself bound by their treaties to that effect. However, it respected the *de facto* existence of the present boundaries and understood respect to mean that States should not resort to violence in order to solve boundary disputes. Boundary treaties should not be regarded as sacrosanct and unchallengeable.

51. His delegation had listened attentively to arguments that the "clean slate" theory should not apply to the so-called multilateral universal treaties. Those who advocated that stand, however, represented countries which either had participated in the formulation of those treaties or had had an opportunity to decline to participate in them. The newly independent States should not be penalized because of their former dependent status. In his delegation's opinion, the "clean slate" principle should apply to all treaties without exception.

52. His delegation welcomed the articles on the retroactive effect of notification of succession to treaties. The present draft represented a delicate balance which should not be disturbed.

53. With regard to paragraph 84 of the Commission's report and despite his delegation's reservations on proposed exceptions to the "clean slate" principle, his delegation felt that there was no need for Member States to be invited to submit their written comments and observations on the final draft articles. Governments would have an opportunity to submit their proposals for consideration during the plenipotentiary conference that would study the draft articles and conclude a convention on the subject. His delegation agreed that the conference should be held in 1976 because that would give Governments enough time to study the draft articles, and in any case 1975 was already overburdened with a number of major legal conferences.

54. His delegation was also grateful to the Commission for producing articles on the question of State responsibility. Small countries like his own welcomed the adoption of the principle that States were responsible not only for wrongful acts of their organs, but also for acts of persons, groups, bodies or entities exercising Government authority or under Government control. He was pleased to note that the defence of municipal law had been rejected. In considering the question of State responsibility, it would also be appropriate for the Commission to touch on certain aspects of aggression. A convention on State responsibility would, he hoped, have the effect of deterring Governments from mistreating foreign nationals who were working or temporarily residing in their territories. He urged the Commission to take up that topic as a matter of priority at its next session.

55. His delegation attached great importance to the law of the non-navigational uses of international watercourses and hoped that the interests of small, poor countries would be given special attention in that regard. Water had become a major economic resource for some countries, and their interests must be taken into account in formulating international legal norms on the uses of water resources. It would not serve any purpose if stringent regulations were formulated, particularly with regard to pollution, if their implementation would adversely affect the economic development of countries. He also hoped that the Commission would clarify the law on tapping underground water which extended from the territory of one country to that of a neighbouring State.

56. His delegation endorsed the Commission's work and supported the recommendation for a 12-week session.

57. Mr. PETRELLA (Argentina) deeply regretted the loss of Mr. Milan Bartoš, whose friendship and advice had always been treasured by his delegation. He welcomed the completion by the Commission of the second reading of the draft articles on succession of States in respect of treaties. That draft was highly acceptable and should serve as a basis for discussion at a future conference of plenipotentiaries. The "clean slate" principle seemed in general terms a wise approach, particularly within the spirit of General Assembly resolution 1514 (XV).

58. He welcomed the adoption of three additional draft articles on State responsibility.

59. With reference to the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation supported the Commission's decision to follow as closely as possible the order and method of the Vienna Convention on the Law of Treaties, given the relationship between the two.

60. His delegation hoped that the Commission would have time to pursue its consideration of the most-favoured-nation clause, since that subject was particularly important for the developing countries and because it involved matters directly related to the principles governing economic relations between States. So that the Commission should have enough time to consider that item, his delegation supported its recommendation that its annual session be extended to 12 weeks.

61. His delegation welcomed the Commission's continued collaboration with regional legal bodies and congratulated the representative of the Inter-American Juridical Committee on his statement before the Commission.

62. The best reply the Commission could offer to the report of the Joint Inspection Unit was its work. His delegation supported earlier speakers and the words of the Secretary-General (see A/9795/Add.1) and thought that the Unit should be reminded that the Commission promoted the fundamental principles of the United Nations.

63. The first part of the Sub-Committee's report on the law of the non-navigational uses of international watercourses included comments on the nature of international watercourses and raised immediate difficulties since that concept did not seem to have a sufficiently well-defined meaning. The questions addressed to States in paragraph 17 of the Sub-Committee's report would help to remedy that lack. Such difficulties were not insurmountable. A lot of documentation had been drawn up over the years by international organizations and should serve as an initial basis for the work of codification. At that stage, the Commission could base its work on an analysis of all those instruments, thereby avoiding any repetition of research.

64. His delegation did not regard the list of uses in paragraph 30 of the Sub-Committee's report as exhaustive or as establishing any order of priority. It would be wise to consider aspects related to flood prevention and erosion and to bear in mind the relationship between navigational and non-navigational uses. The purpose of the Commission's work was to draw up, as a priority, general standard regulations on the uses of watercourses, in other words to codify such law on a world-wide basis. In the initial state of the Commission's work, his delegation did not think it wise to deal with the problem of pollution, which was a consequence of use. The first subject of study should be the uses of watecourses, although pollution could be dealt with at a later stage. Moreover, to give priority to the question of pollution would place emphasis on an element which had not been mentioned in General Assembly resolution 2669 (XXV). Furthermore, he shared the concern of earlier speakers regarding the possible duplication of effort with other United Nations bodies. Similarly, he had noted the understandable uncertainty concerning the meaning and scope of the expression "international watercourses", and thought therefore that it might perhaps be better first to establish the norms on which the study would be based on and then, if necessary, to deal with pollution. The study of pollution should not be allowed to delay the work of the Commission on the general uses of watercourses.

65. His delegation was gratified at the supplementary report submitted by the Secretary-General (A/9732) on legal problems relating to the non-navigational uses of international watercourses pursuant to General Assembly resolution 2669 (XXV). That report was a useful supple-

ment to the 1963 document[5] drawn up by the Secretary-General pursuant to resolution 1401 (XIV) and referred to the Commission by General Assembly resolution 2669 (XXV). Now that the Commission had begun its work on the subject, his delegation hoped that the Secretariat would take the necessary steps so that both reports could be published together in the *Yearbook of the International Law Commission*, as the Commission itself had decided at its twenty-third session.[6]

The meeting rose at 6.05 p.m.

5 *Ibid.*

6 See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10*, para. 122.

1494th meeting

Thursday, 7 November 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1494

Anniversary of the October Revolution of 1917

1. The CHAIRMAN congratulated the Soviet delegation and the people of the Soviet Union on the occasion of the fifty-seventh anniversary of the October Revolution.

2. Mr. KOLESNIK (Union of Soviet Socialist Republics) thanked the Chairman, and said that the gun-fire from the cruiser *Aurora* 57 years ago had marked the dawn of a new era for mankind.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

3. Mr. COLES (Australia) said that, in the 25 years of its existence, the International Law Commission had produced drafts or reports which had served as the basis for the negotiation and conclusion of major multilateral law-making treaties. The Commission's contribution to the codification and progressive development of international law had now been augmented with draft articles on succession of States in respect of treaties (see A/9610, chap. II, sect. D). The drafting of articles on that subject had been no easy task, since there was no general doctrine discernible in State practice in that field. Consequently, the Commission had not been able to confine itself to codification; it had had to elaborate or develop the applicable rules. In doing so, it had drawn on the Vienna Convention on the Law of Treaties, which had already acquired some authority, and on the principles of the Charter of the United Nations, in particular self-determination. However, those sources had not provided the solution to the particular problems of State succession in respect of treaties. The Commission had had to balance the principle of *de jure* continuity, derived from the principle *pacta sunt servanda,* with the principle—derived from the right of self-determination—that a new State began its treaty obligations with a "clean slate" regarding the treaty obligations of the predecessor State. It had not been easy to develop a universally practicable and politically acceptable régime which took these two principles into account. Although some of the draft articles appeared to be inconsistent with others, that was because they were the result of compromise. For example, the Commission had adopted different approaches to the validation of bilateral and multilateral treaties in respect, on the one hand, to newly independent States and, on the other, to States uniting or separating. It was therefore inevitable that the Commission should have agreed to compromise on certain points. Generally speaking, the Commission had taken into account both the desire to preserve stability and continuity in international relations and the need to recognize the reasonable aspirations of emergent States. For those reasons, the Australian Government considered that the draft articles constituted a good working basis for the conference of plenipotentiaries. However, he would like to refer to certain areas which would require further consideration at the conference.

4. Despite the importance of the principle of self-determination, it did not provide a solution to every problem connected with succession of States in respect of treaties. The Commission itself had recognized that the "clean slate" principle was at once too broad and too categoric. Such a principle too rigidly applied would be inimical not only to stability and continuity in international relations, but also to the interests of the newly independent State if it was thereby deprived of favourable treaty arrangements applying to it prior to independence. The "clean slate" principle must be considered in the context of all State succession situations. It was appropriate that emphasis should be placed on the right of self-determination in the case of newly independent States, but other situations must also be taken into account in order to ensure orderly regulation of international relations. The application of the "clean slate" principle was justified in the case of decolonization, but in other cases—especially where there had been no real succession of States, but a profound internal political or social revolution—more complicated problems might arise, involving State responsibility and the rights and duties of States under the law of treaties generally.

5. In their transitional agreements, newly independent States had placed widely differing emphasis on the principle of continuity of treaties. A number of States had deemed it desirable to maintain existing legal relationships; others had asserted that treaty rights and obligations were succeeded

to upon independence by virtue of customary international law. In his delegation's view, it would be wrong to atrribute those positions, in all cases, to a misconception of contemporary international law or of national interest. It was clear that, in some cases, States perceived that it was in their interest to opt for the continuity of legal obligations.

6. He welcomed the provisions in the draft articles dealing with boundary and other territorial régimes, which reflected the opinion among jurists that treaties of a territorial character constituted a special category and were not affected by a succession of States. Since those provisions were without prejudice to the question of the legality or validity of such treaties, it was clear that they were not intended to force unlawful or invalid treaties on newly independent States. They were merely a qualification of the "clean slate" principle, stressing that a newly independent State was not born into a legal vacuum but became a member of international society. The stability of the territorial limits of all member States of the international community was essential for peace and security. It should be noted that those provisions of the draft articles were binding not only on the newly independent States but also on third States which, in the absence of such provisions, might use the occasion of independence to terminate their obligations under treaties of a territorial character, thus threatening the territorial integrity of the newly independent States.

7. With reference to article 15, under which "A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates", his delegation wished to draw attention to the transitional legal or constitutional arrangements which might exist immediately before independence. In most cases, such transitional arrangements did not affect the treaty-making power or, if they did, it was only to a very limited extent. Until the moment of independence, treaties affecting the dependent Territory would be concluded by the colonial or metropolitan Power. In some cases, however, the dependent Territory might enjoy in the transitional period a limited competence in treaty-making and in concluding agreements in its own name, or it might participate directly with the colonial or metropolitan State in the conclusion of treaties. In that case, it might well wish to consider the treaties or agreements thus concluded to be still in force after independence. It would therefore be inconsistent with the principle of self-determination, which accorded legal significance to the clearly manifested political will of peoples, to maintain that no such treaty could remain in force without consensual validation of the newly independent State.

8. He cited the following example: a territory that was not formally independent, but which had none the less been accorded by the administering Power almost plenary powers in foreign affairs, concluded an agreement with a third State in its own name. It regarded that agreement as binding in international law, and according to the principle of State responsibility, was responsible to the third State for the implementation of its obligations. On independence, it might seek to assert the continuing validity of that agreement; but the third State, considering the agreement disadvantageous to it, even though it had freely entered into it, might invoke article 15 to justify its refusal to consider the treaty in force after independence. In such a case, the rules relating to bilateral treaties affecting newly independent States would have been invoked by the third State to the detriment of the newly independent State and in disregard of the legal and political realities existing prior to the formal independence.

9. His delegation therefore felt that the question of transitional arrangements should be reviewed to make sure that the formulation of article 15 adequately reflected all the implications of the principle of self-determination.

10. In the view of the Commission it could not be claimed that a newly independent State was automatically subject to the obligations of multilateral treaties of a law-making character concluded by the predecessor State. Nevertheless, the "clean slate" principle should not be invoked in such a way as to cast doubt upon the law-making character of such treaties. The Commission had added, moreover, that the law contained in a treaty of that nature, in so far as it reflected customary rules would affect the newly independent State by its character as accepted customary law. In that connexion, his delegation welcomed the commentary of the Commission on article 15 concerning the Geneva Red Cross Conventions. Those Conventions concerned rules of customary law and should therefore be applied to all belligerents irrespective of whether they were States or not and whether they were signatories to the Conventions. It sufficed for the application of the relevant provisions that an armed conflict within the purview of those instruments should exist, whether the existence of such a conflict was recognized by the parties to the conflict or not.

11. In the draft articles relating to the uniting and separation of States, the Commission had emphasized the continuity of treaty obligations except in the case where a part of the territory of a State separated from it and became a State in circumstances essentially identical to those existing in the case of the formation of a newly independent State. His delegation appreciated the reasons which had led the Commission to base itself on the principle of continuity in formulating those articles. At the same time it drew attention to certain political situations which illustrated that it was not always appropriate to draw a distinction between newly independent States and other States. In some cases, the evolution towards independence was gradual and peaceful and in full accordance with internal legal norms; in that case, the extension of treaties concluded by the metropolitan State was seen by the peoples of the territories as advantageous. There were a number of historical precedents for such a course of action. In contrast, in some cases involving separating States, the advent of independence might be sudden and violent. The division of the predecessor State might be the result of a social revolution causing the separating State to challenge the pre-existing social, economic and political order and to that end to denounce certain treaties concluded by the predecessor State.

12. The Commission had been right to include in article 33 a paragraph—paragraph 3—which departed from the principle of continuity laid down in paragraph 1 and which

covered cases that could be assimilated to that of a newly independent State. However, his delegation wondered whether a similar exception might not cover the case where the emergence of a newly independent State took place in circumstances closely similar to those envisaged in article 33, paragraph 1. Certain countries, like Australia, had obtained sovereignty and independence after being dependent territories of Great Britain. Australia had decided to consider treaties concluded by Britain and applying to its territory before independence as continuing to apply. The decision had been based on an interpretation of law. It had also been influenced by practical and political reasons. Australia had felt that the assumption of continuing application of imperial British treaties to its territory had been in its interest. Treaties such as those concerning extradition and the enforcement of judgements would otherwise have lapsed and required renegotiation. The straightforward inheritance of treaties had greatly assisted Australia in the early days of its independence, particularly in routine administrative matters concerning legal documents, evidence and extradition.

13. With regard to the draft articles on State responsibility (*ibid.*, chap. III, sect. B), three new articles of which the Commission had adopted at its last session, he pointed out that article 7, which dealt with the attribution to the State of the conduct of other entities empowered to exercise elements of the government authority, was of particular interest to a federal State like Australia. In regard to the theoretical basis of State responsibility in a federation, his delegation believed that the question depended upon the particular legal or institutional system in each federal State. In certain cases limited international legal personality might be conferred on component states under internal law. In most cases, however—including that of Australia—the federal Government was alone responsible for the conduct of foreign affairs. In those cases, there could be no question of the component states having any international rights or obligations. The responsibility of the State for the action of entities empowered to exercise elements of the governmental authority would rest on the conception of such actions as acts of the federal State.

14. His delegation noted that some progress had been made in the study of two other subjects: treaties concluded between States and international organizations or between two or more international organizations, and the question of the law of non-navigational uses of international watercourses. With regard to the organization of the Commission's future work his delegation supported the Commission's request that in future its sessions be extended to cover 12 weeks.

15. Mr. KAUFMANN (Netherlands) said that his delegation viewed the draft articles on succession of States in respect of treaties with special interest in anticipation of important forthcoming changes in the composition of the Kingdom of the Netherlands. As was known, the three component parts of the Kingdom, namely Surinam, the Netherlands Antilles and the territory in Europe, would constitute three separate States as of 1975 for Surinam and as of a later date for the Netherlands Antilles. The doctrine of succession of States to be codified in the draft articles would serve as a basis for determining the treaty relations which would continue to exist for each of the three States.

16. The draft articles sought to strike a delicate balance between the preservation of the continuity of treaty relations and the interest of new States, as expressed by the "clean slate" principle. Historical consequences perhaps made it inevitable that the balance should tip somewhat in favour of the latter interest. It should be kept in mind, however, that those draft articles were to govern future treaty relations and time would undoubtedly show that the draft did, in fact, have many characteristics of transitional law. It should also be kept in mind that the international community was experiencing and would continue to experience cases of smooth transition from dependence to full independence in which the people concerned exercised, during a certain period of time, the right to consent to the establishment of treaty relations affecting their interests and their territory. It was difficult to distinguish between cases of evolutionary separation and revolutionary separation and attempts must be made to introduce those considerations into the draft articles, while, of course, ensuring the application of the "clean slate" principle in cases such as decolonization by struggle and revolutionary separation.

17. There were two ways to improve the draft in that respect. First, article 8 might be completed by the addition of a formula providing that a devolution agreement could contribute to the transfer of obligations and rights from the predecessor State to the successor State, on the condition that the agreement clearly indicated the intention of the successor State to give it legal effect, either for certain specific treaties or for all treaties to which the predecessor had been a party. The legal effect would be, for the bilateral or multilateral treaties referred to in article 16, paragraph 3, an offer to accept certain treaty relations of the predecessor, which offer would have to be completed by the consent of the other parties; and for multilateral treaties not referred to in article 16, paragraphs 2 and 3, be a notification of succession to the depositary. The notification would become effective by registration of the devolution agreement under Article 102 of the Charter. It was thus necessary to give more value to devolution agreements. Second, his delegation felt that further consideration must be given to ways of ensuring better continuity of treaty relations under universal treaties. The rationale for the application of the "clean slate" principle to newly independent States was that those countries could have good reason to fear that treaties in respect of their territories had been concluded to serve foreign interests. That argument could not apply tp treaties open to universal participation, such as those currently adopted under the auspices of the United Nations. The reason why the pure and simple continuity of treaty relations created by that type of treaty had been rejected, had been the difficulty that appeared to exist of identifying or defining precisely the relevant category of treaties. Following the exchanges of views which had taken place on the subject, his delegation tended to believe that it was possible to solve that problem by a purely technical device, namely the test of the number of parties to a multilateral treaty open to universal participation, with universality being understood to mean "all States recognized as such by the practice of the United Nations at any given time". His delegation hoped that the members of the Commission and the Member States of the United Nations which would comment in writing on the draft articles would study that topic

again with great care. It was to be understood that in such a system the new State would have the right to "opt out". Draft article 12 *bis*, the text of which was in foot-note 54, and the commentary accompanying it seemed to be a good starting point in that direction. In that connexion, his delegation commended the Commission for its decision to improve the clarity of the draft as a whole by making the contents of articles 29 and 30 of the earlier draft[1] the subject matter of articles 11 and 12 of the final draft.

18. He added that a number of concepts in the draft and, in particular, the concept of "newly independent States", should be made clearer because neither the definition contained in article 2, paragraph 1 *(f)*, nor the commentary to that article made a distinction between a territory which acquired its independence by succession and a formerly dependent territory. The application of article 33, paragraph 3, could cause serious problems in that respect. Those considerations made it all the more necessary to adopt provisions concerning the settlement of disputes and his delegation therefore fully supported draft article 32, the text of which was in foot-note 55.

19. With regard to the question of State responsibility for injurious consequences arising out of the performance of activities which were not prohibited and to the relationship between that question and the problem of the non-navigational uses of international watercourses, he pointed out that his country, which was located on the delta of three important European rivers, was particularly vulnerable to the consequences of pollution and other injurious uses of international watercourses. At present, the rules relating to international liability for injurious activities were not sufficiently clear. His delegation considered that the Commission should give higher priority to that question and to the problem of the non-navigational uses of international watercourses by postponing somewhat the study of the question of treaties concluded by international organizations.

20. His delegation had no objection to the holding of 12-week sessions by the Commission. It shared the views expressed by the Commission in chapter VI, section H, of the report on the difficulties raised by the proposals for rationalization made by the Joint Inspection Unit (see A/9795).

21. Although the question as such had not been dealt with in the Commission's report, his delegation considered that the question of the computerization of all United Nations treaty information must be accompanied by an effort to achieve greater harmony in the practices of depositaries, whether they were States or international organizations. Having drawn the Committee's attention to the remarks contained in paragraph 47 of the Commission's report on the development of depositary practice, one delegation had suggested that the Secretary-General should be requested to make a concise study of the feasibility of centralizing and standardizing the dissemination of treaty information of the kind normally transmitted by depositaries. As a depositary State of a number of multilateral treaties, the Netherlands was prepared to co-operate in such an effort and supported the proposal that the Secretary should be requested to make a study of the question.

22. He announced that the Netherlands had provided a fellowship for the next International Law Seminar to be organized by the Commission.

23. Mr. ROSENSTOCK (United States of America) said that his delegation admired the work of the Commission, which helped to eliminate ambiguities in customary international law. His delegation applauded the completion of the second reading of the draft articles on succession of States in respect of treaties, in which the Commission had taken into account the practice of States and their observations on the subject and had analysed critically the various approaches to codification of the question. He also noted with satisfaction that the Commission had adopted the "clean slate" principle, and pointed out that the United States was probably the first country to have enunciated that doctrine when it attained independence almost 200 years ago. His delegation was in favour of convening a conference to adopt a convention on the subject.

24. He regretted, however, that the Commission had not completed its work on the provisions concerning settlement of disputes. A draft article could at the least have been included along the lines of the Vienna Convention on the Law of Treaties, and perhaps giving a greater role to the International Court of Justice. In that connexion, he drew the Commission's attention to operative paragraph 2 of the draft resolution on agenda item 93, concerning Review of the Role of the International Court of Justice, which the Committee had adopted by consensus, and stated that any draft the Commission produced which did not contain adequate dispute settlement provisions was an incomplete piece of work.

25. The articles on State responsibility adopted by the Commission at previous sessions, which were reproduced in the report being considered, laid a solid foundation for the development of more detailed rules in that field. As was made clear in the commentary to those articles, the principles adopted represented rules which were well established in State practice and supported by numerous decisions of international tribunals. Article 8, in particular, adopted by the Commission in 1974, raised interesting questions: was it intended to include private corporations, for example?

26. In general, his delegation noted with satisfaction the Commission's decision to continue at its next session as a matter of priority the preparation of additional draft articles on the subject, and trusted that the Commission had in mind the necessity of providing adequate dispute settlement provisions.

27. With regard to the question of treaties concluded between States and international organizations or between two or more international organizations, he pointed out that it was the view of his delegation that international organizations had full capacity to enter into agreements unless they were clearly and specifically denied that authority in their respective Constitutions. That fact should be reflected in the draft articles. The method followed in the preparation of the draft would no doubt assist

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[1] See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

Governments in identifying the similarities and differences between the new draft articles and the provisions of the Vienna Convention on the Law of Treaties, to which the new articles were closely linked.

28. With regard to the question of the law of the non-navigational uses of international watercourses, he believed that the Sub-Committee set up by the Commission to study it had wisely suggested that the States should be requested to comment on the meaning to be given to the term "international watercourses". It was important that the Commission should also know, before proceeding further, what States understood by the term "non-navigational uses".

29. In connexion with the report of the Joint Inspection Unit, and the Commission's response thereto, his delegation considered that the accomplishments of the Commission were exemplary, and had been due, in part, to its distinctive working conditions, with which it would be regrettable to interfere. There were, however, difficulties arising from the increasing number of international conferences. The Secretariat had attempted to resolve those difficulties by recommending certain economies regarding the length and location of meetings. It was incumbent upon all United Nations organs, including the Commission, to consider how they might contribute to the rationalization of the pattern of meetings. Nevertheless, his delegation did not advocate any measures which would serve to decrease the Commission's effectiveness.

30. In the course of the discussion it had been suggested that various aspects of depository practice merited consideration. Problems certainly arose from the lack of promptness with which those functions were sometimes carried out, and from the divergent practices of depositories. There was, therefore, merit to be seen in a preliminary study of the subject.

31. Mr. JEMIYO (Nigeria) observed that nine conventions in the fields of diplomatic and consular law, the law of the sea and the law of treaties had emerged from the Commission's work on the progressive development and codification of international law. In addition, the Commission was active in the dissemination of the principles of international law by organizing annual international law seminars. The report on its twenty-sixth session was of immense importance to the newly independent States, particularly the chapter on the succession of States in respect of treaties. The Commission had duly taken into account the views of States which had achieved independence since the Second World War and had given full recognition to the practice of such States in respect of succession to treaties. His delegation supported the Commission's recommendation in paragraph 84 of its report to the effect that Member States should be invited to submit their written comments and observations on the draft articles, but considered that it was premature to convene an international conference of plenipotentiaries with a view to concluding a convention on the subject.

32. He considered that a useful definition of the term "notification of succession" was given in article 2, paragraph 1 *(g)*. In that connexion, he pointed out that notification of succession did not have a retroactive effect except under the conditions stipulated in article 22, paragraph 2. He welcomed the provisions of article 7, on non-retroactivity. Article 8, on agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State, was of historic importance for his country, which had inherited over a hundred treaties by virtue of the exchange of letters betwen the United Kingdom and Nigeria on 1 October 1960. Nigeria had recognized as binding nearly all the multilateral conventions signed by the United Kingdom, but had declined to assume the United Kingdom's obligations in respect of certain bilateral agreements, and the provisions of such agreements had been renegotiated. Articles 11 and 12 dealt with boundary régimes and other territorial régimes: article 11 was complementary to the relevant provisions of the Vienna Convention on the Law of Treaties, and also conformed to the resolution adopted in 1964 at Cairo at the Conference of Heads of State and Government of the Organization of African Unity. Article 13, which provided that nothing in the articles should be "considered as prejudicing in any respect any question relating to the validity of a treaty", implied that the régimes covered by articles 11 and 12 were not sacrosanct, since the treaties establishing them might be impeached. His delegation also supported article 15 on the position of newly independent States in respect of the treaties of the predecessor State, since it corresponded to State practice. Furthermore, his delegation suggested that the question of including a provision for the settlement of disputes should be referred to States for their observations.

33. He expressed the hope that the Commission would devote more time at its next session to consideration of the law of the non-navigational uses of international watercourses. His delegation felt that the Commission should have a substantial degree of autonomy to perform its work of codification and progressive development of international law, and that the Sixth Committee should support the recommendation in paragraph 165 of the Commission's report that the General Assembly approve a 12-week session.

34. Mr. KHAN (Bangladesh) said his Government would have to study the draft articles on succession of States in respect of treaties before his delegation would be able to make detailed comments thereon, and he would therefore limit himself to a brief statement. He felt that the principle of self-determination of peoples had not received adequate consideration by the Commission. Indeed, the "clean slate" principle had been accepted in the case of newly independent States not on the basis of the principle of self-determination of peoples but on that of the practice of States. However, his delegation commended the Commission for its adoption of that principle, not only in the case of newly independent States but also in the case of States formed from two or more territories. Nevertheless, his delegation wondered why the Commission had not extended the principle to cases of succession where the territory of a State was divided into several parts to form one or more States, and why it had adopted the principle of continuity in that case. Furthermore, the definition of newly independent States contained in article 2, paragraph 1 *(g)*, did not cover States formed in that way, even when they emerged as a result of the exercise of the right of peoples to self-determination. There appeared to be no justification in

the report for the different treatment of the two categories of newly independent States.

35. Article 33, paragraph 3, stated that "if a part of the territory of a State separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State, the successor State shall be regarded for the purposes of the present articles in all respects as a newly independent State". His delegation felt that that provision was not only vague and ambiguous but set impracticable criteria for entitlement to its benefits. Thus far, the cases of States which had been formed by secession had always been determined by State practice and not by any hard and fast rule. But, if the draft articles were adopted, to be entitled to act on the "clean slate" principle, a State formed by secession must be a newly independent State within the meaning of article 2, paragraph 1 *(g)*, or must fulfil the criteria set out in article 33, paragraph 3.

36. It would seem that the draft articles denied the right of self-determination of peoples to territories other than dependencies or territories with similar status. That was contrary to the principles of the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex, which made no distinction between the right of self-determination of the peoples of colonial and other territories. The considerations which had led the Commission to decide to accept the "clean slate" principle in the case of newly independent States were even more relevant to States formed by secession, which were sometimes subjected to worse forms of colonialism than the former colonies.

37. His delegation therefore urged that the "clean slate" principle should be extended to States which emerged following separation of one or more parts of the territory of a State, in exercise of the right of self-determination of their peoples. In doing so, it was acting in the interests of all peoples struggling for self-determination. Bangladesh was not bound by any treaties to which it had not consented. The Constitution of Bangladesh stated that no liability or obligation of any other Government which had at any time functioned in the territory of Bangladesh was or would be the liability or obligation of the Republic, unless it was expressly accepted by the Government of the Republic.

38. His delegation wished to refer to a matter mentioned in the Sixth Committee, namely the fact that the successor State was considered responsible for the public debts of the predecessor State. It had been stated that the successor State which had obtained the benefit of public loans by the very fact of taking over the territory was responsible for the public debts of the predecessor State with regard to the territory in question. Such an argument was unjustifiable: to ask territories which had gained independence after years of exploitation to assume responsibility for the debts of the predecessor State would merely perpetuate injustices to which they had been subjected. On the contrary, the principles of justice on which the United Nations Charter was based required that the predecessor State should compensate the successor State for all the benefits it had gained from its exploitation of the territories which had seceded to form the successor State. His delegation hoped that that principle would be reflected in future codification of the subject.

39. Mr. GARCIA ORTIZ (Ecuador) said his delegation found the Commission's report acceptable as a whole. He hoped that the draft articles on succession of States in respect of treaties would soon be sent to Governments so that they could comment in writing before a conference of plenipotentiaries was convened to adopt a convention on the subject.

40. His delegation welcomed the distinction made between the various forms of successions of States and their legal implications. It endorsed the decision to exclude social revolution from cases of succession of States, since such an event merely gave rise to a succession of Governments. However, no definite position could be taken on that subject until the problem had been considered in greater detail. The tenor of article 39 was difficult to understand within the context of the draft. Military occupation was contrary to the Charter, unless it was the result of a decision taken by the competent United Nations bodies. In all other cases, military occupation of a territory could not give rise to a legal situation which would have any effect on treaties. Like the Czechoslovak delegation, his delegation was in favour of deleting any reference to military occupation from the draft articles. However, it felt that provisions on the settlement of disputes arising from the application of the articles should be included in them.

41. The articles on State responsibility adopted by the Commission were satisfactory. Work must be pursued with a view to the preparation of a draft convention. The Commission must also continue its study of State liability for possible injurious consequences arising out of the performance of certain lawful activities.

42. Article 6 of the draft articles on treaties concluded between States and international organizations or between international organizations (see A/9610, chap. IV, sect. B) seemed the most important at the current stage, because it defined the capacity of international organizations to conclude treaties. Although it could be improved, the wording used seemed satisfactory. However, it should be made more precise by defining an additional criterion to supplement that of the "relevant rules of [the] organization".

43. The question of the non-navigational use of international watercourses was of particular interest to Ecuador, which was pleased with both the beginning of the Commission's work in that field and the report of the Sub-Committee set up at the twenty-sixth session of the Commission (*ibid.*, chap. V, annex). His delegation supported the establishment of the Committee of Experts contemplated in paragraph 37 of that report. It hoped that the question of the law of the non-navigational uses of international watercourses and that of the most-favoured-nation clause would be given priority at the following session of the Commission.

44. His delegation deemed inappropriate the comments made by the Joint Inspection Unit concerning the functioning of the Commission, and approved of the way in

which the Commission had responded thereto. His delegation supported the proposal that, beginning in 1975, the length of the annual sessions of the Commission should be increased from 10 to 12 weeks.

45. Mr. GÜNEY (Turkey) was pleased to note that the Commission, at its twenty-sixth session, had completed the second reading of the draft on the succession of States in respect of treaties. His delegation supported the Commission's recommendation that the General Assembly should invite Governments to submit written observations on the draft. The second reading had not led to a drastic revision of the initial draft. The "clean slate" principle was maintained in the case of newly independent States, and that of continuity *ipso jure* in cases of succession involving previously sovereign territories. Moreover, an exception to the "clean slate" principle had rightly been made in the case of boundary treaties. It was important to examine carefully the differences between multilateral treaties and bilateral treaties within the framework of succession. It would also be desirable to include one or more provisions relating to the settlement of disputes which might arise as a result of the application of the draft.

46. The articles on State responsibility had been drawn up carefully, and any comment would be premature at the current stage. The question of the obligation to provide compensation for possible injurious consequences arising out of the performance of certain lawful activities would also require a thorough study of international practice. He commended the excellent drafting of the articles and the interesting commentaries which accompanied them.

47. With regard to the draft on treaties concluded between States and international organizations or between international organizations, his delegation noted with satisfaction the text of article 6 which had been provisionally adopted by the Commission.

48. With reference to the law of the non-navigational uses of international watercourses, the contemplated questionnaire, to be addressed to Member States, would enable the Commission to establish a long-term plan for its work on the question. When it had defined the scope of a definition of international watercourses, the Commission should go beyond the relatively restricted framework of the non-navigational uses of international watercourses and consider the prevention of floods and erosion. Moreover, the question of the pollution of waterways should be given priority consideration, in view of the world-wide importance and urgency of that aspect of the problem.

49. The Commission had once again not had time to consider either the question of the succession of States in respect of matters other than treaties or that of the most-favoured-nation clause. His delegation felt that the Commission should normally be able to perform the tasks entrusted to it within the ordinary limits of its sessions. However, it realized that the Commission's programme of work included many very complex questions, and therefore supported the recommendation to extend its annual sessions from 10 to 12 weeks.

50. Mr. SAID-VAZIRI (Iran) observed that despite its heavy workload and the insufficient time and means at its disposal, the Commission performed its functions admirably. Its work on the succession of States in respect of treaties would complete the Vienna Convention on the Law of Treaties by putting into concrete form the ideas which had emerged as a result of the end of the colonial era. The draft articles which were being considered by the Sixth Committee showed a careful balance between the major principles applicable in that connexion. With reference more specifically to the principle of self-determination, his delegation could not agree to consider that a newly independent State was presumed to be bound by a treaty, unless that State expressed an intention to the contrary. His delegation supported the adoption of a convention based on the draft articles adopted by the Commission. A convention was, of course, applicable only to the States parties, but any independent State could be activated by the rules and principles embodied in a treaty to which it had not acceded, and apply them in its own international relations. In that respect, conventions constituted sources of customary law. However, an effort should first be made to remedy the short-comings of the draft with regard to non-retroactivity, and to word the provisions as a whole in a manner satisfactory to the largest number of States, in order to secure the widest possible participation in the future convention. Owing to the special interest it had in certain conventions of universal character, among others postal conventions and humanitarian conventions, his delegation hoped that the Commission's draft would in some way ensure that such instruments took precedence over other types of treaties. It would also be appropriate to include provisions relating to the settlement of disputes, and he was pleased to note that the Commission was prepared to consider that question if the General Assembly so desired.

51. His delegation reserved the right to revert at an appropriate time to the questions of State responsibility, treaties concluded between States and international organizations or between two or more international organizations, and the law relating to the non-navigational uses of international watercourses, concerning which the Commission had done valuable work. His delegation shared the views expressed by the Commission regarding the International Law Seminar, which made an effective contribution to the training of specialists in that branch of law.

The meeting rose at 12.50 p.m.

1495th meeting

Friday, 8 November 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1495

In the absence of the Chairman, Mr. Gana (Tunisia) took the Chair.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. JAGOTA (India) observed that the creation of bodies for the development of international law in such fields as outer space, international trade and the law of the sea had not diminished the importance of the role of the International Law Commission. In studying at its twenty-sixth session succession of States in respect of treaties and treaties concluded between States and international organizations or between two or more international organizations, the Commission had been continuing its work on the law of treaties; it should therefore produce the same effective results.

2. With regard to succession of States in respect of treaties, the Commission had made a thorough analysis of State practice and had based its approach on some fundamental principles: that the consent of States was necessary to establish treaty relations; that where the consent could not be associated with the territory in question, that territory, upon becoming independent, should have the right to accept or refuse to be bound by a treaty; and that where the consent to be bound was expressed by a sovereign State, there should be a continuation of treaty obligations to the successor State whether the successor State or States were created by union or by separation.

3. The draft articles (see A/9610, chap. II, sect. D) emphasized the need for the maintenance of the system of multilateral treaties and of treaty relationships and showed that the Commission had concluded that the general rule should be the continuity of treaty obligations, except in the cases of newly independent States, which would nevertheless still be bound by treaties regarding boundary régimes and other territorial régimes. The rule of *ipso jure* continuity of treaty obligations applied to cases of uniting and separation of States, and the emergence of a State in such conditions did not make that State a newly independent State. The Commission had, however, envisaged that such provisions would not apply to cases of newly independent States formed from two or more territories, nor to those of succession is respect of part of the territory.

4. The draft articles also provided that neither a devolution agreement nor a unilateral declaration by a successor State would constitute a notification of succession for newly independent States. A newly independent State would have to express its own consent to be bound by a treaty. In practice, India had conformed to that principle: when it had become independent, it had found that although it was willing to be bound by certain pre-1947 agreements, the other parties to those agreements were not; the treaties in question could not, therefore, be regarded as having devolved *ipso jure.* In other cases, pre-1947 agreements had continued in force by express agreement between the parties.

5. In so far as the newly independent States were concerned, State practice was already based largely on the "clean slate" principle, with the qualifications and conditions set out in the draft articles. However, if the principle of non-retroactivity were adopted, as proposed in article 7, it was doubtful whether the restricted meaning given to the term "newly independent State" would have any utility. The problem might perhaps be solved by enabling the parties to the future convention to apply it retroactively from the date of their succession; but if that were done by all newly independent States, why not omit article 7? Application to the draft articles of the principle of non-retroactivity, which was a general rule of the law of treaties, and the adoption of the principle of *ipso jure* continuity in some cases and of the "clean slate" principle in others, would require further careful consideration. Whether a newly independent State, created by a uniting or separation of States, would be willing to accept treaty obligations contracted by the predecessor State should be left to that new State to determine for itself, since it would be preferable to apply the same principle of the transmission of treaties to all States.

6. By and large, his delegation was satisfied with the draft articles: they appeared to be sufficiently developed to be considered at a conference of plenipotentiaries, which could at the same time consider the question of settlement of disputes, and that of making an exception to the "clean slate" principle in the case of universal or law-making treaties.

7. With regard to the law of the non-navigational uses of international watercourses, he was of the opinion that the many studies carried out on the question by various bodies should provide a rich reservoir of background material for the Commission. In response to some of the questions raised by the Sub-Committee set up by the Commission for its study, which were in the annex to chapter V of the report, he observed that the Commission should provide a legal framework for the optimum utilization of water resources by the countries concerned in the interest of their economic development. The sovereignty of the States concerned should be taken duly into account, while encouraging co-operation between the countries directly interested in the water resources and ensuring that each country received an equitable share of the resources. His delegation's preference would be to determine the scope of

the term "international watercourse" in a comprehensive manner. The concept of an "international drainage basin" had greater appeal to engineers and planners as well as to lawyers, as the report of the Committee on Natural Resources of the Economic and Social Council showed. The Commission should study the definition adopted on the subject by the International Law Association at its 1966 Conference at Helsinki.[1]

8. The list of uses of watercourses prepared by the Commission's Sub-Committee was adequate. From the developing countries' viewpoint, it was more important for the Commission to give priority to the regulation of the uses of water rather than to pollution. Since each river or drainage basin had its own peculiar characteristics, its particular régime should be developed by agreement between the States concerned, bearing in mind the general principles which would be formulated by the Commission. For example, if a watercourse was used primarily for navigation and was regulated by an existing international régime, the other uses of its waters should be accommodated thereto and should not adversely affect that use. Similarly, if a river or watercourse was used primarily for non-navigational purposes, those uses should not be changed or modified except by agreement between the States concerned. With such exceptions, however, no priority should be given to any particular use. His delegation preferred to leave to the discretion of the Commission the decision whether a committee of experts on economic, scientific and technical questions should be established.

9. With regard to the question of the Commission's methods of work, he observed that suggestions for improvement in those methods should emanate from the Commission itself, or be formulated in consultation with it. In any case, law should not be developed and codified in a hurry.

10. Mr. ROBINSON (Jamaica) said that the Commission's influence had been no less noteworthy than that of the principal judicial organ of the United Nations, the International Court of Justice. The Commission was even more active than the Court, and even if the conventions adopted on the basis of its draft articles had not entered into force, they were consulted more often than the Court's judgements. His delegation had studied the report of the Joint Inspection Unit (see A/9795) in the light of those considerations; it could not accept any proposal which would disrupt the smooth functioning of the Commission.

11. Indicating that his Government would comment later on the questions of State responsibility, treaties concluded between States and international organizations or between two or more international organizations and the law of the non-navigational uses of international watercourses, he said that the draft articles on succession of States in respect of treaties reflected the delicate interaction between some of the fundamental principles of international law and that the Commission had had to take into account the implications of the principles of consent, self-determination and the sovereignty and equality of States.

[1] See *Integrated River Basin Development* (United Nations publication, Sales No. E.70.II.A.4), annex VII.

12. The adoption of the "clean slate" principle was not only commendable in theory but was based on the practice of States, as illustrated by the process of decolonization which had followed the Second World War. In cases of succession involving the separation or uniting of sovereign States, in which no problem of decolonization arose, the Commission had stressed that the rule of *pacta sunt servanda*, which derived from the principle of consent, was applicable and had thus adopted the principle of *ipso jure* continuity. The "clean slate" doctrine was nothing more than a confirmation of the principle of consent, since a new State could hardly be expected to be bound by a predecessor's treaty to which it was not a party and to which it had not given its consent. By the same token the *de jure* continuity doctrine was also a mere reflection of the principle of consent since the successor States were originally parties to the treaties to which they succeeded.

13. Some delegations had expressed doubts about such a broad application of the "clean slate" doctrine and, in that connexion, had referred to the practice of States and, in particular, that of newly independent States which had concluded devolution agreements. In fact, when a new State concluded a devolution agreement, it did not do so because it considered that the obligations derived from the treaties concluded by its predecessor continued to bind it, since it knew that the only treaty obligations which continued in force were those which embodied customary international law. The devolution agreement was actually a confirmation of the "clean slate" principle, since the need to conclude such agreements resulted from the view that the treaties concluded by the predecessor were no longer in force.

14. Referring to the problem of multilateral treaties of a universal character and to the question of whether it had been correct to exclude them from the scope of application of the "clean slate" principle, he said that one delegation had proposed that a treaty of that kind, in force at the date of succession, should continue in force between the newly independent State and the other States parties until the newly independent State had given notice of the termination of the treaty. The purpose of that proposal had been to ensure that certain multilateral treaties of a universal character would remain in force after the date of succession, in the interests of both the international community and new States. It could, however, be observed that, if those treaties corresponded to a general practice accepted as law, they would in any event be binding upon the newly independent State by way of custom. The proposed article 12 *bis* in foot-note 54 of the report also raised the fundamental problem of defining a "multilateral treaty of universal character". The attempt made by the Commission in paragraphs 76-78 of its report still left that term vague. Moreover, if the application of the principle of consent was ruled out, the only other source of international obligation for a State was custom, but all multilateral treaties of a universal character did not necessarily embody customary rules. Even if they did reflect international custom in certain respects, they could nevertheless also contain purely contractual provisions, for example, on the settlement of disputes. It would therefore be necessary to examine each treaty individually to determine whether its provisions could be assimilated to custom. Although it was aware of the generous intentions which had prompted that proposal,

his delegation nevertheless considered that there was some danger in departing from the principles of consent and self-determination.

15. In paragraph 66 of its report, the Commission excluded social revolution from the circumstances which could give rise to a succession of States, stressing that "in the majority of cases" a revolution brought about only a change of Government while the identity of the State remained the same. The wording used in the report did not rule out the possibility that there were in fact some forms of social revolution which involved a change in the identity of the State and therefore fell within the scope of the work on succession of States. The problem was, of course, complex, but the Commission might consider the possibility of defining that category of revolution by examining the constitutional features of the new system instead of referring to the general concept of the constituent elements of the State.

16. His delegation agreed with the Commission's position with regard to devolution agreements and considered that they had their primary value simply as an expression of the successor State's willingness to continue the treaties of its predecessor.

17. His delegation was slightly unhappy with the Commission's treatment of boundary and other territorial régimes. In principle, it could not understand why the "clean slate" doctrine should not apply and why the doctrine of continuity of obligations should be stressed in relation to those treaty régimes, but not in relation to other treaty régimes. Nor could he understand the distinction between treaties establishing boundaries and the boundary régime established by the treaty. The Commission justified its approach by referring to the practice of States. If it were established that disputes over boundaries had been historically a source of frequent conflicts and that it was therefore in the interest of States and the entire international community to exclude treaties which establish boundaries from the field of application of the "clean slate" doctrine, then his delegation would be prepared to acknowledge that a distinction based on such pragmatic grounds was fully justified. However, if the distinction arose merely because those treaties had "dispositive" effects, then the question might be properly asked whether those were the only treaties having such effects. Such an approach would lead to a proliferation of exemptions from the "clean slate" rule, in other words, it would jeopardize the principles of consent and self-determination. Furthermore, if an exception was made for boundaries established by treaties, the same exception would not necessarily be justified for other territorial régimes. The evidence submitted by the Commission with respect to boundaries was more convincing than that which it had put forward with respect to other territorial régimes. The statement of the West Indies Federation which was in paragraph (25) of the commentary to articles 11 and 12 was perfectly consistent with a "clean slate" principle in respect of those territorial agreements. One should proceed with the greatest caution in an area in which there was an interplay of the principles of consent and self-determination and the rule of *pacta sunt servanda.*

18. His delegation was not quite satisfied with the use of the term "establish its status" as used in article 16 because of the suggestion implicit in it of a burden being placed on the newly independent State when the Commentary made it clear that the newly independent State was exercising a general right of option to be a party to the treaty. That intention should be more clearly expressed.

19. His delegation supported the request of the Commission to have its session extended from 10 to 12 weeks. It also agreed with the recommendation that States should be invited to submit their comments on the draft articles, but it had reservations regarding the early convening of a conference of plenipotentiaries.

20. Mr. BOJILOV (Bulgaria) recalled the noteworthy contribution of the Commission to the codification and progressive development of international law during the 25 years of its existence. At its twenty-sixth session, the Commission had completed the second reading of the draft articles on the succession of States in respect of treaties, in accordance with the recommendation made by the General Assembly in its resolution 3071 (XXVIII). His delegation fully approved the principles underlying the text submitted to the Sixth Committee. The draft was based mainly on the balance between two fundamental principles: the "clean slate" principle and that of continuity *ipso jure.* His delegation supported the "clean slate" principle whereby a newly independent State was born free and had the inherent right of commencing its new and independent life with a "clean slate". His delegation however reaffirmed its approval expressed at the twenty-seventh session (1326th meeting) of the provisions of article 11 of the draft which made an exception to the "clean slate" rule with respect to the régime of a boundary.

21. However, the draft articles were not flawless. His delegation had great difficulty in accepting the Commission's conclusion that it was appropriate to exclude, from the scope of the draft articles, problems of succession arising as a result of changes brought about by a social revolution. It could not understand why the Commission preferred, in paragraph 66 of its report, to establish no difference between a revolution and a coup d'état. Furthermore, the Commission stated that "in the majority of cases" a revolution or a coup d'état did not change the identity of the State: that was an acknowledgement, at least implicitly, that there were cases in which a revolution did effectively change the identity of the State concerned. The argument that those questions were charged with overtones of a political and philosophical character might serve as a pretext, but it was no justification for ignoring the practice of a number of States.

22. At its twenty-sixth session the Commission, owing to the lack of time, had been unable to discuss the two proposals to which it drew attention in paragraph 75 of its report. His delegation believed that the proposal for an article 12 *bis* deserved special attention. It might be preferable to limit the "contracting out" system to those multilateral treaties which were of universal character. One could hardly assume that the "contracting out" system would be inconsistent with the principle of self-determination or the strengthening of the role of international law in the interest of the international community as a whole. It was then merely a matter of juridical technique in finding the most appropriate formula to establish the

"contracting out" system for the multilateral conventions of universal character. His delegation noted that article 7 on non-retroactivity had been adopted only by a narrow majority. It seemed that in drastically reducing the importance of the whole draft, that article created more problems than it solved. In summary, his delegation hoped that the Sixth Committee would find the appropriate means of improving some of the provisions on the succession of States in respect of treaties.

23. Chapter III of the report showed the progress made by the Commission with respect to State responsibility for internationally wrongful acts. That problem was at the very core of international law since it touched upon some fundamental interests of States. Caution was of course desirable but it was to be hoped that the Commission would make every effort to accelerate the process of its work in that field.

24. The Commission had, on the other hand, made some progress on the question of treaties concluded between States and international organizations or between two or more international organizations. A real analogy should be established between the draft articles on that question and the Vienna Convention on the Law of Treaties with due consideration being given to the basic differences between the two aspects of the matter since an international organization was not a State.

25. With respect to the law of the non-navigational uses of international watercourses, his delegation believed that the replies of Governments to the proposed questionnaire in the report of the Sub-Commission would no doubt enable the Commission to draw up an effective plan for its future work in that area.

26. Regarding the report of the Joint Inspection Unit on the functioning of the Commission, his delegation would prefer that the sessions of the Commission be held in the same place. It believed, however, that the Commission had not exhausted all possibilities of organizing its work in the most effective and economical way. In paragraph 165 of its report, it recommended that the General Assembly adopt a 12-week session as the minimum standard period of work for the Commission. That recommendation was certainly not the most apprpriate measure for increasing the effectiveness of its work. His delegation supported the recommendation in paragraph 164 of the report on the organization of the Commission's future work.

27. Mr. MARIANO (Somalia) said that his delegation gave due credit to the work of the Commission and hoped that that work would enable the United Nations to make international law an instrument for safeguarding justice and equality in international relations.

28. Many decolonized countries had found themselves successors to treaties most of which would have had adverse effects on their economic, social and political status. It was the refusal of many of those newly independent States to accept succession to those treaties that had led the Commission to institute the "clean slate" principle in its draft articles on the succession of States in respect of treaties. His delegation accepted that principle which, moreover, had already been accepted by the Sixth Committee. On the whole, the new draft was a clear improvement over the previous one, in its wording, its conciseness and its commentaries.

29. His delegation had no objection to the first two parts of the report and felt that the Commission should be asked to prepare provisions on the settlement of disputes. In response to the request by the Chairman of the Commission, the Somalian Government would submit in writing its observations on the report as a whole.

30. His delegation was of the view that the Commission's sessions should be extended to 12 weeks, since many delegations, while emphasizing the excellent quality of the Commission's work, had pointed out that it had been progressing too slowly in certain fields.

31. Mr. WISNOEMOERTI (Indonesia) said that the confidence which his delegation had always placed in the Commission was strenghtened by the important contribution which it had just made to the codification and progressive development of international law, in the form of the draft articles on the succession of States in respect of treaties. Since the Indonesian Government was currently studying the 39 draft articles, he would confine himself to making a few preliminary and general observations.

32. Without departing basically from the previous draft, the Commission had significantly improved on it. In article 7, it had introduced the principle of non-retroactivity. That new article was not superfluous, in spite of the existence of article 28 of the Vienna Convention on the Law of Treaties.[2] Article 28 of the Vienna Convention stipulated that the provisions of a treaty were not binding on a party with respect to any act or fact which had taken place, prior to the date of entry into force of the treaty with respect to that party, whereas article 7 of the draft articles restricted the rule of non-retroactivity to a succession of States occurring after the entry into force of those articles. The rule set forth in article 7 was therefore a *lex specialis,* which was both useful and necessary for the special situation of the succession of States in respect of treaties.

33. His delegation endorsed article 8. Under that provision, a devolution agreement between a predecessor State and a successor State merely constituted a statement of intent on the part of the successor State with regard to the rights and obligations under the treaties concluded by the predecessor State with third States. A devolution agreement indicated the willingness of the successor State to continue the treaties of its predecessor. Its legal effects were limited to the two parties concerned; it created no legal nexus between the successor State and third States. Such an approach was consistent with the principle of sovereign equality of States and respected the independence of third States in their relations with the successor State. Article 8 was in fact merely a reflection of the practice of States. For the same reasons, his delegation endorsed article 9 relating to the unilateral declaration by a successor State.

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2 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

34. His delegation welcomed the improvements made to part II of the draft relating to succession in respect of part of the territory of a State which became part of the territory of another State. Under article 14, the treaties of the successor State automatically applied to that territory as from the date of the succesion of States, whereas the treaties of the predecessor State ceased automatically in respect of the territory. That rule, otherwise known as the "moving treaty frontier" rule, had its basis in State practice and in writings on the subject. Furthermore, it was supported by article 29 of the Vienna Convention on the Law of Treaties, whereby a treaty was binding on each party in respect of its entire territory.

35. In part III of the draft, which dealt with newly independent States, the Commission had retained the "clean slate" principle set out in article 15. It was not only logical but also just to have based the draft articles on that principle. A newly independent State should not be automatically under any obligation to maintain in force treaties concluded by its predecessor in respect of its territory when it had not consented to the conclusion of those treaies. It was also just that a newly independent State, as a sovereign State and subject to the character of the treaties in question, should have the right to become a party to the treaties concluded by its predecessor regardless of whether such treaties were or were not in force on the date of the succession of States or were treaties signed by the predecessor State subject to ratification, acceptance or approval. His delegation, therefore, accepted articles 16, 17 and 18, but took the view that the principle set out in the provisions of those articles should be considered as a right and not merely as an option open to the successor State. His delegation also endorsed article 23 which provided for the application of the "clean slate" principle to succession to bilateral treaties.

36. Articles 11 and 12 relating respectively to boundary régimes or other territorial régimes, set forth a rule established by the practice of States, approved by writers on the subject and endorsed by the Conference on the Law of Treaties, under which "dispositive" or "territorial" treaties were excepted from the fundamental change of circumstances rule. The exception of such dispositive treaties from the "clean slate" principle was necessary to guarantee certainty and stability in international relations. As indicated in article 13, such derogation was not however prejudicial to the question of a treaty's validity. Some delegations had proposed that that exception should be extended to include law-making, multilateral treaties or treaties of universal character. His delegation was opposed to that suggestion, not only because it would create uncertainty and ambiguities, but also because it was difficult to identify law-making treaties or universal treaties.

37. Part IV of the draft, relating to the uniting and separation of States, was based on the principle of *ipso jure* continuity. That principle, while very suitable for such cases, should be applied with caution, and the Commission had rightly provided for derogations.

38. Article 22 concerning the effects of notification of succession had been considerably improved. The retroactive effect of notification was maintained until the date of succession but further provisions had been included to ensure that operation of the treaty was considered as suspended between the newly independent State and the other parties to the treaty until the date of notification of succession, unless the newly independent State and the other States parties agreed otherwise. Such a solution had the advantage of establishing legal certainty in the relations between the newly independent State and the other States parties during that interim period.

39. His delegation expressed the view that the General Assembly should invite member States to submit their written observations on the draft and should convene an international conference of plenipotentiaries with a view to concluding a convention.

40. At the twenty-sixth session of the Commission three new draft articles had been added to the draft articles dealing with State responsibility (see A/9610, chap. III, sect. B). His delegation would reserve its comments until the draft was more complete. However, it wished to emphasize the importance of the question of international liability arising out of the performance of certain lawful activities. In its report, the Commission had maintained the view that it would not be advisable to undertake a joint examination of a State's responsibility for internationally wrongful acts and liability for risk. It had indicated in paragraph 110 that, in accordance with General Assembly resolution 3071 (XXVIII) it was prepared to undertake a separate study, at an appropriate time, on the latter question.

41. The Commission had also adopted articles 1-6 of its draft on treaties concluded between States and international organizations or between international organizations. Since those articles were only the first part of the draft, his delegation could only submit its preliminary views. The Commission had rightly adopted the method used in the Vienna Convention on the Law of Treaties but it should decide to what extent it could use that instrument as a model, given the difference between the nature of a State and an international organization. The provisions of article 6 stating that the capacity of an international organization to conclude treaties was governed by the relevant rules of that organization might create ambiguities. Different international organizations had different purposes and structures. While it might be consistent with practice to base the capacity of an international organization to conclude treaties on its own constitution, such a solution could give rise to legal uncertainty on the part of States in their relations with different categories of international organizations. Article 6 should spell out a general principle conferring upon international organizations the power to conclude treaties.

42. His delegation noted with satisfaction the preliminary work of the Commission on the law of the non-navigational uses of international watercourses, and particularly, the excellent report of the Sub-Committee set up to study that question. It endorsed the Commission's programme of work and considered that in future, its sessions should have a minimum duration of 12 weeks.

43. Mr. RAKOTOSON (Madagascar) confined his remarks to one of the four items examined by the Commission at its

twenty-sixth session, namely the succession of States in respect of treaties, since consideration of the other items was still in the preliminary stage. The adoption by the Commission of definitive draft articles on the succession of States in respect of treaties was the result of a considerable amount of work.

44. His delegation agreed with the meaning given to the term "succession of States" in article 2 *(b)* of the draft. That term was perhaps not the happiest choice, since a State could not succeed another State and transfer its sovereignty to it, but it was convenient and should be interpreted as applying to the replacement of one State by another in the responsibility for the international relations of territory, as stipulated in that subparagraph.

45. In the case of the uniting or separation of States, the Commission had retained the principle of continuity, while including provisions to cover certain particular situations, and enshrining application of the "clean slate" principle in the case of newly independent States. It had given particular emphasis to the latter, since they had and would continue to have particular significance in the international community. Accession to independence was the most important form of succession of States. The "clean slate" principle enshrined in article 15 of the draft, had already been accepted by the Sixth Committee; furthermore, it was in accordance with the principle of equal sovereignty of States and the right to self-determination. Under the terms of the draft, succession in respect of treaties concluded by the predecessor State, constituted an entitlement and not an obligation, of newly independent States.

46. The draft envisaged two exceptions to the "clean slate" principle, namely boundary régimes and other territorial régimes. In accordance with articles 11 and 12 the principle of immutability applied to treaties concerning such régimes. That principle, which was enshrined in State practice, was aimed at safeguarding the stability of international relations. Article 13, which stated that nothing in the draft articles should be considered as prejudicing in any respect any question relating to the validity of a treaty, should be interpreted in the light of articles 11 and 12. So-called unequal territorial treaties should be regarded as a violation of a basic rule of international law, in the light of articles 53, 64 and 71 of the Vienna Convention on the Law of Treaties, and consequently should be declared null.

47. The Commission's draft articles contained provisions concerning the right of option of a State to establish itself as a party to a bilateral treaty concluded by the predecessor State. That right of option, embodied in article 23, was readily understandable since in the case of bilateral treaties, the identity of the party was important. With regard to multilateral treaties of a restrictive character or treaties whose purposes were incompatible with participation by the newly independent State, the consent of other States parties was an essential condition of its participation. On the other hand, the newly independent State had the right to become party to multilateral treaties in general in accordance with draft articles 16-18. The distinction with regard to multilateral treaties in general would naturally give rise to difficulties and provisions covering dispute settlement procedures should be incorporated in the draft.

48. Article 7 enshrined a general principle of treaty law, namely, non-retroactivity. That provision had only been adopted by a narrow majority in the Commission, because of the reservations of certain members. In that connexion, his delegation wished to point out that the words "except as may be otherwise agreed" enabled Governments, in due course, to consider the question of non-retroactivity in connexion with the final clauses for inclusion in a future convention.

49. With regard to the question whether the draft articles should take the form of a convention or a declaration, his delegation agreed with the views advanced by the Commission in favour of a convention. Complex political considerations were often an extremely important factor in a newly independent State's acceptance or refusal of succession in respect of treaties concluded by the predecessor State. However, as the Commission had pointed out in paragraph 63 of its report, a new State, though not formally bound by the convention, would find in its provisions the norms by which to be guided in dealing with questions arising from the succession of States.

50. The draft articles should be submitted to Governments and subsequently re-examined by the Sixth Committee at its next session.

51. With regard to State responsibility, his delegation attached particular importance to the early conclusion of the Commission's work on that question. It was not opposed to a lengthening of the Commission's sessions but wished to point out that that body might lose its effectiveness if it did not endeavour to take into account fully the aspirations of the contemporary world.

The meeting rose at 12.55 p.m.

1496th meeting

Monday, 11 November 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1496

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. KASEMSRI (Thailand) expressed gratitude to the Chairman of the International Law Commission for his comprehensive introduction of its report (A/9610 and Add.1-3) and paid a tribute to the achievements of the Commission over the past 25 years. The present report gave evidence of the Commission's continuing contribution to international law-making.

2. The Special Rapporteurs on the topic of succession of States in respect of treaties were to be congratulated for their contributions to the preparation of the draft articles (see A/9610, chap. II, sect.D), which would greatly facilitate the next stage of proceedings. His delegation agreed in principle that a conference of plenipotentiaries should be convened at an appropriate time with a view to concluding a convention on the basis of the draft articles, which would be given careful consideration by his Government. The Commission was to be commended for achieving a judicious balance between continuity of treaty rights and obligations and the "clean slate" rule. With the era of decolonization nearing its completion, it seemed inevitable that the "clean slate" rule would find less and less application in regard to newly independent States emerging from dependent Territories, but would instead be increasingly applicable to the situations contemplated in draft article 33, paragraph 3, where the separation of a new State occurred "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State". In that connexion, there was a paucity of State practice, which might partly account for the vague formulation of the draft, and a statement of the law in that regard might be premature at the present time. However, there was a recognizable political trend towards greater extension of the "clean slate" principle. As the representative of Italy had pointed out (1484th meeting) article 22 seemed to rest on a legal fiction. The purpose of that article was to avoid giving a retroactive effect to a notification of succession by a newly independent State while making provision for continuity. The final result was to bring about a situation where a treaty would be in force although its operation would be suspended. The Commission had admitted that that might not be in strict compliance with all the provisions of the Vienna Convention on the Law of Treaties.[1] Indeed, in his delegation's view, article 22 was not consistent with articles 57 and 58 of the Vienna Convention, which required prior consent of the parties concerned in order to suspend the operation of a treaty. Unless otherwise agreed by the parties, or in the absence of any legal justification to the contrary, a valid treaty was performable. Even in the extreme case of a fundamental change of circumstances—if succession of States might conceivably be so considered—article 62 of the Vienna Convention did not seem to be applicable. Although it was possible that a party might provisionally suspend performance in accordance with the doctrine of *rebus sic stantibus*, there was no automaticity. Continuity for its own sake should not prevail over the alternative of accession by the successor State in accordance with the provisions of article 2.

3. With regard to the question of multilateral treaties of universal character and the question of settlement of disputes, his delegation was inclined to support the view that they should be left for consideration by the conference of plenipotentiaries.

4. With the able assistance of the Special Rapporteur for the topic of State responsibility, the Commission had made satisfactory progress on that subject. The three additional draft articles approved at the Commission's twenty-sixth session (see A/9610, chap. III, sect. B) would be carefully considered by his Government in due course. His delegation would like, however, to make a few observations on article 8 *(b)* concerning attribution to the State of the conduct of persons acting in fact on behalf of the State. Subparagraph *(b)* of article 8 appeared to differ from subparagraph *(a)* in that it dealt with individuals acting on their own initiative, sometimes without the knowledge of the official organs, and in the absence of the official authorities in the area. His delegation wondered whether such individual initiative should be attributed to the State in all cases. It might be pertinent to consider whether or not such conduct benefited the State, or was tacitly approved by the State or was subsequently endorsed by the State. Moreover, it might be asked whether, in the absence of official authorities, the State could be said to exercise effective control over the area where an internationally wrongful act was alleged to have occurred. Article 8 *(b)* seemed to imply that private individuals could violate an international obligation of the State, thus incurring State responsibility without the foreknowledge of the State concerned. According to the traditional view, State responsibility was said to arise from a failure of the State to prevent an offence committed by private individuals. Even in that case, however, responsibility was not absolute but contingent at least on implied foreknowledge on the part of State officials of the impending violation. It should also be noted that recent trends seemed to indicate an increasing prominence of the concept of individual responsibility as opposed to collective responsibility.

5. On the topic of treaties concluded between States and international organizations or between two or more interna-

[1] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

tional organizations, his delegation agreed with the approach taken by the Commission, without prejudice to the final form of the draft, which would be decided upon at an appropriate time. At the present stage the draft articles (*ibid.*, chap. IV, sect. B) were intended to be only provisional. The work of the Special Rapporteur for the topic was deeply appreciated. Important contributions had also been made by the secretariats of the various international organizations concerned. It should be noted that treaties between international organizations constituted only a small percentage of the legal arrangements between them; the majority of such arrangements were less formal. With regard to article 2, his delegation would suggest that the term "acceptance" should be used in the broad sense to include ratification as well as accession. There seemed to be sufficient United Nations practice to justify that simplification of terminology. Thus, the relevant portion of article 2, paragraph 1 *(d)* would read: "... when signing or accepting a treaty ...". With regard to article 6, concerning the capacity of international organizations to conclude treaties, his delegation appreciated the wisdom of avoiding any doctrinal controversy on that question and fully endorsed the pragmatic approach adopted by the Commission.

6. His delegation wished to commend the efforts of the Commission's Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses and the Sub-Committee's Chairman, Mr. Kearney, who had subsequently been appointed as Special Rapporteur for that topic. Some of the non-navigational uses referred to in the outline adopted by the Commission (*ibid.*, chap. V) seemed to have an important bearing on the question of the meaning and scope of the term "international watercourses". Moreover, the concept of "international drainage basin" was very relevant to the requirements of economic development and integration, as well as pollution control. A body of laws on that subject should aim at enhancing international co-operation, particularly at the regional and subregional level. In that connexion, he noted his country's interest in the development of the lower Mekong Basin. His delegation attached great importance to the Commission's work on international watercourses, and the Sub-Committee's report (*ibid.*, annex) would be duly submitted to the Thai authorities concerned for their careful examination and comments.

7. His delegation took note of the proposed future work programme of the Commission and supported in principle the Commission's recommendation that its minimum standard period of work should be fixed at 12 weeks. His delegation also noted with satisfaction the continuing contacts between the Commission, on the one hand, and the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, on the other hand. His delegation was further pleased to note the success of the International Law Seminar for 1974 and wished to record its sincere appreciation for the scholastic contribution made by the members of the Commission as well as the financial contributions given by donor Governments. On a related item, namely, the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, his delegation wished to announce that the Government of Thailand had decided to contribute $1,000 to the Programme for the current year.

8. Miss VEGA (Peru) expressed her appreciation for the accomplishments of the Commission during the past 26 years and congratulated its Chairman on his informative introduction of the Commission's report. The Commission's most important achievement at its twenty-sixth session had been the completion of the second reading of the draft articles on succession of States in respect of treaties. With regard to part I of the draft articles, her delegation supported the inclusion of article 11, which made territorial treaties an exception to the "clean slate" principle. With regard to part III, her delegation agreed with the idea that a newly independent State began its existence with a "clean slate" in so far as treaties were concerned. The "clean slate" principle was consistent with the principle of self-determination, under which formerly dependent territories were entitled to conduct their international relations as sovereign and equal States. In her delegation's view, the draft articles on succession of States in respect of treaties should be submitted to an international conference of plenipotentiaries with a view to the conclusion of a convention on the subject.

9. Her delegation attached the greatest importance to the topic of State responsibility, which was an essential concept of international law. Although the Commission had limited its work for the present to the responsibility of States for internationally wrongful acts, that should not prevent it from undertaking in due time a study of the topic of international liability for injurious consequences arising out of the preformance of certain activities that were not prohibited by international law. In that connexion, consideration should be given to the new rules which might be laid down in the Charter of Economic Rights and Duties of States[2] and those set forth in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)) which recognized the full permanent sovereignty of every State over its natural resources and all economic activities.

10. Her delegation regretted that the Commission had not been able to resume its consideration of the most-favoured-nation clause. Although that topic was covered by the general law of treaties, a special study of it should be made in order to adapt it to the requirements of international life, while taking care not to impede efforts made to promote the interests of developing countries.

11. With regard to the report of the Joint Inspection Unit (see A/9795), her delegation pointed to the accomplishments of the Commission and its *sui generis* nature which distinguished it from other organs of the United Nations.

12. Her delegation supported the recommendation that the General Assembly should approve a 12-week session as the minimum standard period of work for the Commission.

13. Mr. BOULBINA (Algeria) commended the Commission on the quality of its work and paid a tribute to the

2 Contained in resolution 3281 (XXIX) subsequently adopted by the General Assembly.

memory of Mr. Bartoš. He was sure that Mr. Šahović would prove a worthy successor.

14. The report of the Commission on the work of its twenty-sixth session, comprehensively introduced by the Chairman of the Commission, covered a number of important topics which reflected the changes that had occurred in international society, in particular as a result of the recent process of decolonization. With regard to the topic of succession of States in respect of treaties, he expressed appreciation for the contributions made by the Special Rapporteurs and said that he would refrain from commenting in detail on the draft articles. The Commission had done well to take the "clean slate" principle as the basis for its elaboration of the draft articles. That principle was in conformity with the principle of self-determination and consistent with the general freedom enjoyed by a newly independent State with respect to the treaty obligations of the predecessor State. The exception to the "clean slate" principle provided for in articles 11 and 12 of the draft, concerning boundary régimes and other territorial régimes was entirely consistent with the principle of self-determination. The formulation adopted by the Commission was balanced and realistic. In that connexion, he noted that the Organization of African Unity (OAU) had adopted a resolution which solemnly declared that all member States undertook to respect the boundaries existing at the time of their accession to independence. That resolution had confirmed the principle of *uti possidetis*, which had already been accepted by many States. Before convening a conference of plenipotentiaries to study the draft articles and to conclude a convention on the topic, it might be helpful if the Commission could take up at its next session the question of succession of States in respect of matters other than treaties and quickly complete its study of that topic, thus making available a *corpus juris* as complete as possible on the question of succession of States.

15. The criticism levelled at the Commission by the Joint Inspection Unit could not diminish the esteem in which the Commission was held by all Member States or the importance of its work.

16. Mr. OMAR (Libya) thanked the Chairman of the Commission for his detailed introductory statement and congratulated the members of the Commission on the constructive work accomplished at the twenty-sixth session. The Commission's most prominent achievement at that session had been the completion of the second reading of the draft articles on the succession of States in respect of treaties. His delegation was pleased that the Commission had based its work on the "clean slate" principle, according to which a newly independent State had complete freedom to decide whether to continue in force or to terminate treaties concluded by its predecessor. The Commission had rightly rejected the view that newly independent States continued to be bound by treaties formerly in force with respect to their territory. The draft articles prepared by the Commission were a sound basis for further study. His delegation endorsed the Commission's recommendation in paragraph 84 that a conference of plenipotentiaries should be convened at an appropriate date with a view to the conclusion of a convention based on the draft articles.

17. His delegation attached particular importance to the topic of State responsibility, to which it hoped the Commission would give its full attention. In particular, his delegation urged that efforts should be made to fill in the many loopholes in existing law, including, *inter alia*, the responsibility of colonial States for acts of exploitation committed in territories under their domination, responsibility for resettlement and evacuation of populations and injury caused thereby to life and property, responsibility for transforming colonial territories into theatres of war and sites for military experiments, including nuclear tests, and responsibility for the results of wars launched by colonialist countries among themselves or against liberation movements. In view of the important role played by the Commission in the codification and progressive development of international law, his delegation supported the recommendation contained in paragraph 165 of the report that the Commission's sessions should be extended from 10 to 12 weeks. His delegation also welcomed the Commission's continued co-operation with regional legal bodies.

18. Mr. ASEFI (Afghanistan) said the Commission had played and would in future play an increasingly important role in eliminating the use of force, encouraging co-operation and understanding among States and building a new system of international relations. The Commission's report on its twenty-sixth session reflected its positive accomplishments.

19. Commenting on the draft articles on succession of States in respect of treaties, he endorsed the stipulation in article 6 to the effect that the articles applied only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations. Any departure from that principle would deprive the draft of a very important safeguard clause. It was well known that most of the older treaties, particularly those establishing boundaries, were irregular. Such instruments were illicit and therefore invalid, because they were contrary to the principles of *jus cogens* incorporated in the Charter. Article 6 should therefore be maintained.

20. Articles 11 and 12, concerning boundary régimes and other territorial régimes, and the relevant commentary did not satisfy his delegation. Those articles postulated the controversial principle of the inviolability of boundaries and territories and were in flagrant contradiction with the principle of self-determination. The right of peoples to self-determination was the main consideration to be borne in mind in contemporary international law. His delegation did not share the view of the Commission that under certain circumstances other principles should prevail over that of the "clean slate". Articles 11 and 12 were not in keeping with historical reality. Many boundaries had been outlined by the colonial Powers to meet certain strategic or economic objectives without any regard for the geographic or ethnic realities of nations. The legalization of such abnormal and unjust situations would lead to instability and tension among certain States and that would be contrary to the goals of the Commission.

21. The law of succession in respect of treaties was a very complex branch of international law and was governed by very pragmatic considerations. Thus, it was not unusual for

the same State to adopt diametrically opposed positions on the subject. The most complex part of that branch of law was undoubtedly the law of succession of States in respect of boundary régimes or territorial régimes established by a treaty.

22. In paragraph (11) of its commentary to articles 11 and 12, the International Law Commission referred to decisions taken by OAU. The fact that States members of OAU had undertaken to honour existing boundaries at the time of their accession to independence, for reasons that were undoubtedly valid in Africa, did not necessarily imply that their decision was applicable in other regions of the world and in different situations. The precedents mentioned in the Commission's report to justify articles 11 and 12 were not convincing. The manner in which the two articles were formulated gave them a political connotation and that was why they had been supported by quite a few countries. Indeed, like article 62 of the Vienna Convention on the Law of Treaties, articles 11 and 12 of the draft articles on the succession of States in respect of treaties merely reflected the practice followed by the United Kingdom during the eighteenth and nineteenth centuries when it had arbitrarily outlined boundaries in many parts of the world.

23. It would be interesting to see what effect the two articles would have at the international level in the event they should be adopted and included in a convention. Those articles directly concerned only two categories of States: States that were favoured by a previous treaty and States that considered themselves harmed by a previous treaty and wished to challenge its validity. Assuming those articles should be adopted by the General Assembly, would the States that considered themselves harmed agree to be bound by a convention only part of which they could accept? If they did not consider themselves bound by the convention, what would be the practical usefulness of the articles in question?

24. His delegation held the view that the role to be played by arbitration and conciliation in connexion with boundary disputes should not be underestimated. Experience had shown that such procedures could undoubtedly be of greater help than the rigid framework proposed by the Commission in finding an appropriate solution to problems that might arise in that field. Therefore, although his delegation congratulated the Commission and the Special Rapporteurs for the very interesting work they had done on the draft articles on succession of States in respect of treaties, it felt that the question of territorial treaties should be reviewed with a view to establishing rules that would be in harmony with the realities of the contemporary world and the fundamental principles of modern international law.

25. His delegation also wished to congratulate the Commission and the Special Rapporteurs for the progress they had made on the questions of State responsibility and treaties concluded between States and international organizations or between two or more international organizations. It hoped that the Commission would soon be in a position to submit complete draft articles on those subjects, as well as on the most-favoured-nation clause, succession of States in respect of matters other than treaties and legal problems relating to the non-navigational uses of international watercourses.

26. Mr. WARIOBA (United Republic of Tanzania) said the draft articles on succession of States in respect of treaties submitted by the Commission represented a considerable improvement over the draft that had been submitted two years before.[3] His delegation whole-heartedly supported the "clean slate" principle with regard to the succession of newly independent States. However, it did not agree on the exceptions to that principle proposed by the Commission in articles 11 and 12 on boundary régimes and other territorial régimes. The arguments adduced by the Commission did not justify those exceptions. Territorial treaties should be dealt with in exactly the same manner as any others. In the case, for example, of the Belbases Agreements of 1921 and 1951, the United Kingdom, as administering Power, had made certain territorial commitments for Tanganyika; once that country had become independent, it had announced its intention to treat the Agreements as void. The same had been true in the case of the Nile Waters Agreement of 1929. That did not mean that the services referred to in the treaties had been discontinued; services could be continued despite the termination of a treaty.

27. With regard to the question whether multilateral treaties should be excepted from the "clean slate" principle, his delegation held that there were even stronger reasons for not doing so than in the case of boundary treaties. It would be illogical to expect any emerging State to be bound by multilateral treaties entered into by the predecessor State.

28. The question whether or not to include provisions concerning the settlement of disputes was one of the most vexing issues facing the international community and one to which it should give special attention. The proposal contained in foot-note 55 of the Commission's report was not the best solution, even though it could provide a considerable improvement over the existing situation. The international community had reached the stage where it must not only consider the possibility of elaborating procedures for the settlement of disputes, but must also consider the possible necessity of providing for an element of compulsion. Its main concern, however, should be to devise a procedure that would be effective, whether that involved compulsory measures or not.

29. His delegation would follow with interest the progress of the Commission on other topics taken up by it, such as State responsibility, succession of States in respect of matters other than treaties, and the law of the non-navigational uses of international watercourses. The latter question was very important and he hoped the Commission would be able to formulate guidelines on the matter within the next few years.

30. Referring to the report of the Joint Inspection Unit on the work of the Commission, he said it was very unfortunate that the reactions of both bodies should have reached the Committee in the manner and tone that they had. If the proper procedure had been followed, the debate would have taken a different course. His delegation did not believe the problem was restricted to questions of procedure alone,

[3] See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

but involved more than had been mentioned in the report. During the discussion on the matter at the twenty-eighth session, his delegation in the Sixth Committee (1405th meeting) had supported a Nigerian suggestion even to the extent of contemplating the dissolution of the Commission. His delegation did not hold that view now, but that did not mean the Commission was free from criticism. The arguments put forth by the Commission in rejecting the report of the Joint Inspection Unit were very strong. Nevertheless, the world had changed so much that existing organs must also change. There were urgent issues that required quick settlement. If the procedures and method of work of the Commission did not allow for it to accomplish its work expeditiously, its procedures and methods of work should be reviewed. The draft articles on succession of States in respect of treaties, for example, were the result of 12 years of work. It might take five years more before a treaty was drawn up and another five years before such a treaty could enter into effect. In other words, it could take over 20 years for the work of the Commission on one issue to have a binding effect. Also, if the composition of the Commission was holding back its progress, the General Assembly should offer suggestions for improvement. The Commission had been a very important organ within the United Nations, but if it continued to follow its present methods, it would be doomed to failure. Furthermore, other organs were bypassing the Commission and doing work in fields which could much better be dealt with by it. On the question of the pattern of conferences, he warned against creating a crisis that would do the Commission no good.

31. Mr. MAI'GA (Mali) said his delegation noted with satisfaction that, in pursuance of General Assembly resolution 3071 (XXVIII), the International Law Commission had completed 39 draft articles on succession of States in respect of treaties, which constituted an important contribution to the codification and progressive development of international law as well as to détente and international co-operation. The doctrine of succession of States had been a very controversial one and had given rise to complex and confusing situations. The Commission, having realized that there was no over-all doctrine that might provide an appropriate solution to the various problems of succession in respect of treaties, had stressed that the codification of the law in that regard would consist of determining the impact of a succession of States within the context of the law of treaties and bearing in mind the principles of the Charter. One of the fundamental principles on which the draft articles were based was the "clean slate" principle, which provided a new State with the opportunity of denouncing all previous treaties concluded on its behalf by a colonial Power.

32. Many of the provisions of treaties concluded by former administering Powers were contrary to the interests and aspirations of the peoples of newly independent States, and the "clean slate" principle ensured that the new State was entirely independent with regard to its political, economic and social options. However, his delegation agreed with the Commission that that principle should not affect boundary and other territorial régimes, which constituted a separate category of treaty relations. Articles 11 and 12 both confirmed the provisions of article 62 of the Vienna Convention on the Law of Treaties, which stated that a fundamental change of circumstances might not be invoked as a ground for terminating or withdrawing from a treaty if the treaty established a boundary. That exception to the "clean slate" principle was, moreover, endorsed by legal theory and the practice of States and regional and international organizations. As the Commission had noted in paragraph (6) of its commentary to article 12, the case concerning the Temple of Preah Vihear had been settled by a treaty concluded between Thailand [Siam] and France in 1904. Similarly, the Conference of Heads of State and Government of OAU held at Cairo in 1964, also reaffirming the principle of respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence, had adopted a resolution solemnly declaring that all States Members of OAU pledged themselves to respect the borders existing on their achievement of national independence. The Conference of Heads of State or Government of Non-Aligned Countries held at Cairo in 1964 had adopted a similar resolution.

33. With regard to the question of State responsibility, his delegation supported the Commission's decision to prepare a set of draft articles based on the relevant provisions of the Charter of the United Nations. The topic had particular importance in the contemporary world because of the interventionism and ambitions of certain Powers, and, in his delegation's view, State responsibility should be regarded as involved both in the case of acts committed by Governments and in the case of acts of aggression or crimes against peoples.

34. It would be advisable for the Commission to take account of State practice with regard to the progressive development and codification of the rules of international law relating to the non-navigational uses of international watercourses also. The legal régimes governing international watercourses varied so widely that the harmonization of rules applicable to all the practical problems that might arise should be approached with great caution.

35. His delegation supported the proposed extension of the Commission's session to 12 weeks, on the grounds cited by the Commission.

36. It welcomed the work done on the topic of treaties concluded between States and international organizations or between two or more international organizations and felt that, in view of the rapidly changing contemporary world, it would be desirable for the Commission to undertake as soon as possible the preparation of a legal instrument on succession of Governments and to resume its study of the most-favoured-nation clause, having due regard to the Declaration on and Programme of Action on the Establishment of a New International Economic Order adopted by the General Assembly at its sixth special session (resolutions 3201 (S-VI) and 3202 (S-VI)).

37. Mr. KEBRETH (Ethiopia) expressed appreciation to the Chairman of the Commission for his very lucid introduction of the Commission's report.

38. The Commission had reached a significant phase at its twenty-sixth session in its consideration of the topic of succession of States in respect of treaties, having completed a second reading of the draft articles on that topic. His delegation hoped that, subject to such further comments as

Governments might make, the text of the draft articles would ultimately be embodied in a treaty, to be made supplementary to the Vienna Convention on the Law of Treaties, with which the topic was, in the nature of things, intimately linked.

39. His delegation was in general agreement with the draft articles but wished to reserve specific comments on them for a future occasion. Generally speaking, the Commission's text struck a happy balance between the need for continuity in State relations in an increasingly interdependent world and the need for new States to be free from the shackles of the past. That had been made possible by the Commission's adoption of a method of work that put a premium on a meticulous survey and evaluation of State practice as evidence of the *opinio juris* of the international community. By adopting such a scientific approach, the Commission avoided *ex cathedra* pronouncements based on dogmatic assertions of any one single principle.

40. His delegation hoped that the Commission would be able to pursue its study of the topic of State responsibility for internationally unlawful acts with renewed vigour and determination, and that work on the international liability of States for injurious consequences arising from performance of lawful acts would also figure among the Commission's top priorities.

41. His delegation welcomed the fact that the Commission at its twenty-sixth session had set up a Sub-Committee to deal with the preliminary aspects of the legal problems relating to international watercourses, a subject that was of increasing importance in a world that had to make the best of limited water resources. In his delegation's view, the Commission should aim, at the initial stage, at the formulation of general principles concerning the utilization of water resources, without limiting itself to any one aspect of the problem, such as the question of pollution, which, as the Argentine representative had rightly pointed out, was a consequence of water use.

42. His delegation would consider favourably the Commission's request for an extension of its session to 12 weeks. Endorsement of the Commission's recommendation in that regard would be an affirmation of the Sixth Committee's confidence in the Commission, and the latter, which was frequently pressed for time, would be better able to accelerate the completion of its programme of work.

43. Mr. USTOR (Chairman of the International Law Commission) expressed appreciation to the Committee for the attention given to the report of the Commission and for the kind words uttered in respect of the Commission and himself. He expressed gratitude also to those who had made critical remarks on the Commission or its work, for he knew well that such remarks had all been made in a constructive spirit with the intention of improving the work of the Commission and furthering the cause of international law.

44. Statements by members of the Sixth Committee were always given the most thorough consideration by the Commission. Those statements reflected the views of the Governments or at least the views of authoritative persons who played an important role in the formation of the ultimate position taken by States Members of the United Nations on specific issues. Members of the Commission always studied most carefully the summary records of the Sixth Committee's debate on the Commission's report, as well as the Committee's report on that agenda item. They always listened attentively to the oral reports of those of their colleagues who had the good fortune to attend the relevant meetings of the Committee. He would do his best to inform the Commission as faithfully as possible about the debate, the mood of the Committee, and, with the greatest pleasure, the spirit of comprehension, appreciation, help and collaboration which he had experienced in the Committee. It was on the mutual comprehension and collaboration of the Commission and the Committee that the cause of the codification and progressive development of international law stood or fell. The current year's debate had again shown clearly that understanding and co-operation between the two bodies was a flawless, living reality.

45. He would inform the Commission of the following with regard to the debate in the Sixth Committee. The report had stirred a very wide interest among members of the Committee; he had the impression that a substantially greater number of speakers had taken part in the debate than in previous years. The discussion had been on a high and scholarly level. Not only had the legal aspects of the various issues been considered but also the political implications had been illuminated and interesting thoughts had been developed. He had been particularly heartened to note that many representatives of young emerging countries had made their voices heard—voices which, as regards learning and erudition, had not fallen behind those of the representatives of other countries. While he had full respect for the reformatory idea of the United Kingdom representative (1493rd meeting) concerning the organization of work of the Sixth Committee, he felt that if it had been implemented at the current session of the General Assembly, he would have been the poorer for having missed many penetrating analyses of the Commission's texts. Some of those analyses illustrated the point that even the most carefully drafted text could give rise to diverse constructions.

46. He would inform the Commission further that its report had, on the whole, received a favourable response from the Sixth Committee, although there were some points on which a diversity of opinion existed. That diversity seemed to be somewhat greater than it had been in 1972 when the first set of draft articles on succession of States in respect of treaties had been presented to the Committee. Regarding that topic and also that of State responsibility, so many and so various points of view had been stated that he had felt a great temptation to respond at least to some of them, to explain and defend the positions taken by the Commission. He would, however, resist that temptation, firstly, because he did not wish to claim the authority to speak on behalf of the Commission about all the controversial issues raised in the debate and, secondly, for the sake of brevity.

47. With regard to the problems of the Commission in general, several members of the Committee had expressed the view that they would welcome an acceleration of the Commission's pace of work and that the need for the codification and progressive development of international

law was still great, notwithstanding the fact that what had been accomplished in that field in the past 25 years–thanks largely to the arduous work of the Commission and the valuable contribution of the Sixth Committee–was quite outstanding in the history of mankind. On that point there was no disagreement between the members of the Committee and the members of the Commission, who also believed that the international community was in ever increasing need of international law. The Commission tried, within the limits of its possibilities, to do its best to augment its output. Its report on the work of the twenty-sixth session testified to an extraordinary effort. It had done everything in its power to comply with the wishes of the General Assembly. It had succeeded in completing the second reading of the draft articles on succession of States in respect of treaties; it had made some progress in the field of State responsibility and it had found time also, at intervals, to address itself to two other topics. The texts submitted by the Commission had been adopted with unanimity or near unanimity, and that was in itself a veritable miracle in view of the composition of the Commission. In order to achieve that, it had been necessary to overcome the greatest difficulty in the very sensitive field of State responsibility, and the three new articles adopted at the twenty-sixth session were the result of long travail. To achieve agreement among jurists of such diverse backgrounds and such different schools of thought was perhaps the most difficult and time-consuming part of the Commission's work. The results so far attained, however, proved that its efforts were not entirely in vain. While bitter remarks were often made about compromises which satisfied neither party, he felt that the compromises reached by the Commission were supportable and useful to all.

48. The law-making treaties which were the outcome of the Commission's efforts were proof that universality of legal concept was not unattainable. Experience showed that the codification of international law was best performed through the interplay of minds trained in various legal systems and different cultures and through the harmonization of the wide range of experience of the members of the Commission, who must continually balance the preservation of their essential diversity against the demands of the imperative objectives of the Commission.

49. With regard to the working methods of the Commission, its members gave constant thought to ways and means of improving its work–to its own "progressive development", as one member had put it. It would continue to do so, as was only natural in the case of a body composed of responsible men, conscious of the expectations of the General Assembly and of the whole community of nations.

50. He was gratified by the Committee's response to the Commission's plea on matters of organization. The Commission would highly appreciate the comprehension shown by the Committee. The codification and progressive development of international law was not considered by the Commission as an end in itself but as a means towards the attainment of peace, security and the well-being of peoples. The codification and progressive development of international law was not a mere academic exercise but a means of achieving peaceful coexistence among States and their better and closer co-operation for the sake of their peoples and for all mankind. That was a noble task, and members of the Commission devoted their energies and dedicated their lives to it, just as did many members of the Sixth Committee. The vital co-operation between those two bodies, both inspired by the same ideals, had, in the course of the past 25 years, developed into an international law-making machinery unprecedented in history. He trusted that that machinery would continue to work smoothly and that the results of the next 25 years would not lag behind those of the first 25 years but would surpass them. He wished all good luck, good health and a further improvement of the prevailing political atmosphere of confidence, which was an indispensable element of international law-making by means of codification and progressive development.

51. Mr. ROSSIDES (Cyprus) asked the Chairman to convey to the Yugoslav Government his delegation's condolences on the death of Mr. Milan Bartoš, the eminent Yugoslav jurist and distinguished member of the Commission. He expressed also his deep appreciation to the Chairman of the Commission for his lucid introduction of the report of the Commission on the work of its twenty-sixth session.

52. At that session, the Commission had most impressively carried out the recommendations made by the General Assembly in resolution 3071 (XXVIII). It had not only completed the second reading of the draft articles on succession of States in respect of treaties, but had also been able to make further progress on the topic of State responsibility by adopting three new articles and had dealt with the initial articles on treaties concluded between States and international organizations or between two or more international organizations. His delegation was particularly glad to note that the Commission had begun work on the law of the non-navigational uses of international watercourses, a topic which had an important bearing on the problems of environmental pollution.

53. The final set of 39 draft articles on succession of States in respect of treaties represented the culmination of a concentrated effort by the Commission, and he paid a tribute to the dedicated work of the two Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat. Taking into account the comments submitted by Governments, the Commission had revised its first draft, changing somewhat its structure and amplifying some of the original provisions, but had nevertheless maintained its basic approach to the codification of the topic and confirmed the principles on which the draft was based. His delegation was in agreement with that attitude and was therefore able to support the draft as a whole as a suitable basis for the elaboration of a convention.

54. In particular, his delegation agreed that the "clean slate" principle should be at the basis of the regulation of the position of newly independent States, since it was the best designed to meet their situation.

55. With regard to the topic of State responsibility, his delegation reaffirmed its support for the manner in which the Commission was approaching codification of the responsibility of States for internationally wrongful acts. The new articles adopted on the attribution to the State of the conduct of organs or persons acting for it in whatever

capacity represented a step forward in the codification of that most complex and sensitive topic. Following the recommendation of the General Assembly, the Commission had included in its general programme of work the topic of international liability for injurious consequences arising out of the performance of activities other than internationally wrongful acts. His delegation agreed that "responsibility for risk" was different in nature and that the two categories of questions should not be dealt with in one and the same draft. Nevertheless, he stressed the urgent need for the legal regulation of acts which, by reason of their harmful effects, could no longer be treated as lawful. His delegation hoped that the Commission would find it possible to undertake consideration of that topic, as a separate item, in the immediate future. One of the most pressing aspects involved in the study of responsibility for risk was that concerning the effect of activities which, because of technological advances, gravely endangered the human environment.

56. The Commission had taken a first step towards the codification of the "primary" rules in one of the areas more directly relating to the preservation of the environment, namely, the non-navigational uses of international watercourses. On that topic, the Commission would be well advised to concentrate its efforts first on the urgent question of pollution of waters. However, there was also a compelling need for formulate those "secondary" rules that would determine the legal consequences of acts which were still considered as not wrongful under international law. That would be a significant contribution to the consolidation of the international legal order in a world threatened by the multiple perils that accompanied rapid technological advances. That topic had been mentioned in third place in General Assembly resolution 3071 (XXVIII), before the question of treaties concluded between States and international organizations or between two or more international organizations and should, in his delegation's view, be given priority. Some work on the marine environment had been accomplished at the Caracas session of the Third United Nations Conference on the Law of the Sea, but the larger part still remained to be done.

57. With regard to the remarks and suggestions by the Joint Inspection Unit regarding the seat of the Commission and the length and dates of its sessions, he felt that there were certain aspects of the problem that might have been overlooked by the Unit or to which it might not have given sufficient consideration. While the Unit was understandably concerned that as many international conferences and meetings as possible should be accommodated at the United Nations Office at Geneva, it would seem that, for a body such as the Commission, entrusted with the vitally important work of the progressive development and codification of international law, special considerations should apply. One of the main problems of the technologically changed world was the urgent need to develop international legal order, for only thus could international security be maintained or the prospect of the cessation of the arms race become a realizable proposition. In addition, the growing requirements for the protection of the environment emphatically pointed to the need for the relevant development of international law. A move by the Unit which would result in hampering instead of facilitating the work of the Commission would run counter to the growing need for the progressive development and codification of contemporary international law. It would seen hardly advisable or profitable to interfere with the site of the Commission's meetings, which had been decided upon by the General Assembly in resolution 984 (X). His delegation firmly believed that the question of the time, location and length of the Commission's sessions should be left for the Commission itself to decide. His delegation supported the Commission's view that it should continue to sit at Geneva, in the months between May and July, for a minimum of 12 weeks.

Organization of work

58. The CHAIRMAN informed the Committee that at the 222nd meeting of the General Committee of the General Assembly the President had stressed that, if the current session was to end on 17 December as envisaged, considerable efforts would be required to accelerate the work of the Main Committees. It had been pointed out that by beginning their meetings late, the Main Committees had lost more than 80 hours since the beginning of the current session, or 15 per cent of the time allocated to their session. The early adjournment of meetings owing to a lack of speakers had further aggravated the situation. It had been suggested that in order to make up for lost time, the Main Committees should not only meet punctually but should also hold night meetings and even Saturday meetings. Accordingly, he appealed to all representatives to arrive punctually at meetings, to be ready to speak early in the general debate, to be concise in their statements and prompt in the preparation and submission of draft resolutions.

The meeting rose at 5.50 p.m.

1497th meeting

Wednesday, 13 November 1974, at 3.40 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1497

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session (A/9617, A/C.6/L.984)

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General (A/9711 and Corr.1)

1. The CHAIRMAN invited the Chairman of the United Nations Commission on International Trade Law to introduce the Commission's report.

2. Mr. JAKUBOWSKI (Chairman of the United Nations Commission on International Trade Law) said that the Commission's report on the work of its seventh session (A/9617) indicated the progress made in respect of the various items under consideration. In keeping with suggestions made in the Sixth Committee in 1973, the Commission had endeavoured to give some background information in the chapters dealing with substantive items. The reports of the Working Groups and the substantive studies and preliminary draft texts were of course available as Commission documents and were also published in the various volumes of the Commission's *Yearbook*.

3. The Commission had also endeavoured, following suggestions made in the Sixth Committee, to establish an order of priority within the priority topics included in the programme of work. Chapter IX of the report established a schedule which implied the following order: first, international legislation on shipping; second, international sale of goods; and, third, international negotiable instruments. That did not mean that work on other topics was at a standstill, but merely that the full Commission would consider draft conventions or draft uniform laws on those topics in the order indicated and, consequently, that diplomatic conferences on those matters might likewise be expected to take place in that order.

4. Top priority had been accorded to the work done since 1970 regarding uniform rules on the liability of ocean carriers for loss, damage or delay with respect to cargo. The Working Group on International Legislation on Shipping, dealing with that topic, was expected to terminate its work in February 1975. Shortly thereafter, the draft uniform rules, in the form of a draft convention, would be transmitted to Governments for comments, and the Commission intended to devote a full session, in 1976, to the adoption of a final text for possible submission to a United Nations diplomatic conference in 1977 or 1978. The Working Group had been able, largely through consensus, to agree on basic policy decisions concerning the allocation of risks between the cargo owner and the carrier and, generally, had succeeded in bringing about clarity in provisions where that was lacking under the existing Hague rules.[1] The Commission's work on new rules governing the liability of ocean carriers showed that reconsideration of existing legal rules at the universal level of the United Nations could produce satisfactory results.

5. The second topic, on which good progress was being made, concerned the unification of the substantive rules of law governing the international sale of goods. The Working Group on the International Sale of Goods at its fifth session had completed its initial examination of the Uniform Law on the International Sale of Goods (ULIS) annexed to the Convention of the Hague of 1964 and had prepared a revised text,[2] which constituted a definite improvement over the older one. It was hoped that the final text of the uniform law would be more acceptable to countries with different legal, social and economic systems. The revised text still presented some problems, and the Working Group would tackle them at its next session on the basis of the comments and proposals of representatives in the Commission and a study by the Secretariat.

6. The third topic on the Commission's list of priorities concerned the work on a convention setting forth rules in respect of an international negotiable instrument—a bill of exchange or a promissory note—that could be used optionally for settling international payments. The Working Group on International Negotiable Instruments would hold its third session in January 1975. It was considering the preliminary draft convention prepared by the Commission's secretariat in consultation with interested international organizations and various banking and trade institutions, but at the rate of one two-week session per year final results could not be expected before 1978 or 1979.

7. In accordance with its general policy of considering the substance of the work done by working groups only upon completion of that work, the Commission at its seventh session had taken note of the reports of the three Working Groups mentioned above. He did not think it necessary, at the current stage, to go into details of the substantive aspects of those reports. In due course the end results of the work would be transmitted to Governments for comments. Indeed, the draft uniform rules governing the liability of ocean carriers for cargo would be transmitted during the first half of 1975. It was hoped that Governments would give that draft the attention it deserved so as to enable the Commission to place before the General Assembly, for submission to a conference of plenipoten-

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[1] See International Law Association, *Report of the Thirtieth Conference*, vol. II, *Proceedings of the Maritime Law Committee* (London, Sweet & Maxwell, Ltd., 1922), p. 249.

[2] See A/CN.9/87, annex I.

tiaries, a draft text reflecting the views and comments of as many States as possible.

8. In the field of the international sale of goods, the Commission at its sixth session had requested the Secretariat to prepare a draft set of uniform general conditions of sale that would be applicable to a wide scope of commodities. He understood that the Secretariat's work was nearing completion, and the Commission would be able to decide at its next session what further action it should take on that subject.

9. In the field of international payments, the Secretariat, at the request of the Working Group on International Negotiable Instruments, was carrying out inquiries regarding the use of cheques for making or receiving international payments with a view to determining whether the proposed uniform rules on bills of exchange and promissory notes should be expanded to cover cheques as well. A preliminary report on that matter would be before the next session of the Working Group in January 1975.

10. Two other items were of interest to the Commission: bankers' commercial credits and bank guarantees. Both those items were being dealt with by the International Chamber of Commerce (ICC), but in view of the great importance for international trade of documentary letters of credit, particularly in the context of the international sale of goods and the financing of such sales, the Commission had been closely following the work of revision being carried out by ICC with regard to its "Uniform Customs and Practice for Documentary Credits". In particular, the Commission had seen to it that the views of commercial centres in countries not represented in ICC had been brought to the latter's attention. Similar procedures were being followed in respect of bank guarantees, which played an important role in contracts of international trade. In view of the uncertainty of the nature of such guarantees and of the legal régime applicable to them, uniformity in respect of both concept and the applicable law would be beneficial to international commercial transactions. The task of the Commission so far has been to co-ordinate the work of various international organizations which were interested in that subject.

11. Another item under study concerned security interests in goods. Preparatory legal research had been carried out, and the Commission would decide at its next session whether any further action should be taken and, if so, what the course of action should be.

12. In respect of international commercial arbitration, the Commission at its sixth session had requested the Secretariat to prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade and to do that work in consultation with the regional economic commississions of the United Nations and centres of international commercial arbitration. A draft set of arbitration rules had been prepared and comments were being sought from the regional economic commissions and from centres of international commercial arbitration. The draft arbitration rules, together with the observations received from those bodies, would be submitted to the Commission at its next session. It was expected that the Commission would then consider what further work it might usefully undertake in that field.

13. At its twenty-seventh session the General Assembly in resolution 2928 (XXVII) had invited the Commission to seek from Governments and interested international organizations information relating to legal problems presented by the different kinds of multinational enterprises and the implications thereof for the unification and harmonization of international trade law. The Commission had endeavoured to obtain the necessary information by addressing a questionnaire to Governments and international organizations.[3] The response of Governments so far had been disappointing: only about 25 had replied. It was evident that the work of the Commission in that particularly difficult and important field would gain substantially if more Governments would submit their views. He therefore appealed to those Governments which had not yet replied to the Commission's questionnaire to do so as soon as possible. The Secretariat had been requested to place before the Commission a report setting forth an analysis of the replies to the questionnaire, and a survey of available studies, including those by United Nations organs and agencies, in so far as those studied disclosed problems arising in international trade because of the operations of multinational enterprises, which were suspectible of solution by means of legal rules. The Commission intended to give full attention to that important matter.

14. With regard to training and assistance in the field of international trade law, the Commission's action was twofold. First, as a result of internships offered by the Governments of Belgium and Austria to nationals from developing countries, four young lawyers from developing countries had been enabled to gain practical experience in international trade law at financial and academic institutions in Belgium and Austria. The Commission was grateful to the Governments of those two countries for their assistance. Secondly, the Commission had directed its secretariat to arrange for a symposium to be held in connexion with its eighth session. Voluntary contributions had been made or promised by some member States of the Commission, namely Austria, the Federal Republic of Germany, Norway and Sweden, which would cover the travel and subsistence expenses of a number of participants from developing countries. The theme of the symposium was the teaching of international trade law in universities. Participants in the symposium would therefore be chosen from those who taught or would teach commercial law and comparative law at universities.

15. At its twenty-eighth session the General Assembly by resolution 3108 (XXVIII) had invited the Commission to consider the advisability of preparing uniform rules on the civil liability of producers for damage caused by their products intended for or involved in international sale or distribution. The Commission had of course not yet had sufficient time to consider the various issues involved, but it had requested the Secretariat to prepare a report surveying the work of other organizations on that subject and examining the main problems and the solutions adopted therefor in national legislations. The Commission would report to the General Assembly as soon as it had reached a decision as to the course of action to be taken.

3 See A/CN.9/90.

16. Refering to the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, which had met for four weeks immediately following the seventh session of the Commission, he noted that the Conference had marked the adoption of the first United Nations convention based on the work of the Commission and expressed the hope that it would be followed by others. It was of the utmost importance that legislative texts adopted within the framework of the United Nations should be implemented at the national level, and for that reason he suggested that the Sixth Committee should consider the possibility of submitting to the General Assembly a recommendation inviting States to sign and ratify the Convention on the Limitation Period in the International Sale of Goods.

17. The programme of work of the Commission related to the principal transactions and legal relationships that occurred in or arose out of the conduct of international trade. At a time of growing interdependence between States the Commission's work was therefore of great importance and deserved the support of States Members of the United Nations.

18. He paid a tribute to the excellent work being done by the Commission's secretariat and stressed the great contribution made by the previous Secretary of the Commission, Mr. Honnold. He also thanked the current Secretary of the Commission, Mr. Vis, whose work was well known and highly appreciated. He was also grateful to his fellow officers on the Commission at its seventh session who had assisted him so efficiently in the performance of his task as Chairman.

19. Mr. TELLEFSEN (Norway) said that the report of the Commission on the work of its seventh session testified to the competent and fruitful work being done by it and its Working Groups. The most important item on its current agenda was undoubtedly the revision of the existing international rules relating to bills of lading. He was happy to note that the Working Group on International Legislation on Shipping had made very satisfactory progress and would appear to be in a position to complete its work early in 1975. Accordingly, the Commission had decided to consider at its ninth session, in 1976, the draft uniform rules that would be submitted by the Working Group. His Government attached great importance to the successful completion of that work and stressed the need to adhere to that time-schedule and avoid further delay.

20. His Government appreciated the work done thus far by that Working Group. The compilation of draft provisions on carrier responsibility approved by the Working Group[4] had achieved a wide measure of support, and his Government hoped that the results of the Commission's work in that field would be generally acceptable to the international community. His Government welcomed the Commission's decision at its fifth session[5] that the Working Group carry out its work with a view to establishing a new convention and not merely a protocol to the existing international instruments.

21. His Government was also pleased to note that as a result of the preparatory work of the Commission, the United Nations Conference on Prescription (Limitation) in the International Sale of Goods had taken place in New York from 20 May to 14 June 1974. Using the draft prepared by the Commission, the Conference had been able to reconcile important differences and had approved the Convention on the Limitation Period in the International Sale of Goods[6] which his Government hoped could obtain general acceptance. The Convention could be regarded as a supplement to ULIS, and many States found it useful to consider those matters as a whole. The Commission had requested that the Working Group on the International Sale of Goods should continue its work and complete it expeditiously. His delegation hoped that a final draft on that topic could be worked out at the sixth session of the Working Group, in February 1975, and that the Commission could complete its work on the subject at its eighth session.

22. With regard to liability for damage caused by products intended for or involved in international trade, his delegation noted with satisfaction that the Secretary-General had been requested to prepare a study on the main problems that arose in connexion with uniform rules on the topic and a survey of the pending work of other organizations in that area for consideration by the Commission at its eighth session. It was to be hoped that the subject would eventually be included in the Commission's programme of work.

23. As to the effect of multinational enterprise activity on international trade law, his delegation recognized that that was an important subject. It was doubtful, however, whether the Commission could make a significant contribution to the solution of the very complex problems arising in that field.

24. Mr. ROSENNE (Israel) asked whether the Secretariat could prepare a document indicating the names of the States that had already signed the Convention on the Limitation Period in the International Sale of Goods.

25. The CHAIRMAN said that the Secretariat would comply with that request.

The meeting rose at 4.30 p.m.

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4 See A/CN.9/88, annex.

5 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 51.

6 See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), document A/CONF.63/15.

1498th meeting

Thursday, 14 November 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1498

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(continued)* (A/9617, A/C.6/L.984)

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General *(continued)* (A/9711 and Corr.1, A/C.6/L.991)

1. Mr. BROMS (Finland) said his delegation noted that the Working Groups of the Commission on International Trade Law were making satisfactory progress. Since their work had not yet been completed, his delegation would reserve its comments for a later stage.

2. With regard to the question of legal problems presented by the different kinds of multinational enterprises and the implications thereof for the unification and harmonization of international trade law, he said that early in 1974 his Government had sent a detailed reply to the Secretary-General's questionnaire.[1] His Government recognized the importance of the problem and was happy that the United Nations had taken up the question. He noted, however, that the Economic and Social Council by its resolution 1908 (LVII) had decided to establish within the United Nations permanent machinery to follow the activities of multinational enterprises. It seemed to his delegation that, in order to avoid duplication, the study of questions concerning the activities of such enterprises should be left for decision with the Economic and Social Council and its new machinery, once the latter was set up. His delegation therefore proposed that, once it had received the replies of Governments, United Nations bodies and institutions, and national and international organizations to the Secretary-General's questionnaire, the Commission should suspend its study of the question pending further instructions, and transmit all the relevant documentation to the aforementioned auxiliary machinery of the Economic and Social Council.

3. He wished to express the satisfaction of his delegation at the fact that the United Nations Conference on Prescription (Limitation) in the International Sale of Goods had adopted the Convention on the Limitation Period in the International Sale of Goods, the first convention based on a text prepared by the Commission.

4. Mr. KLAFKOWSKI (Poland) said that, since his country was a member of the Commission his delegation had already had the opportunity to express its views on all the problems taken up by the Commission, and his statement would therefore be limited to certain general considerations. The report, while not as voluminous as other documents circulated in the Committee, represented a considerable sum of legal work of the highest level. The usefulness of the Commission's work was made evident in document A/9711 and Corr.1, concerning the opening for signature by all States of the Convention on the Limitation Period in the International Sale of Goods. He hoped that the Commission would be able to continue its codification efforts under optimum working conditions.

5. One striking element of the Commission's report (A/9617) was the fact that all its decisions had been adopted by consensus. That practice had enabled the Commission to obtain positive results and devise solutions that were acceptable to all States, thus giving them all an equal opportunity to participate in the process of unification of international trade law. He also wished to stress the importance of the co-operation between the Commission and other United Nations bodies, specialized agencies, intergovernmental organizations and international non-governmental organizations.

6. The comparative method adopted by the Commission in dealing with its topics, which was particularly evident in chapters V, VI and VIII of its report, enabled the Commission to deal effecively with the questions before it. The Commission should continue to develop and perfect its own method of work on the basis of its past accomplishments.

7. Chapter IV of the report, on international legislation on shipping, was particularly interesting because it dealt with definitions of certain fundamental concepts. The importance of legal terminology and precise definitions should not be underestimated, particularly in connexion with the principal legal systems applicable in international relations. The question was not a purely theoretical or semantic one and it was encouraging to note that the Commission did not hesitate to deal with it.

8. His delegation wished to draw particular attention to chapter VII of the report, paragraph 67 of which mentioned the holding of a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. He also wished to stress the importance of disseminating Commission documents in order to enable universities and other scientific research centres not only to teach international trade law but to do parallel work with all centres engaged in studying the topic throughout the world. He had in mind, first of all, the documentation mentioned in paragraphs 96 and 97 of the report and in the annex to the report. The Committee should pay special attention to those problems during its discussion of the item.

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[1] See A/CN.9/90, para. 5.

9. Mrs. SLÁMOVÁ (Czechoslovakia) said that her country was an active member of the Commission and supported its work because the belief of her country was that the unification and harmonization of international trade contributed significantly to strengthening friendly relations between States and expanding co-operation on the basis of equality and mutual benefit. The law governing international trade should be acceptable to the largest possible number of States irrespective of their social systems.

10. Commenting on the Commission's work during the past year, she noted with satisfaction the adoption of the Convention on the Limitation Period in the International Sale of Goods. She also welcomed the expansion of the Commission's membership, which would no doubt help the Commission to move ahead more expeditiously in its work. The Commission was now a more representative body and its expanded membership would enable it to draw on a greater number of experts. It was regrettable, however, that the number of States participating in the Working Groups had not been increased and that, with few exceptions, the States newly elected as members of the Commission had not been directly brought into the activities of the Working Groups.

11. Her Government attached great importance to the elaboration of uniform rules governing the international sale of goods, on which work was well advanced. The Commission was to be commended for the results it had achieved in that field, and it was to be hoped that a final draft would be ready in two or three years. Her delegation endorsed the decision of the Commission set forth in paragraph 20 of the report. In its further examination of uniform rules, the Working Group on the International Sale of Goods should bear in mind the need for the widest possible application of the uniform rules and the principle that States must have the right in their mutual trade relations to conclude or to give effect to such special rules as might be agreed upon to meet their mutual needs.

12. With regard to chapter III of the report, concerning international payments, her delegation attached considerable importance to the regulation of questions relating to negotiable instruments and cheques. It was essential to eliminate the divergence of legal concepts in that regard as between the Geneva Conventions of 1930 and 1931, on the one hand, and Anglo-American law, on the other. It would be desirable to complete the preparation of the uniform law as expeditiously as possible.

13. With regard to international legislation on shipping, her delegation welcomed the results achieved by the Working Group and endorsed the Commission's decision in paragraph 53 of the report that the draft uniform rules on that subject should be transmitted to Governments for their comments.

14. In view of the need for protection against the harmful consequences of the activities of multinational enterprises, a problem that could best be solved at the international level, her delegation welcomed the inclusion of that subject in the Commission's programme of work. Her Government had already replied to the Secretariat's questionnaire and would support efforts designed to provide legal protection against the activities of international monopolies.

15. Her delegation supported the idea that consideration should be given to the question of accelerating the process of ratification of or adherence to conventions concerning international trade law. However, it was essential that the constitutional provisions of every State should be respected. In the first instance, attention should be given to the possibility of speeding up the process of adopting the uniform rules elaborated by the Commission. It should give further consideration to that subject at an appropriate time, perhaps at its ninth session.

16. In view of the Commission's already heavy workload, its resources should not be overburdened by items of secondary importance which were of doubtful relevance to international trade law. Her delegation could not support the proposal which had been made that the topic of liability for damage caused by products intended for or involved in international trade should be included in the Commission's work. Unification of the law in that regard posed great difficulties, and it would be better to leave such matters to be regulated by national legal systems. Moreover, it should be pointed out that the Hague Conference on Private International Law had done work on that subject, which therefore did not require the urgent attention of the Commission.

17. On the other hand, it would be desirable to include in the Commission's programme of work the topic of the legal regulation of the validity of contracts of international trade in connexion with the preparation of rules for the conclusion of such contracts. The Commission could appropriately consider that topic in a general way, since the differences between various types of contracts were rather small.

18. In its work on unification, the Commission should not lose sight of the need for comprehensive codification. The ideal approach would be for the Commission to proceed gradually towards a uniform code of international trade law. The individual conventions and laws elaborated by the Commission should be integrated into a uniform system.

19. The Commission faced problems of great complexity and difficulty in its future work, but it had performed its task well thus far and there was reason to hope for continued good results in the future.

Organization of work

20. The CHAIRMAN reminded members that the list of speakers would be closed at 6 p.m. on that day.

21. Mr. BRENNAN (Australia) said he had come to New York especially for the purpose of participating in the debate on diplomatic asylum (item 105), which had originally been scheduled to begin on 4 November. Since he would have to make arrangements in connexion with other engagements he had, he would like to know approximately when the Committee would be able to take up that item. He suggested that the Committee might better utilize its time by having more than one active item on its agenda so that members who were not prepared to speak on one could speak on another.

22. The CHAIRMAN said he shared the Australian representative's concern regarding the delay in the Committee's work. By the following day, he would know how many speakers wished to take the floor on the current item and he would then be willing to consider the Australian suggestion. He was confident the Committee would be able to take up the item on asylum at the beginning of the following week.

The meeting rose at 4.05 p.m.

1499th meeting

Friday, 15 November 1974, at 3.15 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1499

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(continued)* (A/9617, A/C.6/L.984)

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General *(continued)* (A/9711 and Corr.1, A/C.6/L.991)

1. Mr. YOKOTA (Japan) said that the past year had been a memorable one in the history of the United Nations Commission on International Trade Law. He referred to the Convention on the Limitation Period in the International Sale of Goods[1] which had been adopted in June 1974, the Commission's first concrete achievement in the unification of international trade law. The unification of private laws was a very difficult task since these laws had constituted fundamental legal framework and were inseparably connected with the commercial customs and practices of each country. His delegation appreciated fully the enormous difficulties which the Commission and the United Nations Conference on Prescription (Limitation) in the International Sale of Goods had had to overcome. The Convention might be criticized as an uneasy compromise between different systems of law but, in the view of his delegation, the effective functioning of a uniform law on prescription depended to a large extent on the future unification of substantive laws, such as the Uniform Law on the International Sale of Goods (ULIS) on which the Commission was currently working. The progress of the work in that field would provide a basis on which to make a more accurate appraisal of the Convention.

2. The Commission's three Working Groups had been working on three different topics. Of those three, the Commission had decided to give the highest priority to the work on international legislation on shipping and specifically to the revision of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels in 1924 and the Protocol by which that Convention was modified, signed at Brussels in 1968. That decision was fully justified, because there had been considerable technical progress in navigation, and sea-borne trade by merchant fleets had increased markedly since the Second World War, so that it was an appropriate time for the international community to review the rules that had been established almost half a century before. He did not intend to comment on the substance of international legislation on shipping at the current stage, but wished to state that prevailing customs and practices, and legal developments in that field, should be carefully studied and duly reflected in the work on that problem.

3. Although Japan had supported the decision to give priority to international legislation on shipping, it was no less interested in the items being dealt with by the other two Working Groups and had therefore been closely following the progress of the Working Group on the International Sale of Goods and the Working Group on International Negotiable Instruments. He trusted that those two Working Groups would continue their work with the same attention to prevailing customs and practices as the Working Group on International Legislation on Shipping.

4. Besides the three items being dealt with in the Working Groups, the Commission's future programme of work contained several other items. In the view of his delegation, the Commission should concentrate, at least currently, on the completion of its work on the three items already under study and should discuss at a future stage whether or not to take up the other items. Currently, such questions as general conditions of sale and bank guarantees might be left to commercial customs and practices or possibly to the rules formulated by commercial organizations. As to international commercial arbitration, further detailed study might be required before the Commission could take its final decision as to whether a uniform law was really necessary in that field. Since other United Nations bodies, such as the Economic and Social Council and the United Nations Conference on Trade and Development were currently studying the question of multinational enterprises, the Commission should confine its study to the legal aspect of the question so as to avoid unnecessary duplication of work. Although his delegation saw the utility of making a basic study of the problems involved in the question of civil liability of producers for damage caused by their products and of exchanging information on existing national legislations, it was of the view that, owing to the

[1] See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), document A/CONF.63/15.

complexity of the question, the Commission should not expand the scope of its activities before the three Working Groups had completed their tasks.

5. Another important task entrusted to the Commission by General Assembly resolution 2205 (XXI) was the collection and dissemination of information on national legislation and modern legal developments, including case law, in the field of the law of international trade. The compilation of a list of the existing conventions in that field and exchanges of information on national laws and cases would be of great value to lawyers and also to businessmen. Japan therefore welcomed the Commission's plans for a symposium on the teaching, dissemination and wider appreciation of international trade law to be held in 1975. It wished the symposium every success and expressed the hope that more programmes of a similar kind would be organized by the Commission in the future.

6. Turning to the Commission's methods of work, he welcomed its adoption of methods of holding shorter sessions than in the past in order to leave more time for meetings of the working groups. A four-week session imposed an excessive burden on Member States and possibly on the Secretariat also. When a specific task was completed by one of the working groups, the Commission could take additional time if necessary to examine the results. In the opinion of his delegation the revised working method had proved efficient and it therefore supported it.

7. Mr. JAKUBOWSKI (Chairman of the United Nations Commission on International Trade Law) said that, because of pressing university duties at home, he would not be able to be present for the remainder of the discussion of the Commission's report. Mr. Sam of Ghana, Vice-Chairman of the Commission, would represent that body henceforward. All observations, comments and proposals made in the Sixth Committee would be faithfully conveyed to the Commission. He was grateful for the many expressions of appreciation of the Commission's work.

8. The CHAIRMAN thanked the Chairman of the Commission for his valuable contributions to the debate.

9. Mr. FÖLDEÁK (Hungary) said that the report of the Commission (A/9617) covered a wide range of subjects. Over the past year, the Commission had concluded the preparation of what became the Convention on the Limitation Period in the International Sale of Goods and had made significant progress in the preparation of other drafts, relating to uniform rules governing the international sale of goods, a uniform law on international bills of exchange and international promissory notes, and the responsibility of ocean carriers in the field of international shipping. Some work had also been done on a number of other items on the Commission's agenda.

10. Work on several items was nearing completion. As stated in paragraph 51 of the report, the Working Group on International Legislation on Shipping should complete the drafting of uniform rules on the responsibility of ocean carriers by February 1975, and the Commission would take up the draft at its ninth session, in 1976. According to paragraph 86 of the report, the Commission might consider the draft of the uniform law on the international sale of goods in 1977 and that of the uniform law on international bills of exchange in 1978. That seemed rather a tight schedule, and although his delegation was in favour of the speediest possible completion of the Commission's work, it fully endorsed the warning contained in paragraph 18 of the report, that the quality of the work should not be jeopardized by establishing unrealistic dead-lines.

11. The task of the Commission was to prepare uniform laws and rules which were widely adopted and used all over the world, thus contributing to the harmonization and unification of the law of international trade. That aim could only be achieved if, in preparing its draft, the working group concerned sought the views of various Governments and interested international organizations and tried to reach unanimous decisions. The objectives of the Commission would be better served if the working groups spent the necessary time to reach agreed solutions rather than submitting texts more promptly but before unanimous agreement had been reached on all problems. His delegation therefore doubted whether the Working Group on the International Sale of Goods could complete its work in time to submit a draft to the Commission at its tenth session, as suggested in paragraph 86 of the report. According to its terms of reference, the Working Group had to consider the Convention on the Law Applicable to the International Sale of Goods signed at The Hague in 1955, the Convention relating to a Uniform Law on the International Sale of Goods (ULIS) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, both signed at The Hague in 1964, and decide whether those texts could be modified to make them more widely acceptable or whether a new text should be drafted for that purpose.

12. So far, the Working Group had considered only ULIS. It had not yet considered the comments and suggestions of States regarding the other two Conventions, or such basic questions as the relationship between the Convention of The Hague of 1955 and the Conventions of The Hague of 1964 or between the two Conventions of 1964. It also had several other questions of principle and a number of knotty problems to consider. His delegation therefore had serious doubts as to the possibility of the Working Group's finishing its work within the period mentioned in paragraph 86 of the report. In view of the fact that in the field of the unification of the law of international trade, unification of the law relating to the sale of goods was undoubtedly the most important issue, his delegation suggested that, in its decision on the Commission's future work, the Sixth Committee should recommend that the Commission should take all appropriate steps to enable the Working Group to complete its work within a period of two years at the most.

13. One item on the Commission's agenda was not mentioned in its report, namely the feasibility of preparing a set of general conditions for the sale of goods in any part of the world. At its fifth session, the Commission had requested the Secretary-General to prepare such a set of conditions if preparation thereof proved feasible.[2] At its sixth session, the Commission had requested the Secretary-General to continue work on the general conditions in

2 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 43.

co-operation with the regional economic commissions and with interested trade associations, chambers of commerce and similar organizations from different regions and to report to the Commission at its seventh session on the progress made.[3] The use of general conditions did not depend on ratification by States as in the case of a uniform law. The completion of the work in that field might therefore more significantly and more rapidly contribute to the facilitation of international trade than completion of the work on a uniform law. His delegation therefore suggested that the Sixth Committee should recommend to the Commission that it give appropriate attention to the work on general conditions of sale. The Committee should also express the expectation that the Commission would base its work on existing and widely used formulations and that the work would be carried out in close co-operation with the organizations mentioned in the decision taken by the Commission at its sixth session.

14. In the field of training and assistance, his delegation had noted with satisfaction that the Commission's plan to organize a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law had made good progress and that many countries had recognized the importance of that project. In Hungary, the University of Budapest had decided to introduce the teaching of international trade law at its institute for post-graduate studies. The teaching of international trade law was essential to the attainment of the objectives of the Commission, since the more that was known about international trade law, the greater recognition would there be of the importance of unification.

15. Mr. SPERDUTI (Italy) said that his delegation had carefully studied the report of the Commission, which had been lucidly introduced by the Chairman of the Commission.

16. The Commission had made considerable progress towards the elaboration of a uniform law on the international sale of goods, which was the most important topic currently under consideration. The adoption of such a uniform law would greatly facilitate the development of international trade. It appeared that the Working Group on the International Sale of Goods would soon be in a position to submit the final draft of the uniform law to the Commission. The Commission should consider the draft uniform law on the international sale of goods as soon as possible after completing its work on the uniform rules on the responsibility of ocean carriers. At the current stage it would be premature to make a substantive evaluation of the very large number of provisions elaborated thus far by the Working Group, but it should be commended for its efforts to regroup and unify the provisions of ULIS, annexed to the Convention of The Hague of 1964. The revised text elaborated by the Working Group comprised 69 articles, as compared with the 101 articles of ULIS. From the very outset of its work on uniform rules governing the international sale of goods, the Commission had realized the importance of co-operation with scientific bodies and intergovernmental organizations which were active in the elaboration of uniform rules in the field of private law. Thus, at its second session the Commission had invited the International Institute for the Unification of Private Law (UNIDROIT), The Hague Conference on Private International Law and other international organizations concerned to attend the meetings of the Working Group on the International Sale of Goods. The uniform rules governing the international sale of goods were related, both logically and pragmatically, to the rules governing the formation and validity of contracts of international sale of goods. After completing the work on the uniform law on the international sale of goods, it would be appropriate to take up the subject of the formation and the validity of contracts. In that regard, he drew attention to the draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods, prepared by a working group of UNIDROIT,[4] and to the decision of the Commission recorded in paragraph 93 of its report. In its future work on the international sale of goods, the Commission should strive for the elaboration of a complete *corpus juris* on the subject. A step in that direction had been taken with the adoption of the Convention on the Limitation Period in the International Sale of Goods. It would also be desirable to study the relevant problems of private international law, taking into consideration the Convention on the Law Applicable to International Sale of Goods of 1955, which the Secretary-General had described as the most successful of The Hague Conventions pertaining to international trade law.[5]

17. The Commission was also doing important work in the field of international payments, in particular on the subject of negotiable instruments. Taking into account the difficulty of reconciling the differences between various legal systems, a uniform law applicable to an international instrument for optional use in international payments was urgently needed. Such a law would be optional in that the drawer of a bill of exchange would be free to treat the bill in accordance with national law or in accordance with the uniform law. His delegation would regard the adoption of such a law as a step forward in the history of civilization. Such a development would be particularly welcome to his country, which was generally recognized to have been the first to use bills of exchange.

18. The structure of the Commission, as established in General Assembly resolution 2205 (XXI), was conceived in a particularly successful way. The fact that members of the Commission were States and not individuals acting on their personal responsibility and that they were chosen in so far as possible from among persons of eminence in the field of the law of international trade could combine to assure the efficacy of the Commission's work. The high quality of delegations, the fact that the Commission could readily establish intersessional working groups and the fact that the General Assembly had recently increased the membership of the Commission were all elements that ensured optimal conditions for the Commission's functioning and efficiency. However, in establishing the Commission, the General Assembly had emphasized the importance of the Commission's role in co-ordinating the work of organizations

3 *Ibid., Twenty-eighth Session, Supplement No. 17*, para. 24.

4 See UNIDROIT publication Etude XVI IB, Doc. 22; U.D.P. 1972.

5 See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, documents A/6396 and Add.1 and 2, para. 42.

active in the field of international trade law and encouraging co-operation among them. By section II, paragraph 12, of General Assembly resolution 2205 (XXI), the Commission had been authorized to establish appropriate working relationships with intergovernmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade. The Commission had consequently given a great deal of attention to the problems of co-ordination and co-operation, and it maintained relations with many organizations which had an interest in its work. A number of specialized agencies of the United Nations, intergovernmental organizations and international non-governmental organizations reguarly attended the sessions of the Commission as observers. Nevertheless, it would be desirable to make greater use of the resources offered by the existence of a large number of organizations which were active in the field of international trade law and which had welcomed the establishment of the Commission. In that connexion, his delegation welcomed the Commission's decision to express its appreication to UNIDROIT for its work on the validity of contracts of international sale of goods and noted with satisfaction the decision recorded in paragraph 93 of the Commission's report. From a pragmatic point of view, it might have been better if the Commission itself had taken the initiative by requesting UNIDROIT to prepare a draft set of uniform rules relating to the validity of contracts of international sale of goods, in view of the universal recognition of UNIDROIT's competence in that field. Such rules, if they were as clear and simple as possible, could exercise an important influence on the development of trade throughout the world.

19. His delegation had recently received the study prepared by the Secretariat[6] pursuant to the Commission's decision of 11 April 1973[7] requesting the preparation of draft uniform arbitration rules for optional use in *ad hoc* arbitration relating to international trade. The study in question listed the experts whose collaboration had been sought in the preparation of the draft rules as well as of the relevant background documents. He noted with surprise that the Consultative Group that had been set up did not include an expert from the Court of Arbitration of the International Chamber of Commerce (ICC), which had aquired invaluable experience in that field. If he was not mistaken, ICC, which was recognized as being widely representative of the various regions of the world, had been mentioned only once in the study in question, namely in the commentary to article 23 of the Commission's Arbitration Rules.

20. His delegation felt that further consideration should be given to the organization of the Commission's work, but was happy to note that that body had already shown a degree of flexibility and adaptability. It had recognized the advantage of leaving certain subjects to organizations that were particularly competent in the relevant field and of encouraging and taking advantage of their work. That had been done, for example, in the case of bankers' commercial credits and bank guarantees, which were being studied carefully by ICC.

21. Subject to the foregoing comments, his delegation was happy with the choice of subjects for the future work of the Commission. It was particularly interested in the work being done on the subject of the legal problems presented by the different kinds of multinational enterprises pursuant to General Assembly resolution 2928 (XXVII). The recent report of the Secretary-General on The Impact of Transnational Corporations on the Development Process and on International Relations[8] stressed the role to be played by the Commission in that connexion.

22. He wished to emphasize the importance of bearing in mind the fact that the General Assembly had decided to create the Commission because of its belief that the interests of all peoples, and particularly those of developing countries, demanded the betterment of conditions favouring the extensive development of international trade.

23. Mr. MEISSNER (German Democratic Republic) said the Commission's report showed that that body had taken a major step forward in its efforts to unify the rules of international trade law. Special mention should be made of the work accomplished by the Working Group on the International Sale of Goods in a relatively short period.

24. The United Nations Conference on Prescription (Limitation) in the International Sale of Goods, which had been attended by his Government, had been both the result and the successful conclusion of the Commission's efforts to draw up a Convention on the Limitation Period in the International Sale of Goods. His Government, which had been one of the first States to sign that Convention, felt that it would help remove the considerable disparity with regard to terms of prescription and its legal consequences under the various legal systems, thus making a major contribution to the promotion of trade relations which was an important area for co-operation among States with differing social and economic systems. It was worth mentioning that the Convention was the first international convention in the field of international trade law to have been formulated under the auspices of the United Nations. His Government particularly welcomed the fact that the Convention was open to all States for accession and that the colonial clause contained in article 44 of the original draft,[9] under which the colonial Powers were to have signed the Convention on behalf of colonial territories, had been eliminated. By preparing the Convention, the Commission had contributed, on the basis of the principles of peaceful coexistence among States with differing social systems, to the unification of one important sector of international trade law.

25. The completion of the Convention on the Limitation Period in the International Sale of Goods should prompt the Working Group on the International Sale of Goods to expedite its work and to submit a set of draft articles on the international sale of goods. The revised text of ULIS contained in annex I to the Working Group's report[10] showed what great efforts the Working Group had made to draw up an uncomplicated, comprehensible and practicable

6 A/CN.9/97.

7 See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17*, para. 85.

8 E/5592.

9 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 21.

10 See A/CN.9/87.

draft. That was also borned out by the fact that the original 101 articles had been reduced to 69 without any essential provisions being dropped. Both the Convention on the Limitation Period and the expected convention on the international sale of goods would simplify contractual relations among enterprises domiciled in States with differing social and economic systems and would greatly add to legal security in trade relations. His Government therefore attached special importance to the activities of the Working Group on the International Sale of Goods.

26. His delegation had read with attention chapter III of the Commission's report regarding the proposed unified arrangements in the field of international payments. It endorsed the Commission's decision to request the Secretary-General to prepare an analysis of the observations received in respect of "Uniform Customs and Practice for Documentary Credits" and to submit the analysis to the Commission at its eighth session.

27. Regarding international legislation on shipping, his delegation held that it would be appropriate to expedite work on the revision of the Brussels Convention of 1924 and the Brussels Protocol of 1968 and to draw up a new convention under United Nations auspices. There were three reasons for his delegation's position: firstly, the subject regulated by the Brussels Convention was limited to part of the ocean carrier's contractual responsibility for the carriage of goods under the bill of lading; secondly, most of the substance of that legislation no longer corresponded to the technical development levels of maritime traffic; and, thirdly, regulations on the allocation of risks between cargo owner and carrier had come to contrast with the changed relationship of forces on the world market and the capital structure in international shipping.

28. His delegation attached great political importance to the problems presented by multinational enterprises because of their interference in the internal affairs of the countries where they operated and their collaboration with racist régimes and colonial administrations. In that connexion, he drew attention to the relevant provisions of the Declaration and Programme of Action on the Establishment of a New International Economic Order adopted at the sixth special session of the General Assembly (resolution 3201 (S-VI) and 3202 (S-VI). The Commission had an important contribution to make to the achievement of the goal of formulating, adopting and implementing an international code of conduct for transnational corporations. His delegation therefore whole-heartedly supported the Commission's unanimous decision in paragraph 59 of the report to ask the Secretary-General to submit to it, for consideration at its eighth session, a report setting forth an analysis of the replies received from Governments and international organizations to the questionnaire concerning legal problems presented by multinational enterprises. Moreover, the report should contain a survey of studies on problems arising in international trade because of the operations of multinational enterprises, which were susceptible of solution by means of legal rules. The report should also contain suggestions for a programme of work and working methods in that particular area. His delegation hoped that as a result of the consideration of that report at the eighth session of the Commission, its work in that important field would be expedited.

29. Mr. VALLADÃO FILHO (Brazil) said his delegation attributed special importance to the Commission's work because it contributed to the achievement of the global objective of development. He noted with appreciation that, despite the short duration of its seventh session, the Commission had been able to make progress with regard to the main items on its agenda.

30. The Working Group on the International Sale of Goods was to be commended for having completed the initial examination of the text of ULIS. In a laudable spirit of simplification, the Working Group had prepared a revised text containing only 69 articles, as compared with the 101 articles of ULIS. His delegation believed that at its next session, the Working Group would be in a position to reach a final conclusion on certain articles and pending questions, so as to forward a draft uniform law on the matter to the Commission for its evaluation.

31. Turning to chapter III of the report, he said his delegation wished to record its satisfaction at the progress made by the Working Group on International Negotiable Instruments in the examination of articles 42 to 62 of the draft uniform law on international bills of exchange and international promissory notes. His delegation agreed with the decision that the Secretariat should proceed with its inquiries concerning uniform rules applicable to international cheques. The result of such inquiries would determine the future course of action to be followed on the matter.

32. The report of the Working Group on International Legislation on Shipping showed the substantial progress achieved in revising the rules of the Brussels Convention of 1924 and the Brussels Protocol thereto of 1968. He hoped that the Working Group would be able to complete its task in the two sessions scheduled for it.

33. On the question of training and assistance in the field of international trade law, his delegation complimented the Secretariat on its plans for the symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. It was encouraging to observe that that important activity would have the financial support of several Governments, whose voluntary contributions would make it possible for nationals of developing countries to attend.

34. He wished to congratulate the Commission on the adoption of the first international instrument based on a draft prepared by the Commission, namely the Convention on the Limitation Period in the International Sale of Goods.

The meeting rose at 4.50 p.m.

1500th meeting

Monday, 18 November 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1500

Tribute to the memory of H.E. Mr. Erskine Hamilton Childers, President of Ireland

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of H.E. Mr. Erskine Hamilton Childers, President of Ireland.

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(continued)* (A/9617, A/C.6/L.984)

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General *(continued)* (A/9711 and Corr.1, A/C.6/L.991)

1. Mr. BENTIN (Federal Republic of Germany) said that his country had for the first time had an opportunity to participate as a member of the United Nations Commission on International Trade Law in the work of its seventh session. His Government felt that the work of revising the Uniform Law on the International Sale of Goods (ULIS) annexed to the Convention of The Hague of 1964 was of particular urgency and that it was important to have a draft convention ready for adoption as soon as possible. As a party to the 1964 instrument, the Government of the Federal Republic of Germany hoped that the new text would facilitate the adoption of the Convention by States which had been unable to ratify it in its original form. His delegation welcomed the Commission's request that the Working Group should complete its work expeditiously and hoped that two sessions would be sufficient to prepare a final draft. The recent adoption of the Convention on the Limitation Period in the International Sale of Goods[1] was a further reason to speed up work in that field, for it was important that that instrument should be supplemented by the codification of substantive rules governing the international sale of goods.

2. The Convention on the Limitation Period was the first concrete result of the work of the Commission in the field of the unification of international trade law. It represented a compromise and as such was not fully satisfactory. Its sphere of application differed from that of the Convention of The Hague of 1964; fortunately, it could be brought into line with that of existing conventions through a reservation by the party concerned, as stipulated in article 38. Moreover, article 3, paragraph 3, provided that the non-applicability of the Convention would become effective only if the parties explicitly agreed to exclude its application; in the view of his delegation, it would have been preferable to give absolute precedence to the autonomy of the parties. His delegation also regretted that no specific limitation period had been envisaged for claims in respect of defects and that no contractual shortening of limitation periods had been foreseen. A detailed examination of the provisions of the Convention would have to be made before his Government would be able to make a final decision on the signing and ratification of the Convention.

3. The revision of the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924, and the Protocol of Brussels of 1968 to amend that Convention, met the urgent need to adapt their provisions to the conditions of modern shipping. As a newly elected member of the Working Group on International Legislation on Shipping, the Federal Republic of Germany shared the Commission's view that the Commission should first adopt draft uniform rules on the liability of ocean carriers before finalizing the uniform rules on the international sale of goods, and should then convene international conferences to study those two questions. It seemed important that both conventions should be adopted, if possible, not later than 1976.

4. While not entirely convinced of the need to create a new international instrument for payment, the Government of the Federal Republic of Germany observed with interest the progress which had been made in the study of the various questions raised by international payments. That was a lengthy task because of the many points of view which had to be taken into consideration. His delegation hoped to attend, as an observer, the next meeting of the Working Group dealing with that question, which would take place in January 1975.

5. On the subject of liability for damage caused by products intended for or involved in international trade, he referred to the work done in that particularly important and complex field by the Council for Europe and the European Economic Community. Only when the report to be submitted by the Secretary-General at the request of the Commission had been studied would it be possible to decide whether the Commission should continue to consider the question.

6. With regard to the problems raised by multinational corporations, it seemed that they fell more within the spheres of competence of the United Nations Conference on Trade and Development (UNCTAD) and the Economic and Social Council than within that of the Commission, although the latter could play a decisive role in dealing with the legal aspects of the matter. There was reason to hope

[1] See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods*, (United Nations publication, Sales No. E.74.V.8), document A/CONF.63/15.

that the Secretary-General's report would set forth concrete proposals on the subject of co-operation between the Commission and the Economic and Social Council in that respect. His Government had replied to the Secretary-General's questionnaire[2] which was to provide the basis for an analytical report which would be before the Commission at its eighth session. In that reply, his Government had stated that multinational corporations should be subjected to more stringent provisions, particularly concerning the disclosure of information.

7. His delegation, which attached great importance to the teaching and dissemination of international trade law, would continue to promote those activities. It welcomed the symposium to be held during the eighth session of the Commission for experts on international trade law from developing countries. The Federal Republic of Germany had made a voluntary contribution of about $10,000 to cover the travel expenses of participants from developing countries. It would also continue to provide internships at universities and research institutes and in private enterprises for post-graduate students from those countries.

8. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that his country's foreign policy was in keeping with the thinking of Lenin, who believed that the development of trade between countries, whatever their systems, was essential to the improvement of the international situation. His delegation approved the report of the Commission (A/9617), whose work was helping to solve the problems of the international community.

9. The completion by the Working Group on the International Sale of Goods of the initial examination of the revised text of the uniform law gave grounds for hope that a new instrument would soon be adopted to govern international trade relations. The draft of the Working Group respected the consensus achieved in 1968 and that should be seen as a guarantee of its effectiveness. The Working Group had been well-advised in requesting the Secretariat to communicate the revised text to Governments for their comments.

10. His delegation had already had an opportunity at the twenty-eighth session in the Sixth Committee (1426th meeting) to state its position regarding the draft uniform law on international bills of exchange and international promissory notes. However, it wished to point out that it would be essential, in future work, to observe a just balance between the rules which various legal systems applied in the field of negotiable instruments. With regard to international legislation on shipping, his delegation approved the decision taken by the Commission concerning the consideration of revised rules on the liability of ocean carriers, since that enabled the Secretary-General to request the views of Governments on the subject. As to the form to be given to the new rules relating to bills of lading, several delegations had already indicated that they should form a new convention rather than a second protocol to the Brussels Convention of 1924. The position of his delegation on the question of multinational corporations was also well known. Those corporations represented a threat to the national sovereignty and general economic development of the countries in which they operated. They caused considerable damage in the developing countries, which for centuries had been the victims of exploitation. At the twenty-eighth session, the General Assembly had taken note with satisfaction of the decision of the Commission to organize a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law (resolution 3108 (XXVIII)). It was essential that the expenses relating to that symposium should be covered by voluntary contributions.

11. The adoption of the Convention on the Limitation Period in the International Sale of Goods testified to the success of the Commission's work. The new instrument provided in its article 8 a single limitation period of four years. The adoption of the Convention would further promote international trade relations and international trade. He pointed out that the Byelorussian SSR was one of the first nine countries to sign the Convention.

12. On the whole, the work of the Commission at its seventh session revealed shortcomings in method and a certain unevenness in the results achieved by the various working groups. It did not therefore seem advisable to extend the duration of the eighth session, since it could not be said that the effectiveness of the Commission's work would thereby be enhanced.

13. Mr. WARIOBA (United Republic of Tanzania) said that although not perfect, the recently adopted Convention on the Limitation Period opened the way to further impressive results in the field of international trade law in the next few years. In that connexion, the Commission had been realistic in limiting its future work programme to three broad subjects. It was to be hoped, however, that it would not await completion of the work on those subjects before taking up the many other important subjects within its sphere of competence. His delegation whole-heartedly endorsed the decision to give priority to legislation on shipping and to set a date for the completion of work on that subject. That decision should have been taken earlier, so that a convention on bills of lading could have been signed before 1978.

14. The Commission's achievements were largely the result of its method of work. The establishment of working groups to deal with particular subjects had been a wise one. The way in which the working groups operated was likewise satisfactory. His delegation also supported the idea that drafts prepared by the Commission should be submitted to the General Assembly only when the Commission had taken a final decision on them. Any other method would slow down the Commission's work. Moreover, States could comment on the Commission's work at any time because its work was available for examination at any time. There was, however, nothing to prevent suggestions being made with a view to enabling the Commission to achieve even faster results. The Commission had the advantage of being a body of experts who were also State representatives. It acted as a preparatory group whose members were particularly competent. The final results were achieved by the States they represented, sitting as the General Assembly or as a conference of plenipotentiaries. It might therefore be worth while to consider modifying the method of work so that

2 See A/CN.9/90, para. 5.

the working groups and the Commission itself would not spend too much time on issues on which there were wide differences of opinion of a political nature which only the General Assembly or a conference of plenipotentiaries could really resolve. A review of methods was desirable, for otherwise legal bodies might lose the confidence of other organs of the United Nations system.

15. His delegation particularly appreciated the Commission's efforts in the field of training. It congratulated the Governments which had offered scholarships to support those activities, and hoped that many countries would follow their example. It also hoped that assistance in that field would be multilateral and not merely bilateral in nature. It commended the Commission for organizing a symposium on international trade law in connexion with its eighth session. Lastly, it wished to stress that the Commission's *Yearbook* was of great value to the developing countries.

16. Mr. JEANNEL (France) said it would be desirable for Governments to submit their observations after the first reading of the revised text of ULIS, completed at the Commission's seventh session, so that those observations could be taken into consideration in the course of the second reading, during which pending questions would likewise be resolved. The improvements thus made to the original text should encourage more accessions, without necessitating the drafting of a new convention. With regard to international legislation on shipping, there was every reason to believe that the Working Group which had been instructed to prepare new rules on bills of lading would need at least two meetings to complete its work. The Commission had seemed to be unanimously of the view that that work should be completed as soon as possible. It should therefore begin consideration of the new rules at its ninth session, in 1976, for most delegations did not think it advisable to discuss them only a few months after the last meeting of the Working Group on that subject, which would take place early in 1975. His delegation supported the views to that effect expressed in the Commission, while recalling that in its opinion it was not for the Commission itself to draw up a new convention; its role should be limited to revision.

17. With regard to multinational corporations, his delegation believed that the first step should be to formulate a satisfactory definition of the concept of a multinational corporation. Concrete solutions could only be achieved on the basis of very wide agreement among States on that point. His delegation had accepted the principle of sending out a questionnaire, but considered that in order to make the best use of the replies it was essential to wait until a sufficient number of States, representing the main legal systems of the world, had made their views known and expressed a minimum number of common concerns. Only then could the Commission take up the substance of the matter, in close liaison with other interested bodies.

18. His delegation, like others, had already questioned the advisability of beginning work on liability for damage caused by products intended for or involved in international trade. It felt that consideration of a draft relating solely to civil liability did not fall within the terms of reference of the Commission. Moreover, since there was little hope of widespread ratification of a text on that subject, the States which did ratify it would in fact be penalizing their own exports. It was certainly more realistic to prepare conventions of that kind in a more limited geographical context, in which there was a more obvious community of interest. In that connexion, his delegation looked forward to receiving the document the Secretariat had been instructed to prepare on the work which had been or was being done by other international organizations.

19. Generally speaking, his delegation considered it essential that the Commission should, as a matter of principle, take up a specific subject only when its value had been recognized by a very large majority of States representing the main legal systems of the world. The success of the Commission's studies in fact depended on the extent to which each country concerned considered it feasible to incorporate the results in its own legal order. That aim could only be achieved if, as a result of their technical value, the instruments prepared by the Commission corresponded to the interests of the States concerned more closely than other similar or parallel instruments drawn up by other bodies.

20. Mr. FEDOROV (Union of Soviet Socialist Republics) said that the seventh session of the Commission had been marked by the atmosphere of international détente which was becoming increasingly prevalent in the economic, scientific and technical relations between States with different political régimes, and was helping to establish among those States a climate of confidence and friendship that benefited all countries, and the developing countries in particular. Reciprocity, the full equality of the parties and the absence of any kind of discrimination were essential for the successful development of trade relations. As the General Secretary of the Central Committee of the Communist Party of the Soviet Union, L. I. Brezhnev, had recently recalled, the Soviet Union had always been determined to establish stable economic relations with other States, and intended to pursue that policy.

21. The Commission should make its contribution to the harmonization and unification of the rules of international trade law and thus promote the stability of trade relations between States and further the strengthening of international peace and security. The Commission had made great progress with its work at its most recent session. The draft which it had prepared at its earlier sessions had made it possible to organize the Conference on Prescription (Limitation), which had led to the conclusion of a Convention on that subject which was open for signature by States. It should be noted that that Convention was the first in the field of international trade law that made provision for universal participation by all States. Therefore, the Provisional Revolutionary Government of the Republic of South Viet-Nam had the right to participate in that Convention on an equal footing with other States. He was gratified that the Conference on Prescription (Limitation) had rejected the discriminatory "Vienna" formula.

22. At its seventh session the Commission had had before it a revised text of ULIS, prepared by the Working Group established to revise that law. After examining the draft, the Commission had felt that it should be able to complete its work on the subject in the near future. He hoped that the Commission would be able to do so at its next session.

23. With regard to international payments, the Commission had considered a report of the Working Group on International Negotiable Instruments, entrusted with preparing a draft uniform law on international bills of exchange and international promissory notes and considering the desirability of preparing uniform rules applicable to international cheques. The Commission had also studied the question of the revision of "Uniform Customs and Practice for Documentary Credits", and also the subject of contract guarantees and payment guarantees. With regard to shipping, the Commission had studied the question of the revision of the Brussels Convention of 1924 and its Protocol of 1968. The Working Group on the question had reached the conclusion that the scope of those instruments should be extended to all shipping contracts. He was in favour of adopting a new convention on the subject, under the auspices of the United Nations.

24. In 1974, the Commission had also studied a question which was under consideration by other bodies such as the General Assembly, the Economic and Social Council, UNCTAD and the International Labour Organisation, namely, that of multinational corporations. The Commission had been entrusted with the task of studying the legal aspects of the activities of such corporations. A special questionnaire on the subject had been prepared by the Secretary-General and addressed to Governments and international organizations. His delegation was aware of the harmful effects which multinational corporations could have on relations between States, and was in favour of the improvement of international trade, the development of co-operation, and the elimination of the developing countries' lag and of colonialism and all forms of neo-colonialism. The report which the Group of Eminent Persons appointed by the Secretary-General had prepared for the Economic and Social Council[3] indicated that the production of multinational corporations was greater than the total volume of international trade which was currently approaching one trillion dollars and that they controlled more than half of the income derived from raw materials throughout the world. The Group of Eminent Persons recommended that the uncontrolled activities of such corporations should be strictly limited. His country had always supported the developing countries which had proposed that the question should be studied by the United Nations. Only by legal measures could the activities of multinational corporations be restricted and the inequalities currently characterizing the world of international trade be gradually eliminated. Many of the recommendations of the Group of Eminent Persons could serve as a basis for the future decisions of the United Nations, and of the Commission in particular.

25. With regard to the ratification of or adherence to conventions concerning international trade law, the Commission had decided that it would be preferable to study the question after studying the experience of the signing and ratification of the Convention on the Limitation Period in the International Sale of Goods. He pointed out that, for the time being, only nine States had signed that instrument.

26. The Commission had contemplated holding a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. There was no doubt that the expenses arising from the symposium should be covered by voluntary contributions. He emphasized the role played by the Council for Mutual Economic Assistance (CMEA) in training students from the developing countries in the field of international trade law. On the occasion of its twenty-fifth anniversary, CMEA had established a scholarship fund. For the academic year 1974-1975, 420 scholarships had been granted to students from 24 developing countries; more students were receiving lodging and medical services free of charge.

27. While his delegation approved of the Commission's decision to study the question of liability for damage caused by products intended for or involved in international trade, it considered that that project should not delay the study of priority questions. He was against the holding of a three-week session in 1975. Since its work was carried out essentially by working groups, the Commission should be able to dispose of its agenda in two weeks. He stressed the quality of the Commission's report and recommended its adoption.

28. Mr. MILLER (Canada) stressed the quality and extent of the Commission's work at its seventh session. Although Canada was not a member of the Commission, as a major trading nation it paid close attention to its work. The adoption of the Convention on the Limitation Period was the first tangible result of the Commission's fulfilment of its mandate.

29. The various working groups set up by the Commission had actively continued their work, and the Commission should soon have before it various draft texts of uniform rules and laws on topics of immediate interest to the international community. As a country extending from the Atlantic to the Pacific which attached importance to its shipping trade across both oceans, Canada was particularly happy with the progress made by the Working Group on International Legislation on Shipping. He welcomed the Working Group's decision to orient its future effort towards the establishment of a new convention, instead of merely amplifying and revising the Brussels Convention of 1924 and the Protocol of 1968. His country had sent an observer to the Working Group's sixth session, and intended to do likewise at the session at which the draft convention on the subject was to be considered.

30. His country attached particular importance to the study of the legal aspects of the activities of multinational enterprises, some of which played an exceptionally large role in key sectors of the Canadian economy. His Government was devoting efforts to ensure that such enterprises were accountable to its authorities and responsive to its national policies. In its comments on the report of the Group of Eminent Persons to the Economic and Social Council, his Government had stressed the importance of the study of the question of multinational enterprises. The Commission was particularly well suited to deal with the legal aspects of the subject. The proposed creation, under the Economic and Social Council, of a Commission on Multinational Corporations left room for effective and

3 See *The Impact of Multinational Corporations on Development and on International Relations* (United Nations publication, Sales No. E.74.II.A.5), p. 13.

profitable co-operation on the part of the Commission. He hoped that the report to be prepared by the Secretary-General, on the basis of the replies by Governments and international organizations to the questionnaire which had been sent to them, would be distributed in time for the Commission's eighth session. He also hoped that the report would indicate the way in which the Commission's work could be co-ordinated with that of other United Nations bodies active in that area. With the approaching completion of its work on a number of priority topics, the Commission should now be in a position to concentrate soon on the important question of multinational enterprises.

31. Mr. YASSEEN (Iraq) considered that the General Assembly had been wise to request the Commission to study the question of international legislation on shipping, a subject of the utmost importance to the countries of the third world whose shipping was at an early stage, and in need of encouragement and protection from competition from the highly developed countries. While the Commission had made some progress in that field, an increase in its rate of work would be desirable.

32. The Commission had been requested to study the legal aspects of multinational enterprises. He emphasized that it was a thorny question which should be approached bearing in mind the great power wielded by multinational enterprises throughout the world. Any legislation on the question must take into account that state of affairs and the difficult situation faced by some of the States which were dealing with them. The aim was not to give multinational enterprises more possibilities to consolidate their power. The other United Nations bodies dealing with the other problems presented by multinational enterprises should take into consideration the mandate entrusted to the Commission by the General Assembly.

33. Turning to the problem of the ratification of conventions concluded in the field of international trade law, he noted that ratification was unquestionably a discretionary matter for a State, relating to its sovereignty; on the other hand, however, it was in the interests of the international community and of States themselves for them to adhere to conventions. There were, it was true, possible ways to counter delays which were due to administrative routine and other reasons that did not affect a State's freedom of choice. The International Civil Aviation Organization and the World Health Organization followed a method which it would be difficult to adopt as a general rule; they had developed procedures whereby any standard adopted by them became mandatory upon a member State unless the latter notified the organization that it did not intend to be bound by the standard. He considered that in international trade law it would be preferable to study separately the question of the ratification of each convention. In that connexion, he hoped that a solution would be reached in the case of the Convention on the Limitation Period.

34. Referring to the question of the Commission's working methods, he was surprised that the Commission had asked the Secretariat to make suggestions on the measures which it might take regarding a particular question, when the General Assembly had already requested the Commission to study possibilities of taking such measures. United Nations bodies should of course co-operate with the Secretariat, but it was hardly acceptable for a body entrusted with a specific task to pass the initiative to the Secretariat and ask it for guidance in the discharge of that task.

35. He was pleased to note that the Commission co-operated with other institutions dealing with certain aspects of international trade law. He commended in particular the Commission's co-operation with the International Institute for the Unification of Private Law, concerning rules relating to the validity of contracts of international sale of goods. Such co-operation prevented duplication of effort, saved labour and enhanced the effectiveness of certain institutions.

36. He had always thought that the Commission should not limit itself to drawing up uniform laws; it should also harmonize the rules of private international law. Although some progress had been made in the field of uniform laws, either through international conventions or through national legislation based on model drafts, the fact remained that the rules relating to conflict of laws continued to be the principal means employed in private international law. He therefore supported the proposal made by a member of the Commission to the effect that it should undertake work on the unification and harmonization of the rules of private international law.

37. Mr. SAM (Ghana) noted with satisfaction the progress made by the Commission's Working Groups, and approved that body's policy of considering the substance of the work carried out by its Working Groups only upon its completion. His delegation had carefully studied the work of the Working Group on the International Sale of Goods, the fifth session of which had been the most fruitful. It welcomed the revised text of ULIS,[4] which currently comprised 69 articles as compared with the 101 articles of the original text. It might be useful to make some constructive suggestions at the current stage of the work. In the view of his delegation the current draft text of article 59 of ULIS failed to take into account cases where exchange control regulations existed in the country of either party. Thus, exchange control regulations in the buyer's country could forbid the buyer to pay the price at the seller's place of business; on the other hand, the existence of such regulations in the seller's country could cause the seller to ask for payment of the price in a country with convertible currency, in other words, in a country other than his own. His delegation therefore suggested that in order to allow the parties to agree freely on the place of payment, article 59, paragraph 1, should begin with the words "Unless otherwise agreed".

38. His delegation wished to express its strong objection to the current wording of article 73, paragraph 1, which would enable a seller to prevent the delivery of goods already dispatched if he considered that the economic situation of the buyer justified such stoppage. Such a unilateral decision would open the door to arbitrary action, and might have serious consequences for the buyer, in particular where the buyer was in a developing country having a vital need for certain goods. Almost all national laws, including Ghanaian law, had provisions relating to the

[4] See A/CN.9/87, annex I.

stoppage of goods in transit designed to protect an unpaid seller in the event of the buyer's insolvency. But, in the first place, such provisions were designed solely to provide the seller with a guarantee of payment; secondly, the sole condition for invoking those provisions was the buyer's insolvency; and thirdly, the seller could exercise his rights only during the period when the goods were in transit. Since article 73, paragraph 1, sought to extend the scope of that principle, it was, in form and in substance, objectionable to his delegation. In many developing countries many businesses operated with high overdrafts which might lead their foreign trading partners to invoke article 73 in situations where its use was unwarranted. Article 73 should be based not on one party's impression of the other's general economic circumstances, but on the acts of the other party relating to the performance of his obligations.

39. With reference to the Commission's methods of work, he said that the continuing financial difficulties of the United Nations made some budgetary restraint unavoidable. Since the primary aim of the Commission was not the technical perfection of legal texts, but the elaboration of practical uniform rules which would be understood and acceptable to the international community as a whole, his delegation urged that when experts must be engaged, they should be confined mainly to research and the preparation of background papers. Moreover, the Commission should continue to request representatives on the various working groups to prepare studies on particular aspects of the topics before them. Thus, the Working Group on the International Sale of Goods had been able to speed up its work as a result of the analytical studies carried out by the representatives of Governments on the texts which were to be considered by the Working Group. The oral presentation of the viewpoints of delegations on the relevant topics could therefore be reduced to a minimum.

40. He announced that his Government had approved the signature of the Convention on the Limitation Period in the International Sale of Goods.

41. Mr. STEEL (United Kingdom) congratulated the Commission and its various Working Groups on the valuable work which they had done. The United Kingdom, which participated actively in the work of the Commission and which always replied fully to the Commission's requests to Governments for their views and comments had had the opportunity to state its views on specific problems. He would therefore confine his remarks to organizational and procedural matters.

42. His delegation continued to endorse the Commission's working methods, and in particular the farming-out of the groundwork on individual topics to a relatively small Working Group which itself proceeded either on the basis of an initial study or an investigation carried out by the Secretariat or on the basis of its own preliminary study. The results of the labours of the Working Group then came before the Commission as a whole for acceptance or modification. That method was essential if the Commission was to keep abreast of the various tasks imposed on it and to produce its drafts and recommendations in time.

43. His delegation supported the Commission's proposed programme of work for the immediate future, with regard to both the order of priority and the calendar of work. It was very conscious of the need for full consultation at all stages with Governments and other interested bodies and organizations, both national and international. However, some of the problems with which the Commission was dealing were of an urgent nature and required solutions with the least possible delay. Those remarks were not a criticism of the Commission, which had proceeded with considerable efficiency and expedition in the study of subjects such as the international sale of goods and shipping law, but were directed to Governments themselves, which must co-operate with it.

44. The United Kingdom Government was somewhat sceptical as to the contribution which the Commission could make to the study of some of the subjects which it had just taken up, such as the problem of the ratification of, or adherence to, conventions concerning international trade law. It was the same in the case of liability for damages caused by products: his delegation was looking forward to the report which the Secretariat had been asked to prepare for consideration by the following session of the Commission, but it questioned whether the Commission should embark on the study of that question until there had been time to evaluate the work which other bodies had produced, or were currently producing. It was also somewhat less than optimistic about the value which would eventually be derived from the work of the Commission on multinational enterprises. His Government had replied to the questionnaire on that topic, and would continue to be as helpful as possible in the matter. But the Commission had received a very small number of replies to its questionnaire, which seemed to indicate that the formulation of legal rules intended to have universal application was not regarded as a pressing problem.

45. His delegation wished to congratulate the Commission on its preparatory work for the United Nations Conference on Prescription (Limitation) in the International Sale of Goods. The final text of the Convention of the Limitation Period differed little in essentials from the draft approved by the Commission. Because of certain difficulties which, unfortunately, could not be surmounted at the Conference, and which were connected with the relationship between the Convention on Prescription and the definition of an international sale of goods which was embodied in ULIS, his Government was not able to sign the Convention at the current stage. That did not prevent it from considering that the Conference had been a success and had augured well for the future work of the Commission.

The meeting rose at 5.50 p.m.

1501st meeting

Tuesday, 19 November 1974, at 11.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1501

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(continued)* (A/9617, A/C.6/L.984)

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General *(continued)* (A/9711 and Corr.1, A/C.6/L.991)

1. Mr. SENSOY (Turkey) said that the adoption of the Convention on the Limitation Period in the International Sale of Goods and of the Final Act of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods[1] bore witness to the achievements of the United Nations Commission on International Trade Law and its Working Groups. His delegation welcomed the completion of the revision of the Uniform Law on the International Sale of Goods (ULIS)[2] annexed to the Convention of The Hague of 1964 by the Working Group on the International Sale of Goods and trusted the Working Group would be able to resolve the outstanding questions and finish its drafting as soon as possible. It was to be hoped that the unification and consolidation of a number of provisions of the uniform law would encourage wider acceptance by Governments.

2. He understood that the Working Group on International Negotiable Instruments had likewise made progress in preparing a final uniform law on international bills of exchange and international promissory notes and it was to be hoped that it would determine expeditiously the desirability of preparing uniform rules applicable to international cheques as soon as replies to the questionnaires were received from the international organizations and banking and trade institutions. His delegation noted with appreciation the work of the International Chamber of Commerce (ICC) on bankers' commercial credits. In view of the increasing importance of letters of credit in international trade, the relevant rules should be modernized without delay. In its further review of the "Uniform Customs and Practice for Documentary Credits", the ICC should pay special attention to the views of countries not represented in it.

3. His delegation was pleased to see that the Working Group on International Legislation on Shipping had decided to include in the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels in 1924 a specific provision dealing with the carrier's responsibility for loss or damage caused by delay and that steps had been taken to extend the Convention's scope. The Convention should be based on the carrier's contractual liability and efforts should be made to harmonize the provisions relating to combined transport. His delegation supported the Commission's decision to transmit the draft uniform rules on the subject to Governments and interested international organizations.

4. Agreed rules in respect of multinational enterprises based on past and present experience would contribute to the promotion of international trade, even though they might not solve the relevant problems.

5. His delegation endorsed the Commission's approach to the ratification of or adherence to conventions concerning international trade law as summarized in chapter VI of its report (A/9617).

6. As a developing country, Turkey attached special importance to training and assistance in the field of international trade law. It welcomed the voluntary contributions recently made by some developed countries and hoped that other countries would follow their example.

7. Mr. BAJA (Philippines) said that his Government's support for the Commission was a matter of record; his delegation was proud to have been a member of the Commission at its last session and to have been involved directly in its work. Although in the past his delegation had expressed some concern regarding the methods of work of the Commission, first-hand exposure to the problems confronting the Commission, particularly the wide divergences arising from different legal, social and economic systems, had heightened his delegation's appreciation of the progress made by the Commission. His delegation had formerly shared the concern expressed by the representative of Iraq at the preceding meeting about the Commission's rather extensive use of the Secretariat in preparing background material on the subjects under discussion. However, considering the nature and duration of the sessions of the Commission and its working groups, as well as the technical complexity of the subjects under study, there seemed to be no alternative to using the very valuable and extensive preparatory work of the Secretariat. His delegation also supported the continued use of working groups as the Commission's main method of work and welcomed the valuable assistance provided by experts. With regard to decision-making procedures, the ideal situation would be to adopt texts unanimously, or at least by consensus, with minimum delay. Impasses might occur, however, in matters involving political decisions. In such cases, the Commission should explore the possibility of adopting alternative texts.

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[1] See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), documents A/CONF.63/15 and A/CONF.63/14.

[2] See A/CN.9/57, annex I.

8. Commenting on the Commission's report, he expressed appreciation for the background information concerning the progress of work on each item. His delegation was confident that the Working Group on the International Sale of Goods would be able to complete its work on the draft uniform law at its next session, and it supported the priority given to that topic by the Commission in its programme of work. To achieve that end, his delegation also supported a longer session for the Working Group. However, every effort should be made to avoid piecemeal legislation on the subject of the international sale of goods. In his delegation's view, the Convention on the Limitation Period in the International Sale of Goods should have formed part of a uniform law on the international sale of goods instead of being the subject of a separate convention. There were overlapping provisions and discrepancies between the Convention and the revised version of ULIS, and his Government's action on the Convention would depend largely on the fate of ULIS. The provisions in his country's law concerning prescription differed considerably from those in the Convention; it would require time to acquaint businessmen in his country with its provisions. Consequently, his Government was unable at present to sign the Convention, although acknowledging its potential value in international trade relations.

9. His delegation noted with appreciation the progress made by the Commission on the other topics in its work programme, particularly on the topic of international negotiable instruments. It supported the priority given to early completion of the work on uniform rules on the liability of ocean carriers for loss or damage with respect to cargo. Mention should also be made of the valuable seminars on international trade law organized by the Commission, to which several Governments had generously contributed.

10. His delegation acknowledged the valuable work done by the Commission to promote the development of equitable commercial relations between countries with different legal, social and economic systems. It was to be hoped that the rules elaborated by the Commission would reflect the need of the developing countries for a fair share in the benefits of international trade.

11. Mr. STEPHANIDES (Cyprus) expressed appreciation to the Chairman of the Commission for his excellent introduction at the 1497th meeting of the report of the Commission on the work of its seventh session and paid a tribute to the members of the Commission and its officers, ably assisted by the Secretariat, for the constructive work that had been accomplished at the seventh session, in which his delegation had participated for the first time. His delegation noted with satisfaction that top priority had been accorded to the work on uniform rules governing the liability of ocean carriers for loss, damage or delay with respect to cargo. Gratifying progress was also being made on the unification of the substantive rules of law governing the international sale of goods with a view to increasing the acceptability of such rules to countries of different legal, social and economic systems. On the question of multinational enterprises, his delegation's position was well known. The Commission should confine its study to the legal aspects of that problem and avoid unnecessary duplication of work within the United Nations system. The work of the various United Nations bodies dealing with problems deriving from the activities of multinational corporations should be carefully co-ordinated. With regard to training and assistance in the field of international trade law, his delegation welcomed the Commission's decision to hold a symposium in conjunction with its eighth session. His delegation expressed appreciation to the Commission for performing the preparatory work for the United Nations Conference on Prescription (Limitation) in the International Sale of Goods.

12. Mr. ROSENSTOCK (United States of America) said that his delegation had noted with great interest the Commission's report on the work of its seventh session. The Commission continued to work in an effective and highly professional manner and was ably assisted by an outstanding Secretariat. His delegation appreciated the clear description of the Commission's work given in its report, which had been elaborated upon by the Chairman of the Commission in his introductory statement.

13. His delegation was pleased at the progress made by the Commission's Working Group on the International Sale of Goods. The reduction of the revised text of ULIS from the 101 original articles to 69 articles was welcome, since the length and complexity of the original text had been a subject of widespread unfavourable comment and had contributed to the unwillingness of many States to accept it.

14. The work on negotiable instruments was proceeding at a satisfactory pace, and his delegation supported the request of the Working Group that the Secretary-General should make further inquiries on certain commercial practices relating to presentment of instruments.

15. The Working Group on International Legislation on Shipping was approaching the completion of its work on a revision of the rules of the Brussels Convention of 1924. Updating those rules and bringing them into line with contemporary methods of carriage of goods would be a significant contribution to the field of trade law. His delegation hoped that the Working Group would complete its work in sufficient time so that the final draft and Government comments thereon could be discussed in detail at the ninth session of the Commission.

16. The Commission had also begun work in the field of multinational enterprises. As had been noted by various delegations, that subject was also being considered by other organs of the United Nations, and his delegation hoped that all efforts would be made to avoid premature action and unnecessary duplication of activities in the consideration of that subject.

17. His delegation welcomed the successful conclusion of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, which had been the first diplomatic conference to consider draft articles prepared by the Commission. Although several countries had already signed the Convention on the Limitation Period, the United States had briefly deferred decision on signature, in accordance with its practice, in order to give members of the private bar an opportunity to study the Convention and make recommendations. The Convention was now under

active consideration by the International Law Committee of the New York State Bar Association and by the Committee on Unification of Law of the American Bar Association. It was regrettable that the representative of one country had deemed it necessary to politicize the discussion concerning accession to the Convention and that that delegation had polluted the Committee's atmosphere with untrue and misleading statements.

18. His delegation fully endorsed the programme of future work outlined in paragraph 86 of the Commission's report. It was pleased that the Working Group on International Legislation on Shipping expected to complete its work early in 1975. Conditions thus appeared favourable for the Commission to adhere fully to the schedule of work set forth in paragraph 86.

19. Mr. PRIETO (Chile) expressed his delegation's satisfaction with the work done by the Commission. It particularly approved of the Commission's practice of using special working groups, which enabled it to work simultaneously on different subjects. As a member of the Commission, Chile gave close attention to all the activities of the Commission.

20. His country agreed with the idea of unifying the rules governing the international sale of goods, bearing in mind the interests of all countries. Despite the difficulties involved in harmonizing different legal systems, his delegation felt that progress had been made. Many of the solutions proposed were acceptable to his country, whose legislation was based on the Latin-French legal system. His delegation supported the Commission's decision to request the Working Group on the International Sale of Goods to complete its revision of ULIS.

21. His delegation also supported the establishment of the Working Group on International Negotiable Instruments to prepare a draft uniform law on the subject and endorsed the decision of the Commission to request the Working Group to continue its work. His Government had taken a similar position in the Inter-American Juridical Committee of the Organization of American States which had, in a preliminary report, suggested that an effort should be made to harmonize the various national legislations and to bring them more in line with the fundamental principles accepted in the Geneva Conventions of 1930 and 1931 for the more widely used credit instruments, such as bills of exchange, promissory notes and cheques. The report in question also stated that prior to such harmonization, it would be advisable to enact legislation concerning the negotiable instruments covered by the Geneva Conventions, which would be applicable only at the international level. That indeed was the function of the Commission, although on a wider scale, since its work was universal in scope.

22. With regard to bank guarantees, his delegation joined the Commission in congratulating the ICC for the work it had done. Chile also endorsed the Commission's decision on the subject.

23. Chile was a member of the Working Group on International Legislation on Shipping. His country attributed the highest priority to the matter, not only because of its shipping tradition and its extensive coastline, but also because the adoption of clear and precise international rules would represent a significant step forward in reconciling the interests of all parties concerned and ostensibly improve the position of developing countries which, like Chile, were traditional users of sea transport. The work being done by the Commission through its Working Group was therefore of fundamental importance. The problems arising in connexion with shipping contracts could not be solved unless adequate provision was made to protect shipping countries without large merchant marines from the precarious situation in which they found themselves with respect to the major shipping Powers. Those Powers controlled a large portion of the international fleet and imposed prices and clauses which shippers usually had to accept without even being given the opportunity to discuss the terms established by the maritime conferences to which they had no organized access. Chile had not ratified the Brussels Convention of 1924 and felt that substantial changes should be made in that international law, which was applied in practice—even in the Latin American merchant marines—through the insertion of the so-called "Paramount clause" in bills of lading. The Working Group had been studying and formulating some very important amendments to the Brussels Convention of 1924 and the Brussels Protocol of 1968 thereto with a view to establishing a fair balance between the interests of the shipping companies, on the one hand, and of the shippers or users of transport, on the other. In view of the above, Chile strongly supported the work being done by the Commission in that field. Only through a fair and harmonious international legislation on shipping would it be possible to achieve a co-ordinated and effective international trade where the interests of all countries were protected. That was especially important to countries such as Chile, which was making every effort to speed its development and meet the aspirations of its people. He therefore congratulated both the Working Group and the Commission for the work they had done and endorsed the decision regarding expeditious completion of the revision of the Brussels Convention of 1924 and the Brussels Protocol of 1968 thereto.

24. Chile attributed special importance to the question of multinational enterprises. It realized the complexity of the problem, which was being studied not only by the Commission but by many private and intergovernmental organizations as well. There was a need for agreed international rules in respect of multinational enterprises and the Commission should give the matter special attention at its next session. On 23 August 1973, the Inter-American Juridical Committee of the Organization of American States, considering that the question of multinational enterprises was a topic of extreme complexity, resolved to maintain it on its agenda for the coming year.[3] He assumed that the Group of Eminent Persons appointed by the Secretary-General in accordance with Economic and Social Council resolution 1721 (LIII) had completed its report on multinational corporations, which would contain recommendations for appropriate international action. For the time being, therefore, it seemed that, as recommended by the Commission, the necessary material should be gathered

3 See Inter-American Juridical Committee, *Work accomplished by the Inter-American Juridical Committee during its regular meeting held from July 26 to August 27, 1973* (OEA/Ser. Q/IV.7, CJI-17), p. 27.

for an in-depth study of the problem and the elaboration of any necessary rules to govern that matter.

25. His delegation endorsed the decision of the Commission to maintain on its agenda the question of the ratification of or adherence to conventions concerning international trade law and to re-examine it at its ninth session with special reference to the state of ratification then obtaining in respect of the *Convention on the* Limitation Period in the International Sale of Goods.

26. He noted with satisfaction that the Secretary-General was preparing a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law, to be carried out in conjunction with the Commission's eighth session, which would be considering the international sale of goods, international negotiable instruments and international legislation on shipping. His delegation felt that special emphasis should be placed on the teaching of international trade law and that universities should be encouraged to include the subject in their regular curricula. The law school of the University of Chile had already done so with success.

27. On the question of liability for damage caused by products intended for or involved in international trade, his delegation agreed—aside from any consideration as to whether the problem was of a civil or commercial nature and, consequently, whether or not it was within the sphere of competence of the Commission—that a prior study should be made of the main problems that might arise in the area and that a survey should be made of the work of other organizations on the subject. Once that information was available, the Commission could take up the matter at a future session.

28. He said that his delegation agreed with the Commission's proposals regarding the date and place of sessions of the working groups, especially the Working Group on Shipping. It also agreed with the recommendation regarding the agenda, date and place of the next session of the Commission.

29. Mr. MASUD (Pakistan) expressed condolences to the representative of Ireland on the death of the President of Ireland and to the representative of Saudi Arabia on the death of the Minister of State for Foreign Affairs of Saudi Arabia.

30. His delegation noted with satisfaction the progress being made by the Commission on the codification of international trade law and the harmonization of various customs and international practices. As the representative of Iraq had pointed out at the preceding meeting, the interests of the developing countries should not be overlooked in the process of codification and unification. International law must reflect the aspirations of the peoples of the developing countries, as well as the great changes taking place in the economic and political fields in those countries. The Convention on the Limitation Period in the International Sale of Goods had failed to accommodate the views of some of the developing countries, thus creating possible difficulties with regard to ratification. The problems of the developing countries must also be taken into account in formulating international legislation on shipping. The question of the civil liability of producers for damage caused by their products was one which primarily fell within the domestic jurisdiction of countries. If such matters required international regulation, it should be emphasized that the amount of damages should be assessed according to the domestic laws of the country of the party against which the claim was being made.

31. He congratulated the Chairman of the Commission on his lucid presentation of the report.

32. Mr. NJENGA (Kenya) expressed his delegation's condolences to the delegation of Ireland on the occasion of the death of H.E. Mr. Erskine Hamilton Childers and asked the Irish representative to convey the Kenyan delegation's sympathy to the family of the great President and to the Irish Government and people.

33. He congratulated the Chairman of the Commission on his comprehensive introduction of the Commission's report on the work of its seventh session. His delegation was pleased to note that the Working Group on the International Sale of Goods had managed at its fifth session to complete the revision of ULIS and to harmonize and rationalize the various provisions and thus considerably shorten the number of articles. Kenya, although a member of the Working Group, would examine carefully the revised text and submit its comments to the Commission in preparation for the definitive draft of the articles. His delegation believed the revised text should be transmitted not only to the members of the Commission but to all Member States, so that all would be in a better position to participate in the envisaged conference of plenipotentiaries for the formulation of a convention on that subject; a text thus prepared would have a better chance of wide acceptance.

34. The report of the Working Group on International Negotiable Instruments indicated the progress made towards preparing a final uniform law on international bills of exchange and promissory notes and in considering the desirability of preparing uniform rules applicable to international cheques. The importance of a uniform law on international bills of exchange, even though intended only for optional use in international payments, could hardly be overemphasized. His delegation noted with appreciation that the Working Group had taken the initial step in connexion with the preparation of uniform rules applicable to international cheques by requesting the Secretariat to make inquiries regarding the use of cheques in international payment transactions and the problems presented.

35. His delegation noted with interest that, with regard to bankers' commercial credits, the Commission on Banking Technique and Practice of the ICC had adopted a draft revised text of "Uniform Customs and Practice for Documentary Credit", which would be adopted by the Council of ICC during the current year. In so far as ICC had taken into consideration the comments not only of its member States but also those of banking institutions in non-member States, the Commission should, at its next session, give careful consideration to the desirability of commending the use of "Uniform Customs" in transactions involving the establishment of a documentary credit. That should,

however, only be done after careful examination of the ICC text, in order to establish to what extent observations received by the Secretary-General on the 1962 version of "Uniform Customs" had been taken into account.

36. As a country heavily dependent on international shipping for its trade, Kenya attached great importance to the success of the Working Group on International Legislation on Shipping and was gratified to note the considerable progress it had made at its sixth session. His delegation hoped that at its next session the Working Group could complete its work on the issues outstanding in that field and prepare a final draft text which the Commission could then consider at its eighth session. On the basis of that work and the comments from States Members of the United Nations, it should be possible to prepare a new international convention to replace the Brussels Convention of 1924 and its Protocol of 1968. Accordingly, he hoped that many States and other international organizations would comment on the draft text to be circulated, so as to enable the Commission to have a thorough discussion of the subject at its ninth session. Thereafter a conference of plenipotentiaries on the topic should be held without delay, for it was a topic to which many States, and developing States in particular, with nascent shipping attached great importance.

37. His delegation shared the disappointment expressed by the Chairman of the Commission at the poor response from States to the questionnaire concerning the legal problems presented by multinational enterprises, a vitally important and complex subject. Even with the few replies received so far, the Secretariat should prepare an analytical study for submission to the Commission at its eighth session, drawing upon all available reports on multinational corporations, including the report of the Group of Eminent Persons appointed by the Secretary-General under Economic and Social Council resolution 1721 (LIII).[4]

38. His delegation had attached great importance to the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, in which it had participated, and the Kenyan authorities were examining the text of the resultant Convention, with a view to ratification. The text prepared by the Commission had been improved by the slight amendments made at the Conference, but the general acceptance it had met with showed the high quality of the work being done by the Commission.

39. With regard to training and assistance in the field of international trade law, his delegation, while extending its most sincere gratitude to the Governments of Austria and Belgium, each of which had offered two internships in international trade law for lawyers and government officials from developing countries, must, nevertheless, express its disappointment at the failure of other developed countries to respond to the need for assistance in that field if developing countries were to play an effective role in international trade law. He welcomed the Commission's plan to hold a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law and appreciated greatly the financial contributions made by Austria, the Federal Republic of Germany, Norway and Sweden to cover the travel and subsistence expenses of participants from developing countries. He doubted, however, whether the amount so far contributed would be sufficient to pay for a significant number of participants and hoped that other countries which were financially able to do so would provide donations as to make the symposium a success. At best, however, such symposiums and internships could only be stop-gap measures. His delegation therefore reiterated its appeal to the Commission, to the United Nations Institute for Training and Research and to other interested international organizations to consider holding regional seminars in developing countries on international trade law. In that way, not only would the cost of travel be minimized, but there would be much wider participation by lawyers from developing countries.

40. With regard to the form of the Commission's report, it would be advisable if the Secretariat could highlight the main elements of the working groups' reports in the regular report of the Commission. As the working groups were, of necessity, of a limited character, it was important that they should have the benefit of the comments and opinions not only of other Commission members but also of States Members of the United Nations generally. The regular reports of the working groups, though generally available, were usually too detailed to comment upon, particularly during the preparatory stages in the working groups' deliberations. It should always be borne in mind that the aim of the Commission and its working groups should be to present not merely scholarly texts but texts which would find general acceptance by States, which would be easier to achieve if all States had an opportunity of actively contributing to the formulation of the draft articles prepared by the Commission.

41. The course he had suggested might obviate the need for the Commission to continue discussion of the elusive question of the slow rate of ratification of or adherence to conventions concerning international trade law and to attempt to extend to that field procedures adopted by other bodies, such as the World Health Organization or the International Civil Aviation Organization, which were inappropriate and inapplicable in the field of international trade law conventions.

42. Mr. SAID-VAZIRI (Iran) addressed his delegation's condolences to the Irish delegation for the great loss its country had suffered.

43. The Commission's report on the work of its seventh session showed, on the whole, that the Commission and its working groups were carrying out their tasks with the maximum competence and seriousness, and his delegation congratulated the members of those bodies and, in particular, the Chairman of the Commission.

44. His delegation was firmly convinced that the development of international trade was both a cause and an indicator of peace and, accordingly, supported all efforts of United Nations bodies to create the necessary conditions for the development of trade. The establishment of

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[4] See *The Impact of Multinational Corporations on Development and on International Relations* (United Nations publication, Sales No. E.74.II.A.5), p. 13.

internationally acceptable uniform rules and practices was an essential condition in that field. The Commission's report was a significant example of United Nations efforts to that end and contained serious and profound studies on the main topics relating to international trade law.

45. His delegation felt that the revisions and modifications made to ULIS by the Working Group on the International Sale of Goods, which were designed to establish a simpler and more easily acceptable set of rules, had resulted in a text which, at the current stage, was considerable and worthy of interest. He hoped that the Working Group would have sufficient time at its next session to complete the work it had undertaken. However, the revised text should be submitted to States members of the Commission for comment before its final approval.

46. In view of the legal problems presented by multinational enterprises and their impact on the unification of international trade law, the topic merited special attention, and his delegation believed that the Commission could make a considerable contribution to finding solutions to those problems by establishing rules that were generally acceptable at the international level. He hoped that, in the light of Governments' replies to the questionnaires prepared by the Secretariat and the studies undertaken in United Nations bodies and other national or international organizations, the Commission would be able at forthcoming sessions to devise such solutions.

47. He noted with satisfaction that the Commission had turned its attention to the important question of ratification of or adherence to conventions concerning international trade law. Participation in such international conventions constituted the cornerstone of the edifice which the Commission was called upon to erect. His delegation remained convinced that international standards would be more easily accepted if embodied in conventions, which could contribute to the development of international law if they enjoyed widespread participation. That item should therefore be retained on the Commission's agenda and the study of the causes of non-ratification should be continued and should not be affected by the status of the Convention on the Limitation Period in the International Sale of Goods at the time of the Commission's ninth session.

48. With regard to training and assistance in international trade law, his delegation appreciated the offers made by certain States and organizations to provide scholarships for lawyers, students and government officials from developing countries. The example of the Belgian and Austrian Governments in that field and the establishment of a scholarship fund by the Council for Mutual Economic Assistance were heartening. He hoped that those examples would be followed by more States. His delegation welcomed also the organization of the symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law.

The meeting rose at 12.35 p.m.

1502nd meeting

Wednesday, 20 November 1974, at 11.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1502

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(continued)* (A/9617, A/C.6/L.984)

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General *(continued)* (A/9711 and Corr.1, A/C.6/L.991)

1. Mr. SAM (Ghana) (Vice-Chairman of the United Nations Commission on International Trade Law) said he had listened attentively to the observations and suggestions which representatives in the Sixth Committee had made on the work of the Commission. Those observations would have the full attention and consideration of the Commission. He wished to comment briefly on some of the points that had been made in the course of the discussion.

2. The Commission realized that the subject of multinational enterprises was an important one and that a great many countries were looking to the United Nations for measures conducive to a solution of the problems that had arisen in that connexion. The Commission was aware of the work being pursued in other bodies and organs of the United Nations and would collaborate closely with them in order to avoid duplication. The Commission hoped that Governments which had not yet replied to its questionnaire would do so without delay so as to give the Commission a firm base on which it could establish its work programme in that particular area.

3. Most delegations had, it seemed, commented favourably on the order of priorities established by the Commission for its work programme. As had been stated in the report of the Commission and as its Chairman had mentioned in the 1497th meeting, a draft convention on the liability of ocean carriers for goods would be transmitted to Governments early the following year. He hoped that Governments would give the draft convention the attention it deserved and would submit to the Secretary-General, for consideration by the Commission at its ninth session in 1976, such comments and observations as they might wish to make.

4. With regard to the international sale of goods, in respect of which many delegations had urged the Commission to speed up its work, it was anticipated that at least two more sessions of the Working Group would be required. He hoped therefore that the draft convention on the international sale of goods might be submitted to Governments sometime in 1976 for comments and observations. He wished to point out, however, that the Commission was dealing with complex and at times highly technical subjects and that it would be wrong to speed up the work at the risk of producing texts which would not receive general consensus.

5. In that connexion, he wished to say a few words about the role of the Secretariat in the work of the Commission. Without the appropriate preparatory work and indeed without the options which such preparatory work was designed to place before it, the Commission and its working groups would have been unable to accomplish the amount of work they had so far. The Secretariat was for the Commission a vital component in terms of its method of work. He hoped that the Commission would continue to receive the valuable assistance hitherto provided by the Secretariat.

6. Part of the preparatory work was also carried out by individual representatives on the Commission, in particular in the field of international sale of goods. As those who served on the Commission were well aware, its sessions had a maximum duration of 15 days and the seventh session had only lasted four days; therefore the ongoing work by the Secretariat between the annual sessions of the Commission and its working groups was very vital to the Commission's activities. He assured members that when the background materials were provided, the Commission would be able to decide on its future course of action in a given field.

7. The Commission was also grateful to those representatives who had expressed their appreciation for the programme which it had initiated in the field of training and assistance in international trade law. The scope of such a programme was of course dependent on the available financial means and he appealed therefore to the Governments of the industrialized countries to consider the possibility of establishing scholarships at their universities and banking and trade centres and to contribute financially to the cost of the symposium. On behalf of the Commission, he wished to express its sincere thanks to the Governments that had made it possible to invite 10 to 12 young lawyers and scholars from developing countries to the symposium.

8. He wished to remark briefly on the manner in which the annual report of the Commission was submitted to the General Assembly. The Commission had tried to include in its Report all background information on the work carried out by the working groups. It was, of course, impossible, in the annual report, to go into a great amount of detail; he wished to point out to those representatives who had expressed a wish for more information that the reports of the working groups and the studies placed before them were generally available and that, moreover, the *Yearbook of the United Nations Commission on International Trade Law* contained the full documentation relating to its work.

9. He thanked members for the support given to the Commission during the debate and expressed the hope that it would be worthy of the confidence which the nations of the world had place in it.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued) (A/9619 and Corr.1, A/C.6/L.988, L.990, L.993)**

10. Mr. BROMS (Finland) informed members that as a result of consultations that had been carried out during the past few weeks, a compromise solution had been reached that would save the draft definition of aggression from amendments that would have destroyed the consensus. With regard to the working papers A/C.6/L.988 and A/C.6/L.990, it had been agreed that to the foot-note which appeared at the end of the preambular part of the draft definition (see A/9619 and Corr.1, para. 22), the following text would be added: "Statements on the Definition are contained in paragraphs . . . and . . . of the report of the Sixth Committee." Those statements concerned article 3 *(c)* and *(d)* of the draft defintion and, in accordance with the agreement, were to be made by the Chairman of the Sixth Committee. The texts of the statements would read as follows:

> "The Sixth Committee agreed that nothing in the Definition of Aggression, and in particular article 3 *(c)*, shall be construed as a justification for a State to block, contrary to international law, the routes of free access of a land-locked country to and from the sea."

and

> "The Sixth Committee agreed that nothing in the Definition of Aggression, and in particular article 3 *(d)*, shall be construed as in any way prejudicing the authority of a State to exercise its rights within its national jurisdiction, provided such exercise is not inconsistent with the Charter of the United Nations."

11. The text of the draft defintion remained the same as that adopted by consensus by the Special Committee on the Question of Defining Aggression.

12. His delegation would like to submit on behalf of 20 other sponsors, including Australia, Bulgaria, Canada, Colombia, Cyprus, Czechoslovakia, France, Ghana, Guyana, Italy, Japan, Mexico, Norway, Romania, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yugoslavia, the draft resolution which appeared in document A/C.6/L.993. The annex to the draft resolution included the text of the definition of aggression as adopted by the Special Committee, with the abovementioned foot-note.

13. The road that the Special Committee and the Sixth Committee had travelled had been a long one and there had been many obstacles to overcome. When the draft definition of aggression was studied against the background of its

* Resumed from the 1489th meeting.

creation, it should be clear that the text could not be claimed by any one delegation. Rather, it was based on several versions and proposals. The draft definition was intended to be used as a working tool by the Security Council and was meant to fill a gap left by the Conference of San Francisco. The sponsors hoped that the draft resolution would be adopted by the General Assembly by consensus in order to give further weight to the tool when placed in the hands of the Security Council.

14. He announced that Uganda had joined the sponsors of the draft resolution.

15. The CHAIRMAN congratulated those members who had taken part in the consultations which had made it possible to submit the draft resolution on the definition of aggression.

16. He announced that the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Poland had asked to be included among the sponsors of the draft resolution.

17. Mr. KASHAMA (Zaire), Mr. RICHARDS (Liberia), Mr. MONTENEGRO (Nicaragua), Mr. QUENTIN-BAXTER (New Zealand), and Mr. PRIETO (Chile) said their delegations wished to be included among the sponsors of draft resolution A/C.6/L.993.

18. The CHAIRMAN asked whether the original sponsors of the draft resolution had been consulted.

19. He suggested that, in order to give members time to reflect on the draft resolution, the Committee should postpone further consideration of the matter until a future meeting.

Organization of work (A/C.6/433)

20. The CHAIRMAN drew the attention of members to the letter dated 19 November 1974 from the President of the General Assembly addressed to the Chairman of the Sixth Committee (A/C.6/433), in which the President of the General Assembly informed him that at its 2291st plenary meeting the Assembly had decided to allocate an additional item to the Sixth Committee for consideration and report. The item in question was entitled "Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention" (item 112).

21. Before the Committee took up consideration of the next item on its agenda, namely, diplomatic asylum (item 105), it should decide on the manner in which it wished to consider the new item.

22. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the General Assembly's decision to include the new item on its agenda had been taken unanimously. The new item, which had been proposed by his delegation, should be discussed simultaneously with the item on diplomatic asylum submitted by the Australian delegation. Such a procedure was justified since consideration of the question of diplomatic asylum would inevitably entail reference to the interpretation of the provisions of the Vienna Convention on Diplomatic Relations[1] of 1961. In particular, it was worth mentioning the relationship between diplomatic asylum and article 41 of the Vienna Convention, which dealt with the use of diplomatic premises for asylum. The parallel consideration of the two items would meet the requirements for a rational organization of the work of the Committee, particularly at a stage where very little time was left for the completion of its work. The six meetings that had been allotted to the item on diplomatic asylum would be adequate for the debate on both items.

23. He wished to stress that in proposing the simultaneous consideration of the two items, his delegation in no way wished to hinder the examination of the item proposed by Australia. His delegation felt that the discussion on the two questions should conclude with the adoption of two separate resolutions; it was not proposing the merging of the two issues.

24. Mr. BRENNAN (Australia) said his delegation found it difficult to accept the USSR request for simultaneous consideration of the two items. While there was some measure of overlapping of the two questions, it was not sufficient to justify considering them jointly. As he had already stated on a previous occasion (1498th meeting), he was concerned about the serious delay in the Committee's consideration of the item on diplomatic asylum, which had originally been scheduled to begin on 4 November. He could not accept any procedure that would mean a further delay. He also felt that rule 15 of the rules of procedure should be applied; that rule provided that delegations should be given adequate notice before a new item was brought up for discussion. In the case at hand, that requirement had not been met. Furthermore, a decision to discuss the new item at that stage would involve a departure from the order of business originally agreed upon. He hoped the Soviet delegation would not press its proposal.

25. Mrs. HO Li-liang (China) agreed with the representative of Australia's remarks concerning the rules of procedure. The Soviet representative, in explaining his proposal, had said that the new item was urgent and important and therefore should be discussed as a priority. That position was untenable. There was nothing in the letter from the Permanent Representative of the Soviet Union to the Secretary-General dated 11 November (A/9745 and Corr.1) or the Soviet statement made in the 223rd meeting of the General Committee on 19 November or in the Soviet representative's remarks now to demonstrate the urgency of the item. Therefore there was nothing to justify upsetting the unanimously agreed programme of work of the Committee (A/C.6/428). If the item had indeed been urgent, it was incomprehensible why the Soviet delegation had failed to request its inclusion in the provisional agenda of the General Assembly or on the supplementary list of items. Since no reason given the Committee could explain the priority of the item proposed by the Soviet Union, it should be placed at the end of the Committee's agenda. Only two weeks remained before the date for the conclusion of the Committee's work and the remaining items on the originally agreed programme of work were equally important and required thorough discussion because they

1 United Nations, *Treaty Series*, vol. 500, No.7310, p. 95.

concerned the majority of Member States. It was the Committee's duty to implement that programme of work and complete it in the time available. That would not be possible if the new item were given priroity. If time did not permit discussing the new item at the current session, it could be carried over to a later session. Her delegation was opposed to its inclusion as a priority item and to its discussion together with the item on diplomatic asylum, since either solution would upset the agreed programme of work.

26. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that his delegation supported the Soviet proposal since it involved no change in the agreed order for the consideration of items established by the Committee but simply entailed the more rational use of the remaining time available. Furthermore, the proposal was in accordance with existing practice, since there were precedents for "package deals" on items in the Committee, for example concerning the report of the United Nations Commission on International Trade Law and the United Nations Conference on Prescription (Limitation) in the International Sale of Goods. Since separate draft resolutions would be prepared on the two items, to discuss them together would simply be making the best use of the remaining time.

27. Mr. ZULETA (Colombia) supported the views of the representatives of Australia and China and requested the Chairman, when he saw fit, to give a procedural interpretation of the matter under discussion according to rules 99 and 123 of the rules of procedure of the General Assembly. The Committee had unanimously adopted its programme of work and that document had so far not been disputed. As his delegation understood it, the procedure to be followed in order to revoke a decision arrived at unanimously was that laid down in rule 123. Moreover, rules 14 and 15 of the rules of procedure, which dealt with the inclusion of additional items, should be observed in full. When any country requested the inclusion of an item in the programme of work, it intended that item to be discussed in isolation and in the framework it contemplated. It would therefore be unfair to the delegation of Australia if the item on diplomatic asylum were discussed in a manner other than that it had requested. He appealed to the Chairman to make a ruling since he feared that the work of the Committee would be further delayed by a protracted procedural debate.

28. Mr. NYAMDO (Mongolia) said that the General Committee had unanimously agreed to include item 112 on the agenda of the General Assembly as an urgent and important item and transmit it to the Committee for consideration. The Vienna Convention on Diplomatic Relations was an important instrument in the development of friendly relations among nations irrespective of their differing constitutional and social systems, and as such contributed to world peace and security. The Convention laid down major principles and norms of diplomatic law governing international relations between States. Those principles and norms were generally recognized and all States were obliged to observe them under the principle *pacta sunt servanda*. However, most States had not acceded to the Vienna Convention on Diplomatic Relations and its provisions were frequently violated. It was therefore urgent to remedy that situation. Since there was a connexion between the Vienna Convention on Diplomatic Relations and the question of diplomatic asylum it would be logical to discuss the two items together or consecutively, in accordance with precedents in Committee practice. His delegation fully supported the Soviet proposal.

29. Mr. USTOR (Hungary) said that his delegation supported the Soviet proposal that agenda items 112 and 105 should be discussed together, since it would facilitate the work of the Committee. The representative of Australia had been concerned that consideration of the item proposed by his delegation would be delayed if the two items were taken together, but the Soviet representative had assured him that there could be no delay if both items were discussed in the six meetings originally allocated to the item on diplomatic asylum. Furthermore, separate draft resolutions would be adopted on the two items. In view of the assurances offered by the representative of the Soviet Union, the misgivings expressed by the representative of Australia and others were unfounded. Regarding the priority to be given to the item, if it had been unanimously adopted as urgent and important in the General Committee and the General Assembly, then the Committee must regard it as urgent.

30. The representative of Australia had said that rule 15 of the rules of procedure had a bearing on the discussion, but he begged to differ since that rule referred only to the plenary meeting of the General Assembly. There was nothing in the rules relating to a main committee, including rule 123 which dealt with substantial and not procedural decisions, to prevent the item proposed by the Soviet Union from being discussed with the item proposed by Australia. His delegation supported the Soviet proposal on the understanding that two separate draft resolutions would be prepared and that the debate would not go beyond the six meetings originally allocated to the item on diplomatic asylum.

31. Mr. NJENGA (Kenya) said that the new item had indeed been unanimously accepted by the General Assembly but it was his understanding from the President of the Assembly that the priority for its discussion should be decided by the Committee. Its unanimous acceptance in the plenary was therefore not relevant to the priority it should have in the Committee. In view of the short time remaining to the Committee for the consideration of several equally important items, the new item could not be given priority at the current stage of the Committee's work. Time must be saved in the discussion of all the remaining items and it might even prove possible to dispose of the item on diplomatic asylum in fewer meetings, thus leaving time for consideration of the additional item. However, if the Committee was being asked to revise its programme of work, then rule 99 applied. Similarly, if the order of priority was to be changed, then he agreed with the representative of Colombia that rule 123 applied. That rule covered both substantial and procedural matters and must be invoked unless the need for a change of schedule was unanimously agreed in the Committee. His delegation considered that the item proposed by the Soviet Union should be included at the end of the agenda.

32. Mr. YOKOTA (Japan) said that his delegation agreed with the delegations of Australia, China, Colombia and Kenya. While respecting the decision taken by the General

Committee and the General Assembly to include the additional item proposed by the Soviet Union in the Committee's programme of work, his delegation could see no particular urgency which justified giving the item priority and it should be placed at the end of the list of items for consideration. He referred the Committee to the last line of its original programme of work (A/C.6/428) which reserved six meetings for additional items. In his view it was only natural for the Committee to try to accommodate the item proposed by the Soviet Union within the framework of the original agreement. Any change in the programme of work might call for reconsideration under rule 123 of the rules of procedure.

33. Mr. GÖRNER (German Democratic Republic) said that the implementation of the objectives laid down in the preamble of the Vienna Convention on Diplomatic Relations should be considered at the current session of the General Assembly, since it was in the interest of the international community to ensure that the provisions of that Convention were universally applied. Moreover, violations of that Convention should not be tolerated. That was why the item proposed by the Soviet Union should be given priority, and it was clearly expedient to discuss it in connexion with the item on diplomatic asylum because of the generally accepted principles relating to diplomatic missions laid down in the Vienna Convention. Furthermore, by discussing both items at once, the Committee could keep to its schedule. There was no reason to discuss items in isolation, and there were indeed two precedents in the current session for taking items together. His delegation supported the Soviet proposal.

34. Mr. GODOY (Paraguay), speaking on a point of order, said that everyone agreed that there was too little time to discuss the items already agreed by the Committee. The procedural discussion was merely postponing consideration of those items to which the Committee attached importance. He proposed that the Chairman should put the proposal of the Soviet Union to the vote without further discussion.

35. Mr. ARITA QUIÑONEZ (Honduras) said that the additional item included at the request of the Soviet representative should not take precedence over the item on measures to prevent international terrorism. Accordingly, he agreed with those who favoured placing the additional item last in the programme of work for the current session.

36. Mr. MIGLIUOLO (Italy) said that his delegation had doubts as to the urgency of the additional item and would have appreciated clarification of the alleged violations of the Vienna Convention and the "unfriendly acts" referred to in the letter from the Permanent Representative of the USSR requesting the inclusion of the additional item. He failed to see any direct connexion between the item on diplomatic asylum and the new item. Earlier decisions by the Committee to deal with certain items concurrently were not relevant to the present case. In those instances there had been no objection to that procedure and a decision had been taken unanimously. In the present instance, several delegations had objected to considering the additional item concurrently with the item on diplomatic asylum. The Committee's programme of work had been adopted on 24 September 1974, and it had been decided that six meetings at the end of the session should be set aside as a reserve for additional items. Thus, provision had been made for the additional item included in the agenda at the request of the Soviet Union.

37. Mr. BOJILOV (Bulgaria) said that he could not understand the statements by some delegations to the effect that the additional item was not an important and urgent one, particularly since the Permanent Representative of the Soviet Union had specifically requested the inclusion of the additional item in the agenda "as an important and urgent matter" in his letter of 11 November 1974. No objections had been raised either in the General Committee or in the General Assembly to the inclusion of the item as an important and urgent matter. He fully sympathized with the concern expressed by the representative of Australia and others that the Committee had fallen behind the schedule established in the programme of work. However, the USSR representative had not requested additional meetings for the consideration of the new item, proposing instead that it should be taken up jointly with the item on diplomatic asylum, to which six meetings had been allocated. It appeared that the item on diplomatic asylum might well be completed in three meetings, thus leaving three meetings free for consideration of the item proposed by the Soviet Union.

38. Mr. ROSENNE (Israel) said that he saw merit in both approaches that had been suggested for dealing with the new item but thought it would be best to postpone a decision on the matter until the next meeting, on the understanding that there would be no further procedural debate. He shared the concern expressed by other speakers about the excessively slow pace of the Committee's work and recalled that, at the beginning of the present session, he had expressed the hope that adequate time would be available for some discussion of each item allocated to the Committee.

39. Mr. KOLESNIK (Union of Soviet Socialist Republics), replying to points raised in the discussion, said that the requirements of rule 15 of the rules of procedure had been met with respect to the additional item proposed by his delegation. Rule 123 was not relevant to the present discussion, since it had not been proposed that the order of items adopted by the Sixth Committee should be reconsidered. His delegation had not requested additional time for the consideration of the item it had proposed; rather, it had suggested that the additional item should be discussed together with the item on diplomatic asylum, thus using the time remaining in the most rational possible manner. It was no innovation to consider items concurrently: the Sixth Committee often had a number of items, even ones that were unrelated, on the agenda of a single meeting. His delegation attached urgency to the item because of the flagrant violations of the Vienna Convention which were taking place, upon which his delegation would elaborate at an appropriate time. It might be best to suspend the present discussion to allow time for informal consultations. He assured the representative of Australia that a mutually acceptable solution could be worked out.

40. Mrs. HO Li-liang (China) said that the USSR representative had not given any convincing reasons for treating the additional item as an urgent matter. The USSR appeared

to have some ulterior motive in proposing that the additional item should be discussed concurrently with the item on diplomatic asylum. As the representative of Kenya had pointed out, there were other important items on the agenda which had not yet been discussed. The Committee had already decided the order of consideration of items, and the item proposed by the USSR should properly be put at the end of the agenda. There was no need to defer a decision on that item; a vote should be taken immediately.

41. The CHAIRMAN suggested that informal consultations should be held among interested delegations with a view to reaching agreement on the procedural questions raised concerning the additional item. If the consultations had not reached a successful conclusion by the next meeting, he intended to commence discussion of the item on diplomatic asylum.

42. Mr. ZULETA (Colombia) asked the Chairman whether rule 123 of the rules of procedure would be applicable to any proposal to change the order of consideration of items adopted by the Committee at its 1462nd meeting.

43. The CHAIRMAN observed that no formal proposal had been made to reconsider the programme of work adopted by the Committee. Thus, it would not appear to be necessary to invoke rule 123.

44. Mr. MIGLIUOLO (Italy) said that there would be no change in the programme of work if the additional item was accommodated under the reserve set aside for such items, as indicated in document A/C.6/428. If that was the case, it would not be necessary to invoke rule 123.

The meeting rose at 1.10 p.m.

1503rd meeting

Thursday, 21 November 1974, at 4.45 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1503

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* **(A/9619 and Corr.1, A/C.6/L.988, L.990, L.993)**

1. Mr. PRIETO (Chile) recalled that, at the preceding meeting, his delegation had said that it intended to become a sponsor of draft resolution A/C.6/L.993 because it attached particular importance to the question of defining aggression and was glad that a definition had finally been achieved. In order to facilitate a consensus, it had decided to support the draft resolution in question, without prejudice to the clauses which some States and, in particular some Latin American countries, might wish to add to the draft definition in order to complete it.

2. He was surprised that, at the preceding meeting, the Chairman had asked him whether his delegation had consulted the sponsors of the draft resolution before stating that it intended to join them, although he had not asked the same question of the other delegations which had become sponsors of the document at the same meeting. None of the substantive provisions of the rules of procedure dealt with a delegation's right to become a sponsor of a draft resolution. Consequently, in the interest of consensus, any delegation must be able to join the sponsors of a draft resolution. Intellectual property did not exist in the case of draft resolutions.

3. His delegation had in fact consulted some of the sponsors of draft resolution A/C.6/L.993, who had encouraged it to join them. However, when there were so many sponsors of a draft resolution, it was difficult to consult all of them in order to obtain their consent. Common sense therefore indicated that it was enough to consult only a few. Moreover, it should be noted that some of the other delegations which had become sponsors at the preceding meeting had not consulted any of the original sponsors and that the Chairman had not pointed out that fact.

4. He also noted that the press release concerning the preceding meeting (GA/L/1711) did not refer to his country as one of the States which had become sponsors of draft resolution A/C.6/L.993 at that meeting. Such an omission was extremely unusual and contrary to the Committee's practice.

5. Chile, which had been a Member of the United Nations since its establishment, could not accept any interference with its rights as a sovereign State. He therefore strongly protested against the discriminatory attitude adopted at the preceding meeting by the Chairman.

6. The CHAIRMAN said that draft resolution A/C.6/L.993, submitted on behalf of the sponsors by the representative of Finland at the preceding meeting, was the result of lengthy discussions and represented a compromise. It was understood that the Committee's report to the General Assembly would contain the following two paragraphs:

> "The Sixth Committee agreed that nothing in the Definition of Aggression, and in particular article 3 *(c)*, shall be construed as a justification for a State to block, contrary to international law, the routes of free access of a land-locked country to and from the sea."

and

> "The Sixth Committee agreed that nothing in the Definition of Aggression, and in particular article 3 *(d)*,

shall be construed as in any way prejudicing the authority of a State to exercise its rights within its national jurisdiction, provided such exercise is not inconsistent with the Charter of the United Nations."

7. In addition, the foot-note which appeared at the end of the preambular part of the draft definition (see A/9619 and Corr.1, para. 22) would be completed in the following way: "Statements on the Definition are contained in paragraphs . . . and . . . of the report of the Sixth Committee."

8. In order to speed up the work, he suggested that draft resolution A/C.6/L.993 should be adopted without a vote, on the understanding that delegations which wished to explain their views could do so after the draft resolution had been adopted or at the following meeting.

The draft resolution was adopted.

9. Mrs. HO Li-liang (China) said that, by constantly confronting one another, the super-Powers were threatening the security of small and medium-sized countries, which intended to combat their expansionist policies and condemn their acts of aggression. Her delegation had always supported those efforts. The super-Powers were, however, using the definition of aggression to deceive world public opinion and disguise their own acts of aggression. The draft definition did not take sufficient account of the interests of the third world countries. Some of its articles directly reflected the position of the super-Powers and contained serious gaps on essential matters. Moreover, most of the 80 delegations which had taken part in the Committee's debates on the item had stated that they were not satisfied with the draft definition and had expressed reservations. In particular, it had been objected that the draft definition did not apply to economic aggression and subversive activities and that it contained several ambiguous provisions. It had also been stated that certain super-Powers would make use of their status as permanent members of the Security Council to exonerate themselves. Resisting the pressure exerted upon them, certain delegations had, moreover, submitted some amendments.

10. The discussions showed clearly that the draft definition in no way met the interests of all States and the subterfuges to which the super-Powers had resorted would not deceive anyone. The need to oppose acts of aggression had led the small oppressed states to take up arms because they had no other means of liberating themselves. In Africa, Asia and America, the struggle against the super-Powers had taken an irreversible turn.

11. If a vote had been taken on the draft resolution which had just been adopted, her delegation would not have taken part in it.

12. Mr. SOGLO (Dahomey) said he was surprised that the question raised by the representative of Chile had not been referred to by the Chairman. He was also surprised at the off-hand way in which the Chairman had proceeded with regard to the adoption of draft resolution A/C.6/L.993. That attitude confirmed that some delegations were kept uninformed of what was being arranged outside meetings.

13. It was not surprising that a draft resolution prepared in such conditions should be both biased and incomplete. Of course, the Committee had wanted to adopt the draft resolution by consensus, but the text should at least have contained a reference to indirect aggression and to the fate of the Special Committee. He wondered whether the Special Committee would cease to exist, even though the draft it had been requested to prepare was far from satisfactory to all delegations.

14. Mr. ZALDIVAR-BRIZUELA (El Salvador) said he wished to stress that the definition reflected a biased concept of aggression which was limited to the use of force and to direct aggression. The text would be useful only if it represented a first step towards a complete definition of aggression. His delegation would have abstained if the draft resolution had been put to the vote.

15. Mr. ROSENNE (Israel) considered, as he had already stated during the consideration of the draft definition, that the draft definition was biased and incomplete; the same was true of the draft resolution which had just been adopted without a vote.

16. Mr. GODOY (Paraguay) said he understood the Chairman's wish to have the draft resolution adopted rapidly, but nevertheless wished to express his surprise at that type of procedure. It had been stated that the draft definition was the result of lengthy negotiations, but his delegation had not had an opportunity to participate in those negotiations and the only important proposal submitted by the land-locked countries had been ignored. His delegation therefore strongly protested against the procedure by which the draft resolution had been aodpted and against the pressure exerted on some delegations, which had not been placed on an equal footing with the others. His delegation would refer to that matter again in the plenary meeting of the General Assembly.

17. Mr. DE SOTO (Peru) said his delegation had already pointed out (1483rd meeting) that the draft definition was imperfect as to substance and limited in scope. Together with other delegations, it had submitted a working paper (A/C.6/L.988) relating to article 3 *(d)* of the draft definition for the purpose of adding to the text of the definition a safeguard clause so that States would not be deprived of the right to take any measures they might consider appropriate in the waters under their national jurisdiction. His delegation, which would have preferred that clause to appear in the text of the definition itself, wished to observe that its inclusion in the report of the Committee would not prevent it from having the same legal effect as the other articles of the definition because reference could not be made to the definition without taking into account the foot-note which was to be added at the end of the preambular part of the draft definition. His delegation had taken part in the consensus solely in the light of those considerations.

18. He wished to thank those representatives, and in particular the representatives of Canada and New Zealand, who had taken part in the preparation of the wording adopted for article 3 *(d)* of the draft definition.

19. Mr. NYAMDO (Mongolia) emphasized the historical significance of the decision that had just been taken by the Sixth Committee and expressed his appreciation to the members of the Special Committee. His delegation wished to become a co-sponsor of draft resolution A/C.6/L.993.

20. Mr. PRIETO (Chile), speaking on a point of order, observed that the request made by the Mongolian representative was directly related to the question raised by his own delegation: in order to become a co-sponsor of a draft resolution, was it necessary to be unanimously accepted by the other sponsors, or was it sufficient to make a statement of intent? It seemed to him that differing criteria were applied according to the countries involved, and he pointed out that the Bureau had not taken a decision on the question.

21. The CHAIRMAN stated that the same rule was applicable to all countries and recalled the recommendation of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly, appearing in annex V, paragraph 93, to the rules of procedure of the General Assembly, which stated "The Special Committee does, however, wish to draw attention to the practice whereby the sponsors of a proposal decide whether other delegations can become co-sponsors".

22. Mr. PRIETO (Chile) said that he too had had that provision in mind, but recalled that the rule was not a substantive one; in point of fact, note a to annex V of the rules of procedure stated that "By resolution 2837 (XXVI) of 17 December 1971, the General Assembly approved the conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly established under resolution 2632 (XXV) of 9 November 1970, declared those conclusions to be useful and worthy of consideration by the Assembly . . .". The last words conveyed the impression that no rule had been established in that regard. If it was for the sponsors of a proposal to decide whether other delegations could become co-sponsors, it would seem that a majority decision taken by the sponsors would allow another delegation to become a co-sponsor. If it was accepted that an objection by a single sponsor would suffice to prevent a delegation from becoming a co-sponsor, the right of veto, which did not appear in the rules of procedure, was conferred on that sponsor. He was not raising that question for personal reasons, but because it might affect the other Committees and the General Assembly itself; the Legal Counsel might be able to clarify the problem.

23. Mr. RYBAKOV (Secretary of the Committee) explained that the procedure which should be followed had been determined by the General Assembly at its 1256th plenary meeting, on 11 November 1963, when it had taken note of the comments of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly and had approved the recommendations drawn up by that body in its report.[1] He read out paragraph 60 of that document:

"The Committee considered a situation which has occurred in recent years where a large number of delegations wished to be designated as sponsors of certain draft resolutions or draft amendments submitted for the Assembly's approval. The Committee did not agree to suggestions that a limit should be placed on the number of delegations which might be so designated. It wishes, however, to make it clear that, in its view, it is for the authors of a proposal which has already been submitted to the Assembly or to a committee to decide whether other delegations should also become sponsors of it. Delegations wishing to become co-sponsors ought therefore to approach the original sponsors if they wish their names to be added to the list already published."

24. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said that in his view the Committee was considering a non-existent problem. It was understandable that some of the comments made at the 1502nd meeting might have given rise to some difficulties. It appeared that a regrettable error, doubtless caused by a mechanical failure or an oversight, had been committed by the Office of Public Information, whose work was usually most satisfactory. However, since no delegation had objected to any of the Member States which had expressed the desire to become co-sponsors of draft resolution A/C.6/L.993, his delegation interpreted that silence as an expression of the desire of all to give the decision taken on the draft resolution the broadest possible support. Whatever the reason for the silence, it was not possible to object after the adoption of the draft resolution. His delegation appreciated the wisdom of the decision that had been taken. His delegation would raise no objection concerning any of the co-sponsors, on the understanding, however, that such was the sense of the decision which had been taken. If the Committee should unwisely reopen the matter, his delegation might be forced to reconsider its position.

25. Mr. KOLESNIK (Union of Soviet Socialist Republics), speaking on a point of order, said that the procedural question raised in the Sixth Committee was not "non-existent" and that he did not consider the action of the Office of Public Information an error. The point was that, under the rules of procedure referred to by the Chairman and the Secretary of the Committee, it was possible to join in sponsoring a draft resolution only with the agreement of the original sponsors. Consequently, the question of the co-sponsorship of the representatives of the Chilean junta would not be resolved until it was considered at a meeting of the delegations listed in document A/C.6/L.993.

26. Mr. ROSENNE (Israel), speaking on a point of order, said that since the question of the accuracy of press release GA/L/1711 had been raised, his delegation wished to indicate that it considered that document inaccurate, since it failed to mention an intervention of his delegation.

27. Mr. PRIETO (Chile), speaking on a point of order, observed that the interpretation of the position of the General Assembly given by the representative of the USSR differed substantially from that given by the Secretary of the Committee. According to the USSR delegation, it would suffice for one sponsor to raise an objection for a State which had indicated its desire to become a co-sponsor to be prevented from doing so. However, in paragraph 93 of its conclusions appearing in annex V to the rules of procedure of the General Assembly, the Special Committee on the Rationalization of the Procedures and Orgnaization of the General Assembly specified that "the sponsors . . . decide". He stressed that the plural was used. Acceptance of the theory advanced by the USSR delegation would

[1] See *Official Records of the General Assembly, Eighteen Session, Annexes*, agenda item 25, document A/5423.

amount to the establishment of a new kind of veto, which would be contrary to reason as well as to legality.

28. Mr. HYERA (United Republic of Tanzania) recalled the hope that a great many States had placed in the quest for a definition of aggression, one of whose main effects should have been, as the ninth preambular paragraph of the draft definition stated, "deterring a potential aggressor" and to simplify "the determination of acts of aggression". The text adopted by the Sixth Committee did not achieve any of the goals sought.

29. Far from defining aggression, the provisions of article 1 categorically precluded any act committed without the use of armed force from being considered as an act of aggression. There was no need to explain why acts committed without resorting to armed force could constitute acts of aggression. Article 1, far from forestalling such acts, seemed rather to point out to any potential aggressor a form of aggression not included in the definition.

30. Neither did articles 2 and 3 constitute a definition. They were merely indications which would be of little assistance to the Security Council in determining the existence of an act of aggression. Those articles were an admission of an unquestionable inability to define aggression, for they asked the Security Council to decide for itself whether or not an act of aggression had occurred. Those provisions gave rise to serious consequences, since they concentrated the power to define aggression in the hands of the five permanent members of the Security Council. If that was the intention, the 50 or so years spent in attempting to define aggression had merely been time wasted. History showed that aggression could be committed by the permanent members of the Security Council themselves. If that was so, the provisions adopted meant that the author of an act of aggression would be asked to state whether it was an aggressor. A further serious short-coming was that the text did not state that colonialism and racism constituted aggression in themselves, and that all acts to which they gave rise were also acts of aggression.

31. The impossibility of really defining aggression was due to the excessive importance given to the concept of consensus. However, the draft definition adopted by the Sixth Committee was not truly the outcome of a consensus, as his delegation understood that term. His delegation could not believe that the majority of the Committee took the view that aggression could only be committed by the use of force, and that the determination of the existence of an act of aggression could be left to the initiative of the very States which had committed the reprehensible act. His delegation requested that its reservations should be placed on record.

Organization of work

32. The CHAIRMAN informed the Committee that an additional meeting could be held on the afternoon of Monday, 25 November, in order to avoid a night meeting. However, it would not be possible to secure interpretation of the deliberations into Arabic at that time.

33. Mr. YASEEN (Iraq) said that the delegations of the Arab group would have to consult with each other on that question. He suggested that the decision in that regard should be deferred until the following meeting.

34. Mr. HASSOUNA (Egypt) supported the representative of Iraq and said that the Chairman's suggestion raised a question of principle. He asked whether the proposed meeting could not be held on another day of the week, when it would be possible to have interpretation into Arabic.

35. The CHAIRMAN assured the Egyptian representative that he appreciated the problem and requested the Secretariat to look into the situation. He said that the Sixth Committee's decision would be taken in accordance with the Arab group.

The meeting rose at 6.05 p.m.

1504th meeting

Friday, 22 November 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1504

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990, L.993)

1. Mr. GARCIA ORTIZ (Ecuador) said that it was inconceivable that draft resolution A/C.6/L.993 should have been adopted by consensus. That was certainly an elegant way of resolving difficulties, but, as his delegation had already had occasion to point out (1476th meeting), the text of the draft definition of aggression was not satisfactory. He hoped that the statement relating to article 3 *(d)* would make it possible correctly to interpret that provision, which seemed to interfere with the right of States to adopt measures they considered appropriate and, *inter alia,* with Ecuador's right to take the necessary measures for the protection of its resources. That was why his delegation would have abstained if the draft resolution had been put to the vote.

2. Mr. RAO (India) said he was glad that the draft resolution had been adopted by consensus. The Committee had also approved two statements, one on article 3 *(c)* and the other on article 3 *(d)*. As many delegations had pointed out during the general debate on that item, article 3 *(d)* might be misinterpreted and it was therefore fortunate that the Committee had reached agreement on that matter. While the statement relating to subparagraph *(d)* was intended to clarify the wording on which the Special Committee had agreed, the other statement introduced a new element into the draft definition.

3. Although India had always recognized the need to protect the legitimate interests of the land-locked countries, he was of the opinion that those countries' problems should not be dealt with during the consideration of the draft definition. Moreover, none of the transit countries of Asia, Latin America and Africa had apparently been consulted on the statement relating to article 3 *(c)*. His own delegation had, in any case, not been consulted and it therefore did not consider itself a party to that statement, although it had not wished to raise any objections before the adoption of the draft resolution with a view to promoting consensus on the draft definition as a whole. Consequently, there could be no question of referring to it in the context of the access to the sea of land-locked countries or of extending the authority of transit States because those were problems to be settled by international treaties and the relevant bilateral instruments.

4. Mr. WISNOEMOERTI (Indonesia) was of the opinion that the fact that the draft resolution had been adopted by consensus showed that the draft definition had raised some difficulties for certain delegations. His delegation would have preferred the text of the statement relating to article 3 *(d)* to be incorporated in the text itself of the definition or at least reproduced in a foot-note. Moreover, as it had already explained, the wording of article 3 *(g)* could have been improved by the deletion of the word "substantial", which his delegation considered superfluous.

5. Mr. ARITA QUIÑONEZ (Honduras) said that, by adopting the draft resolution, the Committee had contributed to the development of international law, for the draft definition met the necessary conditions for the protection of States which might become or had already been the victims of an aggression. That definition would also help to strengthen the role of the United Nations.

6. Mr. MAHMUD (Pakistan) said that his delegation had some reservations with regard to the draft definition, as amended, particularly by the inclusion of the substance of working paper A/C.6/L.990 in the report of the Committee. The question of the access to the sea of land-locked countries was of direct interest to Pakistan, whose approach to that subject was based on international law and the practice of States. The problem therefore arose as to whether land-locked States enjoyed an extra-territorial right in the matter of transit or whether they must conclude bilateral agreements with the transit countries. According to the relevant conventions and practice, the transit of land-locked States should be the subject of agreements between the States concerned and subject to the principle of reciprocity. In that connexion, he referred to several provisions of the Convention on the High Seas and the Convention on Transit Trade of Land-locked States. In practice, the arrangements worked out through mutual agreement had satisfactorily met the needs of the land-locked States while safeguarding the interests of the transit States. Moreover, there was no need to ask whether transit was a right or a privilege; no discussion of that matter would further the cause of the land-locked States and might even harm it.

7. Mr. KOLESNIK (Union of Soviet Socialist Republics) welcomed with satisfaction the adoption of the draft definition, which marked a new victory for the diplomacy of peace. The Soviet Union had always supported States advocating the strengthening of international peace and security and their foundations in law, which was the objective of the draft definition. Using words of the Secretary-General of the Communist Party of the Soviet Union, he said that any State which aspired to peaceful co-operation, showed goodwill and adopted a realistic attitude, could always count on the support of the Soviet Union, which rejected reckless attempts at provocation. Although the majority of delegations welcomed the adoption of the draft definition, one or two delegations were advancing the absurd argument that the countries of the third world might have been duped. Those were, however, the very countries which had again taken the initiative of defining aggression and they did not need any mentors. The argument that the third world could not protect its interests was the hegemonistic slogan of the Maoists.

8. The sponsors of the draft definition had endeavoured to take account of generally recognized principles and standards of contemporary international law and to respect scrupulously the provisions of the Charter. That text should therefore constitute a legal obstacle to any attempt at aggression. His delegation hoped that it would contribute to the strengthening of détente and help the Security Council to determine the existence of acts of aggression and adopt the necessary measures.

9. It went without saying that, since the draft definition was the result of a compromise, it could not be fully satisfactory to all delegations. Thus, his delegation considered that the word "sovereignty" in the first article was unnecessary and that the distinction between a war of aggression and aggression made in article 5 was unfounded, but it was of the opinion that the draft definition represented the best which could have been achieved in view of the delicate political nature of the question. With regard to operative paragraph 4 of the draft resolution, his delegation was of the opinion that it meant that the Security Council could later consider the definition which had been adopted and take an appropriate decision to give the definition binding force, thus increasing the effectiveness of efforts aimed at the maintenance of international peace and security.

10. With regard to the statements it had been agreed to include in the Committee's report, his delegation considered that none of the provisions of the draft definition could be interpreted as interfering with the right of a State or group of States and that the statement relating to article 3 *(c)* was therefore unnecessary, although it had not objected to it. Moreover, the statement relating to article 3 *(d)* could in no way be considered as prejudicing the

outcome of the consideration by the United Nations Conference on the Law of the Sea of problems of the limits of the national jurisdiction of coastal States and the régime of the economic zone.

11. He expressed his delegation's appreciation to all those who had worked so untiringly on the preparation of the draft definition and to the delegations in the Committee and, in particular, the delegations of land-locked countries, which had shown a spirit of compromise.

12. Mr. LEKAUKAU (Botswana) said that, as a sponsor of document A/C.6/L.990, his delegation had had to agree to a compromise on article 3 *(c)* of the draft definition, although it had not been offered any convincing reasons for not including that text in the draft definition itself. The delegations of the land-locked countries had been threatened that, if they insisted on their original position, they would be held responsible if the draft definition failed to be adopted. His delegation had already explained its point of view on the right of access to the sea of land-locked countries (1488th meeting) and therefore accepted the compromise on the statement relating to article 3 *(c)*, on the understanding that the provisions of the draft definition and the texts to which the foot-note referred would be interpreted in the spirit of the Vienna Convention on the Law of Treaties.

13. Mr. MANIANG (Sudan) recalled that his delegation, although it had participated actively in the deliberations of the Special Committee, recognized that the draft definition was not perfect. The statements to be reproduced in the Sixth Committee's report would fill in certain gaps in the draft. Nevertheless, he felt that there was every justification for the question raised at the previous meeting by the representative of the United Republic of Tanzania, who had envisaged the possibility that a permanent member of the Security Council might be accused, under article 4, of having committed an act of aggression. Article 7 should be interpreted as referring to all forms of struggle against colonialism and alien domination, including armed struggle.

14. Mr. FUENTES IBAÑEZ (Bolivia) said that it was regrettable that the legitimate aspirations of the land-locked countries had been considered worthy only of mention in a foot-note. He associated himself with the Paraguayan delegation which at the preceding meeting had expressed its astonishment at the unexpected manner in which the Committee had pronounced on document A/C.6/L.993. If that text had been put to a vote, his delegation would have abstained. He deplored the contempt shown by the Soviet delegation for delegations whose point of view differed somewhat from its own.

15. Mr. MILLER (Canada) welcomed the adoption of the draft definition after half a century of effort. He shared the view expressed by the representative of the Soviet Union that it had not been possible to draft a more satisfactory text and that, in order to achieve a final form, it had been necessary to strike a delicate balance between the different views held. It was to be hoped that the text would have considerable moral authority. However, only the test of time would show whether the Security Council would find it useful, and the permanent members of the Council would be largely responsible for the extent to which it was respected. He recognized that the text was not perfect and deplored the fact that the coastal States had been late in presenting their objections to article 3 *(c)*. He thanked the delegations of the land-locked countries and those of the coastal States which had endeavoured to reach a compromise on both article 3 *(c)* and article 3 *(d)*.

16. As the representative of Canada had said during the general debate on the item (1473rd meeting), the draft definition would help to prevent and contain aggression, two of the reasons for the creation of the United Nations. His delegation hoped it would help to maintain peace and that all countries would realize its importance.

17. Mr. ESSY (Ivory Coast) noted that many delegations had stressed the imperfections and limitations of the draft definition, while others had asserted that any amendment to the text could destroy the balance achieved. It was for that reason that his delegation had agreed that the statement on article 3 *(d)* should be reproduced in the report of the Sixth Committee. However, he wished to stress that that statement would have the same legal force as the provisions of the definition itself.

18. He wondered what was to become of the Special Committee in the future and hoped that the question of the definition of aggression would always be kept under review for, as the Soviet delegation itself had demonstrated to the First Committee when speaking of the influence which one State could exert over the geophysical environment of another, States were continually developing new forms of aggression. In that respect, article 4 was a guarantee for the future, but its role as a safety valve was nevertheless very limited. He hoped that the adoption of the draft resolution would be considered as a first step only and not as an end in itself.

19. Mr. BAMBA (Upper Volta) said that during the discussions prior to the drafting of draft resolution A/C.6/L.993, the group of land-locked countries, of which Upper Volta was one, had tried in vain to win acceptance for a number of proposals but, to avoid bearing the responsibility for a failure, had finally had to be content with the least unsatisfactory wording for the foot-note which was to be added at the end of the preambular part of the draft definition. His delegation considered that foot-note to be an integral part of the definition of aggression. It was to be hoped that the adoption of that draft would constitute only a first step and that the Special Committee on the Question of Defining Aggression would do everything necessary to complete the definition.

20. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) expressed her delegation's satisfaction at the adoption of the draft definition, which was a triumph for the forces of peace that favoured the peaceful settlement of the problems of the world community.

21. The draft definition, although based strictly on the Charter, was the result of a compromise and, as such, could be improved. Nevertheless, her delegation particularly appreciated the balance achieved in the selection of the objective criteria for the definition which, in fact, met all the basic requirements of a definition of aggression.

22. For her delegation, the words "the use of armed force by a State against the sovereignty" of another State in article 1 meant the use of armed force against the territorial integrity or political independence of a State. Furthermore, the statements which were to be added to the report of the Committee could not be used to limit the scope of the definition. They could not prejudice the results of the United Nations Conference on the Law of the Sea, the aim of which must be to afford equal protection for the interests of all States.

23. The international community wished the definition to be applied as effectively as possible. The Security Council should use that instrument as a basis when called on to determine whether acts of aggression had been committed, and it should make it binding so as effectively to discourage any would-be aggressor.

24. Mr. SHAFAGHAT (Iran) reaffirmed the adherence of his delegation to the consensus which had made the adoption of draft resolution A/C.6/L.993 possible but said that his Government maintained its position of principle explained earlier within various United Nations organs concerning the statement made by the Chairman on article 3 *(c)* of the draft definition.

25. Mr. HASSOUNA (Egypt) recalled that his delegation had already made known its views and reservations on the draft definition which had been adopted (1483rd meeting). Nevertheless, he wished to emphasize the considerable importance of the declaration for the maintenance of international peace and security. It would have been advisable, however, to include in the draft resolution a request to the Security Council to apply the draft definition when discharging its responsibilities under the Charter. His delegation also felt that the Sixth Committee should have recommended that the General Assembly should adopt the draft definition of aggression in the form of a declaration rather than simply of a resolution, as was customary for instruments whose import was to be emphasized.

26. Mrs. GROSSMAN (Dominican Republic) stressed the usefulness of the definition, which would make it possible to take measures to prevent acts of aggression, and consequently to strengthen the security of peace-loving peoples. The definition was in accordance with the Charter of the United Nations and applied only to armed aggression. As the representative of a small developing country, she regretted the limited scope of the definition, while appreciating the positive results achieved by the Special Committee's text.

27. Mr. TIEN Chin (China) observed that in his statement, the representative of the USSR had not replied to the questions raised by China and other third world countries, thus demonstrating the weakness of the USSR's position. The attitude adopted by the Soviet delegation throughout the preparation of the draft definition showed indisputably that the Soviet Union still had ulterior motives and was constantly endeavouring to put its own interests as a super-Power first.

28. Mr. PRIETO (Chile), speaking on a point of order regarding the debate on the definition of aggression, said that following the 1503rd meeting, a number of delegations had approached the Chilean delegation to ask if Chile was in fact to be one of the co-sponsors of draft resolution A/C.6/L.993. His delegation was in no doubt as to its status as a sponsor since no opposition had been demonstrated when, at the 1502nd meeting of the Committee, it had stated its intention of becoming a co-sponsor of the draft resolution. The situation called for clarification, however, since a number of delegations had expressed their uncertainty and also because press release GA/L/1712 stated that "several other delegations have expressed their willingness to become co-sponsors", but went on to list only the original sponsors of draft resolution A/C.6/L.993. In order to clear up any doubts, his delegation wished to know the opinion of the Officers of the Committee on Chile's position in that connexion.

29. The CHAIRMAN noted that the Chilean delegation was addressing a question to the Officers of the Committee. It seemed possible to conclude from the replies given at the 1503rd meeting that the solution of the question depended on the wishes of the original sponsors of the draft. He was, however, prepared to consult the Officers and to communicate their reply at a later meeting.

30. Mr. ROSENSTOCK (United States of America) recalled that the draft definition had been finally adopted by the Committee. Before its adoption, some countries, including Chile, had taken the floor and had expressed the wish to become co-sponsors of the document. The Chairman himself had then brought up a rarely invoked rule by indicating that the original sponsors could make an objection if they wished. No such opposition had emerged before the adoption of the draft resolution, and the question had been briefly touched on in the statement which his delegation had made after that adoption. It had stated on that occasion that it presumed that an agreement existed to the effect that all the countries which had expressed the desire to become co-sponsors were in fact considered as such. No delegation had raised the least objection at that time.

31. His delegation could not agree that the Chairman, in collaboration with either the Committee Secretary or the Officers, should have the right to revert to the question of who was to be considered as a co-sponsor of the draft resolution. The Committee could not go so far as to create a "*non-event*".

32. However, if the question was illegally reopened, his delegation would be obliged to raise very serious questions concerning many of the States which were sponsors of document A/C.6/L.993 and several of the delegations which had spoken and whose practice in the sphere of political and human rights was unquestionably deplorable. His delegation would not be able to associate itself as a sponsor with a great number of States whose names appeared at the head of the draft resolution if it considered that the fact of accepting a co-sponsor amounted to approval of its political régime.

33. Mr. KOLESNIK (Union of Soviet Socialist Republics) said the Chilean delegation could not be considered as a co-sponsor of the draft resolution, since paragraph 93 of annex V to the rules of procedure of the General Assembly

stated that it was for the sponsors of the document to make the decision. The very fact that that rule had been mentioned before the adoption of the draft resolution proved, if proof was needed, that the question could not be resolved without due consideration. The rules should be respected and the Committee should beware of creating an unfortunate precedent for the future.

34. Mr. STARČEVIĆ (Yugoslavia) considered that the Chairman had been right to stress the existence of applicable rules which conferred the power of decision on the original sponsors. As one of the original sponsors, his delegation was opposed to the inclusion of the Chilean delegation among the sponsors of the draft resolution.

35. The situation was thus clear and if Chile pressed its question and if the officers' reply was that agreement among the original sponsors was not enough to prevent a delegation from becoming a co-sponsor of a document, there would then be no way of preventing a delegation from becoming a co-sponsor of any document. If, however, the opposite solution was adopted, the opposition of one of the original sponsors would be enough to prevent a delegation which expressed a wish to that effect from being included among the sponsors of a document.

36. Mr. PRIETO (Chile) said that he would like to receive clarification on the meaning of paragraph 93 of annex V to the rules of the procedure of the General Assembly. Two theories had emerged following the statement by the representative of Yugoslavia. To his delegation, paragraph 93 meant that the opposition of the majority of sponsors was necessary to refuse the request of a delegation which wished to become a co-sponsor of a document. However, the Yugoslav and Soviet delegations maintained that each of the original sponsors had the right of veto, although that was contrary to the rules of procedure of the General Assembly and of its organs.

37. As it was not satisfied with the Chairman's reply, his delegation called for a recorded vote on the validity of the two theories.

38. Mr. STEEL (United Kingdom) recalled that the draft resolution had been adopted before the least objection had been raised concerning the statements made by any of the delegations which had expressed the intention of becoming co-sponsors of the document. Any vote would therefore seem pointless and the Chilean delegation had the right to be included among the sponsors of the draft.

39. However, if that statement of the facts was contested and if the Yugoslav delegation was allowed to raise an objection, his own delegation, which was also one of the original sponsors of the draft, would then, with the deepest regret, oppose the inclusion of any sponsor apart from the original sponsors.

40. Mr. HASSOUNA (Egypt) said that his delegation was not a sponsor of the draft resolution. However, he considered that it could be concluded without the slightest doubt from the provisions of paragraph 93 of annex V to the rules of procedure of the General Assembly that the agreement of all the original sponsors was necessary for a delegation to be able to join them. The situation was identical to that in which the sponsors had to decide whether to accept or reject an amendment to a draft resolution which they had proposed. Furthermore, that interpretation was confirmed by the practice of the General Assembly; as a matter of principle, his delegation could not accept that a sponsor should be deprived of the right to oppose the inclusion of an additional sponsor.

41. Mr. JEANNEL (France) observed that the basic principle laid down by paragraph 93 of annex V to the rules of procedure of the General Assembly was that it was for the sponsors of a draft to make the decision. United Nations practice did not seem in any way to require that the sponsors should meet and formally take a position. In reality it was necessary for an objection to be raised if the request of a delegation wishing to become a co-sponsor of a draft was to be rejected. In the case in question, his delegation, which was a sponsor of the draft resolution, had not been consulted, and furthermore had not heard the least objection before the adoption of the draft resolution. The United Kingdom representative had rightly stressed that once the draft resolution had been adopted it was no longer possible either to become a co-sponsor or to discuss the legitimacy of the co-sponsorship. It was clear that since no objection at all had been raised when the Chilean delegation had become a co-sponsor, its proposal had been accepted before the adoption of the draft resolution. Had it been otherwise, his delegation would have protested, since it would then have had to have been consulted before any decision was taken, because it was one of the sponsors.

42. Moreover, he considered that it was unnecessary for the Committee to take a vote, since the officers were not empowered to interpret paragraph 93 of annex V to the rules of procedure of the General Assembly, which laid down a perfectly clear rule.

43. Mr. FERNANDEZ BALLESTEROS (Uruguay) shared the view of the representatives of France and the United Kingdom. It, too, was a sponsor of the draft resolution and had never had any knowledge of an agreement among the original sponsors not to accept any additional sponsor. It was for that reason that his delegation had invited the Chilean delegation and many other delegations to co-sponsor document A/C.6/L.993 so as to facilitate the attainment of a consensus in the Committee.

44. His delegation supported the interpretation of paragraph 93 of annex V to the rules of procedure of the General Assembly as confirmed by practice. It had no objection with regard to any of the delegations which had expressed the wish to become co-sponsors of the draft resolution before the vote had been taken. All such delegations had the status of co-sponsors.

45. Mr. CHAVES (Grenada) assured the Chilean and Uruguayan delegations of his firm support. He stressed the importance of the solution to be found for the problem, as it would set a precedent.

46. Mr. SCIOLLA-LA GRANGE (Italy) made it clear that as a sponsor of the draft resolution his delegation had never been consulted by any delegation wishing to become a co-sponsor itself. No objection had been raised before the vote against any of the delegations which had expressed the

desire to become co-sponsors and there was therefore no way to deny them that status. If that interpretation did not prevail, however, his delegation would take the same attitude as the United Kingdom delegation towards all other delegations.

47. Mr. KOLESNIK (Union of Soviet Socialist Republics) observed, in connexion with the comments by the representatives of France and Italy, that his delegation had referred to the rule in paragraph 93 of annex V to the rules of procedure of the General Assembly prior to the vote on the draft resolution. Its intention at that time had been to draw attention to the existence of that provision on the sponsorship of draft resolutions and to stress that the question had not been settled by the sponsors of the draft in question. The Chilean delegation, moreover, had understood its intervention in that sense, and the comments of the French and Italian delegations were not absolutely relevant.

48. One delegation had, moreover, proposed that a vote should be taken. It went without saying that if the question raised by the Chilean delegation was to be considered from a political point of view, the Sixth Committee could in fact give its opinion by means of a vote. If, however, the problem was to be considered from a legal point of view, a vote would be pointless, since it was obvious that the answer had to be given by the sponsors alone who should, consequently, consult each other and settle the problem among themselves, since the Sixth Committee had no competence.

49. Mr. BRENNAN (Australia), speaking on a point of order, observed that the discussion was still concerned with the question of defining aggression. The question raised by the Chilean representative was a legal one and of considerable practical importance. Since the Committee was not yet able to find a solution to it, and in order to save time, it would be better to instruct experts to study it. Accordingly, he proposed that the debate should be adjourned in accordance with rule 116 of the rules of procedure and that the next agenda item, namely diplomatic asylum, should be taken up.

50. Mr. MAI'GA (Mali), speaking on a point of order, recalled that the Chairman had stated that the debate on the question of defining aggression would be closed after the explanations of vote. The Committee therefore seemed to be considering another question, namely that raised by the Chilean representative. Accordingly, it was the adjournment of the debate on that question which was apparently being proposed.

51. The CHAIRMAN explained that, in accordance with article 116 of the rules of procedure, two representatives might speak in favour of, and two against, the motion for adjournment, after which the motion should be immediately put to the vote.

52. Mr. ROBINSON (Jamaica) supported the Australian motion, pointing out that the Committee had more to lose than gain by continuing the discussion. It would be better to entrust the question raised by the Chilean representative to experts. They should perhaps make a distinction between proposals with very few original sponsors and those with at least 60 or so original sponsors. In the first instance, one might insist that they should give their unanimous consent to another delegation becoming a co-sponsor of the proposal, while in the other instance, it would be unfair to confer on every one the right of veto.

53. Mr. PRIETO (Chile) opposed the motion by the representative of Australia. He reiterated that his country was in fact a co-sponsor of the draft resolution in question, and that the question he had raised was of general concern to the United Nations. That question could be settled forthwith.

54. Mr. JEANNEL (France) said that he, too, was opposed to adjourning the debate. Since the Soviet delegation did not dispute the fact that the Chilean delegation was a co-sponsor of the draft resolution in question, there was no reason why the question raised by the Chilean representative should not be decided upon immediately.

55. Mr. HASSOUNA (Egypt), noting that the Committee was by no means unanimous with regard to the question raised by the Chilean representative, supported the Australian motion.

56. Mr. ZULETA (Colombia) said he, too, supported the Australian motion and suggested that the Chairman should give his interpretation of paragraph 93 of annex V to the rules of procedure at the next meeting.

57. The CHAIRMAN said he did not believe that it devolved upon him, in his capacity as Chairman, to interpret that provision.

58. Mr. ROSENSTOCK (United States of America), speaking on a point of order, noted a slight divergence between the position of the Australian delegation and that of the Colombian delegation. Both wanted the debate to be adjourned, but the former did not specify when it should be resumed, while the latter desired that it should be resumed at the following meeting. To enable them to resolve that divergence, he moved the suspension of the meeting for a few minutes, in accordance with rule 118 of the rules of procedure. Invoking rule 119 *(a)* of the rules of procedure, he requested that a decision should be taken on his motion forthwith.

59. The CHAIRMAN said that if there was no objection, he would take it that the Committee adopted the motion of the representative of the United States.

It was so decided.

The meeting was suspended at 5.20 p.m. and resumed at 5.25 p.m.

60. Mr. BRENNAN (Australia) said that his delegation and the Colombian delegation had agreed to move the adjournment of the debate, on the understanding that it would be resumed when the Chairman deemed appropriate, but at the latest after the conclusion of the general debate on the right of asylum. In point of fact, the Colombian delegation feared that the question raised by the representative of Chile might drag on indefinitely.

61. Mr. PRIETO (Chile), speaking on a point of order, requested that the question he had raised should be put to the vote before the Committee took up the question of the right of asylum.

62. Mr. KOLESNIK (Union of Soviet Socialist Republics) felt that the Australian delegation had shifted its position after its consultations with the Colombian delegation. It was no longer requesting the adjournment of the debate in accordance with rule 116 of the rules of procedure, but a disruption in the order in which the agenda items would be considered. Amended in that fashion, his motion could not be put to the vote.

63. Mr. BRENNAN (Australia) stated that his motion had in no way been amended. The Jamaican, Egyptian and Colombian delegations had supported it, while two other delegations had opposed it. The Committee should now abide by rule 116 of the rules of procedure and put the motion to the vote.

64. Mr. MILLER (Canada) pointed out that an adjournment of the debate did not necessarily imply a change in the agenda. He suggested that the Chairman might subsequently give a ruling on whether the request by the Chilean delegation had been opposed by any of the original sponsors of the draft resolution before it had been adopted by consensus.

65. Mr. BRENNAN (Australia), replying to a question by Mr. KOLESNIK (Union of Soviet Socialist Republics), explained that his motion was based on rule 116 of the rules of procedure and was intended solely to adjourn the debate, without disrupting the work programme established by the Committee.

66. The CHAIRMAN put the Australian motion to the vote.

The motion was adopted by 70 votes to 16, with 9 abstentions.

67. Mr. STEEL (United Kingdom) said that his delegation had voted against the motion because it felt that the question raised by the representative of Chile deserved to be settled quickly.

68. Mr. FUENTES IBAÑEZ (Bolivia), speaking in explanation of of vote, said that the Committee should have taken a decision at once on the question raised by the Chilean representative.

69. Mr. PRIETO (Chile), speaking on a point of order, requested that his question should be put to the vote.

70. The CHAIRMAN said that he did not think he could comply with that request, since the Committee had just decided to adjourn the debate.

71. Mr. ROBINSON (Jamaica) explained that he had voted for the Australian motion, for the reasons he had already adduced, but that he was nevertheless of the view that the Chilean delegation should be considered as a co-sponsor of the draft resolution in question.

72. Mr. ZULETA (Colombia) said that his delegation's vote indicated a position identical to that of the Jamaican delegation.

73. Mr. GODOY (Paraguay) said that he had voted for the Australian motion, although he believed that Chile was in fact a co-sponsor of the draft resolution. However, the atmosphere currently prevailing in the Committee was not conducive to an immediate decision. He urged his colleagues to devote the necessary time to studying that question, and to take account of the consequences which might arise from an interpretation of paragraph 93 of annex V to the rules of procedure which would authorize the exercise of a right of veto.

74. Mr. PRIETO (Chile) said there was no reason why an immediate decision should not be taken on the question he had raised and requested that a vote should be taken on it.

75. Mr. HASSOUNA (Egypt) pointed out that the Committee had just decided to take up the next item on its agenda and that it was no longer possible for the question raised by the Chilean representative to be put to the vote.

76. The CHAIRMAN said that in the circumstances, he would put to the vote the ruling by which he had declined to comply with the request of the Chilean delegation that its question should be voted on after the adoption of the Australian motion.

The ruling of the Chairman was approved by 78 votes to 1, with 10 abstentions.

77. Mr. JEANNEL (France) stated that he had abstained in the vote since he felt that the vote was not warranted.

AGENDA ITEM 105

Diplomatic Asylum (A/9704, A/C.6/L.992)

78. Mr. BRENNAN (Australia) said that, in view of the lack of time, he would prefer to postpone his statement until the next meeting.

The meeting rose at 5.55 p.m.

1505th meeting

Monday, 25 November 1974, at 11 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1505

AGENDA ITEM 105

Diplomatic asylum *(continued)* (A/9704, A/C.6/L.992)

1. Mr. BRENNAN (Australia) drew attention to the working paper on diplomatic asylum (A/C.6/L.992) prepared by his delegation. Australia believed that there should be a discussion of the humanitarian, legal and other aspects of the question because it was deeply concerned that uncertainty about the applicable principles should not have detrimental consequences on relations between States or on international co-operation for humanitarian purposes. That uncertainty did not exist in the Latin American region, where five conventions had been adopted and a substantial body of State practice had emerged; but the situation was not the same elsewhere. Many States denied the existence of such a right; others, of which Australia was one, believed that the institution of diplomatic asylum was now recognized in international law for humanitarian reasons, but there were differences of opinion regarding the legality and the extent of that right. His Government felt that, in the interest of friendly relations between States, it would be unwise to allow such confusion to continue.

2. If it was argued that there was no general recognition of the right of diplomatic asylum, practice belied theory. How that practice was viewed—as a persistent aberration or as a fact of legal significance was a fundamental question which must be faced and answered. It might be argued that States would have greater flexibility if the area of doubt was left unresolved, but the perpetuation of doubt was not favourable to the progressive development of humanitarian law or to friendly relations between States. In the recent case of Chile, there had been no grave problems because Chile had accepted the principles evolved in Latin America and applied them to non-Latin American missions; no one knew what might occur if the same situation arose outside Latin America. He recalled the situation during the Civil War in Spain, when 10,000 persons had been given asylum by 20 diplomatic missions in Madrid and Spain had refused safe conduct for the refugees.

3. For many years, there had been a growing sense of the interdependence of nations and a clearly discernible common concern in the international community for the recognition in humanitarian law of the rights of peoples and individuals and for the observance of basic humanitarian standards in their treatment, noted in the dissenting opinion of Judge Alvarez in the South-West Africa case.[1] That view had already affected the practice of States, as in Chile and in Cyprus. The practice of granting asylum was not confined to Latin America. Over half of the States granting diplomatic asylum in Chile had been non-Latin-American States. If they could grant asylum in Chile, it was obviously proper for Chile to do the same in their countries. That was very important, as there was no certainty that a similar situation would not occur outside Latin America.

4. It was often argued, on the basis of the International Court of Justice's opinion in the Asylum case of 1950,[2] that there was no right of asylum in general international law. In that case, the only rationale for the Court's decision would appear to be that the law on that subject was in a kind of twilight zone. The Court had made no distinction between Latin American law and general international law, to the dissatisfaction of the Latin American countries, which had taken action by adopting the Caracas Convention on Diplomatic Asylum in 1954.

5. In the last 25 years, a substantial body of State practice had emerged and there had been a vigorous development of international humanitarian law. In the Corfu Channel case[3] the Court itself pointed to humanitarian considerations as a source of law. Therefore, the law of diplomatic asylum could no longer be said to be in a twilight zone and the institution should now be recognized in international law on humanitarian grounds. The practice of asylum was as old as the human race and would continue to exist wherever men were persecuted by reason of their race, religion or political opinions. The question of the limit of the right to grant asylum then arose. There was general agreement that it should be granted only as an urgent and exceptional measure, but there was no definition of what constituted urgent and exceptional cases. The discretion of the State to grant or to refuse diplomatic asylum must be fully recognized. There should also be some recognition by States of what moral and humanitarian considerations should be taken into account.

6. Some States considered that granting diplomatic asylum was a derogation of sovereignty, but in the Asylum Case of 1950 the International Court of Justice had expressed the view that it would involve no unlawful interference where diplomatic asylum had a legal basis. In many cases there was no question of any derogation of sovereignty in any event, i.e., in the case of persons pursued by mobs, or that of the members of a *de jure* Government during violent insurrections.

7. It had been argued that the granting of diplomatic asylum was based on the discarded notion of the extraterritoriality of diplomatic premises and was inconsistent with the Vienna Convention on Diplomatic Relations of

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1 See *International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950*, p. 174.

2 *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, p. 266.

3 *Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949*, p. 4.

1961,[4] but his delegation contested the validity of those arguments. First, the right of diplomatic asylum was not based on extra-territoriality; at the most, it might be considered an aspect of the inviolability of diplomatic premises. However, Australia was of the view that the grantee of asylum derived his right to protection from neither of the foregoing reasons but from his quality as a person in need of protection. Secondly, those that argued that diplomatic asylum was not in accordance with the functions of diplomatic missions as defined in article 3 of the Vienna Convention overlooked the fact that article 3 had been purposely left open-ended, so as, *inter alia,* to avoid any prejudice to the position of those States which accepted the right of diplomatic asylum. Under article 41 of that Convention, the diplomatic premises must not be used in any manner that was incompatible with their functions, but both article 41 and article 25 made it clear that the receiving State must accord full facilities for the performance of the functions of the mission. As to the question whether the State granting asylum had the unilateral right to qualify the person as a grantee, the answers must be in the affirmative if the grantee's life and liberty were not to be endangered. Thirdly, there was the question of safe conduct. If the territorial State was under no obligation to grant safe conduct, the asylum-granting State must care for the refugees, and if the territorial State asked it to withdraw its mission, the life and liberty of those it had accepted as grantees of asylum would be in jeopardy.

8. Some of those questions had been dealt with by the Latin American countries in the Caracas Convention. As pointed out by Mr. Francisco Villagrán Kramer in *L'asile diplomatique d'après la pratique des Etats latinoaméricains*[5] the right of asylum would be a necessary evil as long as the lives of great and wise men were endangered.

9. The Australian delegation realized that diplomatic asylum was a difficult and complex subject which delegations would need time to consider. Therefore, in submitting the draft resolution included in document A/C.6/L.992, all it was seeking at the time was acceptance of the idea that all States should be given an opportunity to submit in writing any information and views they considered relevant and that the Secretary-General should be asked to prepare a report analysing that information, with a view to stimulating discussion at the next session of the General Assembly. His delegation hoped that a sufficient measure of agreement would be reached for the formulation of operative principles; that might take time, but the task must be faced. It had confidence that States were sufficiently responsible and realistic not to abuse the institution of diplomatic asylum to interfere in the internal affairs of other States.

10. One important draft convention on territorial asylum had already been adopted by the Colloquium on the Law of Territorial Asylum, held at Bellaggio in April 1971, and it followed the Declaration on Territorial Asylum adopted by the General Assembly in resolution 2312 (XXII). Australia welcomed the fact that agreement had been reached in that Declaration on the definition of the persons entitled to receive asylum and on the principle of unilateral qualification. The International Law Association had also adopted a draft Convention on Diplomatic Asylum in 1972. Much of the groundwork had therefore already been done. At a later stage, his delegation would formally introduce a draft resolution along the lines of the text reproduced in the working paper. He trusted that it would command wide support.

11. Mr. CHAVES (Grenada) said that his delegation supported the initiative taken by the delegation of Australia, which should extend the rule of international law and help to promote friendly relations among States. Commenting on the Australian working paper, he strongly endorsed the "contemporary relevance" of diplomatic asylum; it was also a question of great urgency, since heads of State were being kidnapped and eminent persons executed in various parts of the world.

12. Turning to the statement just made by the Australian representative, he did not agree that there was so much uncertainty with regard to the principles and rules of diplomatic asylum. As a result of a long tradition, those principles and rules had been amply developed in Latin America, and the rules themselves had been tested in the courts over the last 150 years.

13. In the view of his delegation, the General Assembly should adopt a general international agreement on diplomatic asylum, not only for humanitarian reasons but to facilitate friendly relations among States, establish a firmer basis for international intercourse, and save persons whose lives were precious not only to the individuals concerned but to the region and the world because of the services they had rendered to humanity.

14. The Australian representative had pointed out that diplomatic asylum was important in the case of persons who were persecuted for their race, religion or political opinions; but there was a further category of persons that he had omitted to mention, namely, members of ethnic groups.

15. The formulation of principles and rules on diplomatic asylum should be welcome as an addition to the existing body of international law. Grenada, as a member of the Latin American Group, was proud of the long Latin American tradition in that respect which had led to the adoption of the Havana Convention on Asylum of 1928, the Montevideo Convention on Political Asylum of 1933, and finally the Caracas Convention of 1954. The premise of all three of those Conventions was that diplomatic asylum was a generally accepted principle of international law which was not subject to discussion. In Grenada's view, it was already accepted as an institution. The International Court of Justice had unfortunately failed to take advantage of its opportunity to recognize that institution, but that was merely an additional reason for the General Assembly now to adopt an appropriate convention.

16. He would vote for the draft resolution to be introduced by the Australian delegation, of which his delegation would like to become a sponsor.

Mr. Broms (Finland), Vice-Chairman, took the Chair.

4 United Nations, *Treaty Series,* vol. 500, No. 7310, p. 95.

5 Published by the Faculty of Law of the University of Geneva and printed at Brussels (Imprimerie Amibel, 1958).

17. Mr. SETTE CAMARA (Brazil) welcomed the initiative of Australia in proposing the item on diplomatic asylum for discussion, with a view to the future preparation of a declaration on diplomatic asylum, which would be complementary to the Declaration on Territorial Asylum contained in General Assembly resolution 2312 (XXII). Over the centuries, the broad interpretation of diplomatic asylum, according to which envoys claimed the right to grant asylum in their residential quarters of diplomatic missions to any individual seeking refuge therein, had given way to a narrower view of asylum as a mere by-product of the inviolability of the premises of the diplomatic mission. For the majority of States, diplomatic asylum had ceased to exist as an internationally recognized right of States as early as the nineteenth century. The exception was Latin America, where the old practice had continued to be recognized and had been embodied in international conventions. The inter-American conventions on diplomatic asylum of 1928 and 1954 were the most important instruments establishing the legal basis for the practice of asylum in Latin American countries.

18. The working paper circulated by Australia confined itself to requesting from the Secretary-General measures with a view to eliciting information and the views of States Members concerning the practice of asylum. At the same time, the Secretary-General was asked to provide the Assembly with an analysis of the material presented by States. His delegation supported the preliminary steps suggested by the representative of Australia, which it hoped would result in recognition by the General Assembly of the Latin American institution of the right of asylum for application all the world over. The Latin American countries would no doubt be able to provide a wealth of information concerning diplomatic asylum.

19. While it would be premature to embark on any consideration of the substance of the item at the present stage, his delegation would like to indicate two aspects of the right of diplomatic asylum which it considered to be of the utmost importance. The first was the fact that common criminals could not benefit from the right of asylum and the second was the right of the granting State to qualify the offence of which the individual was accused. His Government had emphasized those aspects of the problem in its observations on the draft articles prepared by the International Law Commission on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons.[6] In that connexion, his Government had stated that the perpetrators of acts of terrorism should not be entitled to asylum, which, however, must be maintained in so far as its basic principles were concerned, especially as regards the right of the country granting asylum to qualify the nature of the crime. His delegation hoped that those observations would be taken into consideration in connexion with the studies proposed by the Australian delegation.

20. Mr. ESCOBAR (Colombia) said that diplomatic asylum was an institution in which the countries of Latin America took pride, having practised and upheld it from the beginning of their lives as independent States. Latin America had not given birth to the concept of asylum. In 1802 the jurist Bonalde had expressed his opposition to the surrender of political refugees; in 1815 the principle of protection of persons suffering persecution for their political views had been proclaimed in the House of Commons of the United Kingdom by Sir James McKintosh. Lord Palmerston had affirmed the right of political refugees to asylum. In Latin America, the immense distances and problems of communication made territorial asylum difficult and compelled political refugees to seek asylum in diplomatic missions. In Colombia the first well-known case of asylum had occurred in 1854, when a former Secretary of State had sought refuge in the United Kingdom legation while two of his companions took shelter in the United States legation. Following a military coup in 1861, the acting President of Colombia had received diplomatic protection from the United Kingdom Government. During the century of its independent existence, there had been more than 50 cases of diplomatic asylum in Colombia, and that practice had not had any adverse effect on the fraternal relations between Colombia and other Latin American countries. During the present century, three eminent citizens of Colombia, who subsequently were elected to the Presidency, had taken shelter in diplomatic missions of neighbouring States. Latin America had a long history of protecting the life or freedom of political leaders by means of diplomatic asylum. No less than 10 eminent Latin Americans, who at some time in their lives had been heads of State, had found refuge in diplomatic missions. In general, the Latin American institution of diplomatic asylum had been used to protect persons who were being persecuted as a result of their political activities and not to shelter common criminals. The right of the State granting asylum to determine whether the grounds for asylum were political or not, which was known as the right of qualification, had been used prudently and in accordance with generally accepted principles so as to prevent distortion of the institution of diplomatic asylum. In approving the Declaration on Territorial Asylum as a logical corollary of article 14 of the Universal Declaration of Human Rights, the General Assembly had left no doubt that granting asylum was a peaceful and humanitarian act which served to promote respect for human rights and fundamental freedoms.

21. In view of the humanitarian purpose of diplomatic asylum and its ample development in Latin America, as witnessed by the inter-American Conventions of 1928, 1933 and 1954, his delegation would enthusiastically support any proposal for an examination of the legal and humanitarian aspects of diplomatic asylum. In that regard, the Australian working paper was in principle acceptable to his delegation. However, it was to be hoped that the final text to be adopted as a resolution would not affect the peculiarities of the institution of asylum in Latin America. His delegation was prepared to co-operate to the fullest with a view to arriving at a text which would be acceptable to all States. He thanked the Australian delegation for its important initiative and commended the representative of Australia on his able introduction of the item.

22. Mr. RAO (India) said that his delegation appreciated the reasons that had prompted the Australian delegation to bring the question of diplomatic asylum before the General Assembly. His Government was giving careful consideration to the subject and would express its considered views at an

[6] See A/9127, p. 8.

appropriate time. Commenting in a preliminary way on the subject, he noted that a clear distinction should be drawn between territorial asylum and diplomatic asylum. The one was not complementary to the other. Territorial asylum was given by a receiving State to such refugees or fugitives from justice as that State might receive and did not constitute an exemption from the jurisdiction of the receiving State. However, on the other hand, as the International Court of Justice had stated in the Colombian-Peruvian asylum case:

"In the case of diplomatic asylum, the refugee is within the territory of the State where the offence was committed. A decision to grant diplomatic asylum involves a derogation from the sovereignty of that State. It withdraws the offender from the jurisdiction of the territorial State and constitutes an intervention in matters which are exclusively within the competence of that State. Such a derogation from territorial sovereignty cannot be recognized unless its legal basis is established in each particular case."[7]

23. While a number of Latin American States had concluded treaties which expressly recognized the institution of diplomatic asylum, that institution had not become part of general international law. United Nations resolutions and declarations relating to human rights made no mention of it, and there had been no conventions or agreements on the subject outside Latin America. Under international law as codified in the Vienna Convention on Diplomatic Relations, diplomatic missions were not treated as part of the territory of the sending State. The concept of extra-territoriality as the basis for diplomatic missions to grant asylum in their premises was no longer valid. Diplomatic asylum was not within the purposes of the diplomatic mission as understood both under traditional international law and under the Vienna Convention. The practice of States, however, seemed to show that although diplomatic asylum was not recognized, a distinction was drawn between diplomatic asylum and cases of temporary refuge within the diplomatic premises on grounds of humanitarian considerations. Upon the cessation of the danger to the life of the person seeking shelter, the grantees of asylum should be asked to quit the mission. In that connexion, he drew attention to a circular issued by the Government of India on 30 December 1967 to all diplomatic missions in India. The circular stated, *inter alia,* that the Government of India did not recognize the right of foreign and Commonwealth missions in India to give asylum to any person or persons within their premises. It was well established that the affording of asylum was not within the purposes of a diplomatic mission. State practice clearly showed that the concept of diplomatic asylum had not become part of international law and that a decision to grant asylum involved a derogation from the sovereignty of the receiving State.

24. Mr. FREER (Costa Rica) said that the institution of asylum had evolved over the centuries to become one of the primary means for the international protection of human rights. However, the institution of asylum had not been codified until the present century and then almost exclusively with reference to Latin America. The right of asylum was referred to in article 14 of the Universal Declaration of Human Rights, which expanded upon the provisions of the Charter relating to human rights. In adopting the Declaration, the States Members of the United Nations had accepted the obligation to ensure the universal and effective recognition of the rights and freedoms referred to in Article 1, paragraph 3, of the Charter, by means of progressive measures taken at the national and international levels. At the twenty-eighth session of the General Assembly his country's Minister for Foreign Affairs (2136th plenary meeting) had reaffirmed Costa Rica's dedication to the ethical norms embodied in the Universal Declaration of Human Rights. In the Latin American region, the ninth Inter-American Conference held at Bogotá in 1948 had adopted the American Declaration of the Rights and Duties of Man,[8] article 27 of which recognized the right to seek and receive asylum. His country considered asylum not only as a right attributed to the State vis-à-vis other States but also as a right attributed to the individual himself as a direct subject of international law. The Constitution of Costa Rica explicitly provided for asylum for persons being persecuted for political reasons. Since the nineteenth century a number of distinguished Latin American politicians had been granted asylum in Costa Rica.

25. Territorial asylum was closely related to diplomatic asylum, since both were governed by the same principles of international law. Asylum was basically a humanitarian institution designed to protect human rights and should never be regarded as contrary to the principle of non-intervention or as a violation of the sovereignty of the territorial State. Diplomatic asylum could not be applied to such acts as terrorism, kidnapping and genocide, which were contrary to both international law and the humanitarian considerations underlying the institution of diplomatic asylum. As a party to the Havana Convention of 1928, the Montevideo Convention of 1933 and the Caracas Convention of 1954, his delegation warmly supported the draft resolution on diplomatic asylum submitted by Australia and endorsed the request made in that draft resolution that an item on diplomatic asylum should be included in the provisional agenda of the thirtieth session of the General Assembly.

Mr. Šahović (Yugoslavia) resumed the Chair.

26. Mr. RILLON (Chile) welcomed the initiative of the Australian delegation in proposing the item on diplomatic asylum and submitting working paper A/C.6/L.992. The practice of granting diplomatic asylum was widespread in Latin America. Where asylum was granted to individuals who were being persecuted for political reasons, the granting State could not be regarded as having violated the sovereignty of the territorial State or having committed an unfriendly act. While the humanitarian basis of the right of diplomatic asylum was unquestionable, there were certain legal implications of the practice which could usefully be investigated. It was to be expected, however, that the task of formulating legal rules on the subject of diplomatic asylum would take several years to complete and that many difficulties would have to be overcome, despite the models provided in the Latin American conventions on the subject. The most recent expression of the right of diplomatic

7 See foot-note 2.

8 See Pan American Union, *Final Act of the Ninth International Conference of American States*, p. 40.

asylum was the Caracas Convention on Diplomatic Asylum adopted at the tenth Inter-American Conference in 1954. That instrument, although needing improvement in certain respects, could serve as a useful reference for international discussion of the problem. Useful results could be achieved by examining the humanitarian foundations of the institution of diplomatic asylum, which were of universal relevance. His delegation would welcome an international discussion of diplomatic asylum but would stress that any instrument resulting from such a discussion should be consistent with regional law on the subject and should not be used, in particular, to distort the Latin American doctrine of diplomatic asylum. With that reservation, his delegation was prepared to co-operate in a discussion of diplomatic asylum and to furnish any information on the subject requested by the United Nations.

27. Mr. GARCIA ORTIZ (Ecuador) congratulated the Australian delegation for its introduction of the item. His delegation would be prepared to support the draft resolution set forth in document A/C.6/L.992. As a member of the Latin American group and the representative of a country which had always defended the practice of diplomatic asylum, he felt it most fitting to support the idea of a universal convention on that institution, the preparation of which should bear in mind the achievements of Latin America in that field. He recalled that at the previous session of the General Assembly the Latin American group had vigorously defended diplomatic asylum during the discussion of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and had succeeded in ensuring the insertion of an article protecting the right of asylum. His delegation hoped that the Australian delegation would accept its offer of co-operation and would like to be a sponsor of the draft resolution ultimately submitted on the topic.

28. Mr. MANSFIELD (New Zealand) congratulated the Australian delegation not only for its initiative in having the current item placed on the Assembly's agenda but also for its willingness to take into account the views of other delegations and to attempt to ensure that the way in which the item was approached and dealt with was satisfactory to all. It had not attempted to press a particular viewpoint but had rather sought to institute a general discussion of a subject of great general and humanitarian interest, one which, in view of events of the last year, had acquired a certain prominence. It was perhaps not difficult to bring to mind a number of problems or situations the proper resolution of which required that, consistently with the principle of State sovereignty, regard must be had to certain other principles or standards accepted as fundamental by the international community as a whole. In such situations, a certain balancing was required, in respect of which it was important to recall that the Charter of the United Nations itself did not deal solely with States but with people as well. The item under consideration raised precisely that kind of issue. It was, perhaps for that very reason, shrouded in some degree of uncertainty and might therefore benefit significantly from the kind of preliminary study and discussion proposed by the Australian delegation.

29. For the discussion of that subject to be as useful as possible, it was desirable that it should proceed on the basis of as much information as possible, particularly as to the way in which Governments viewed the humanitarian aspect. Accordingly, the discussion could best take place after Governments had been given an opportunity to provide relevant information or comments and on the basis perhaps of a report from the Secretary-General bringing together that information and other material bearing on the question. His delegation would fully support any proposal that such a procedure be followed.

AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in their Relations with International Organizations, to be held in 1975 *(concluded) (A/9836)**

30. Mr. HASSOUNA (Egypt), speaking with regard to the Committee's report on the item to the General Assembly (A/9836), recalled that when his delegation had introduced draft resolution A/C.6/L.980 at the 1481st meeting, it had asked the Secretary to read out the names of the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States which were referred to in operative paragraph 2 of that draft resolution. However, it seemed that one liberation movement recognized by the Organization of African Unity had been omitted from that list. In order to avoid future misunderstandings and for the purpose of consistency with the draft resolution adopted by the Third Committee on a similar question of participation,[9] he wished to bring that omission to the attention of the Secretariat, which he hoped would take the necessary steps to remedy it. When introducing the draft resolution, his delegation had made an oral revision to insert the words "in their respective regions" before the word "recognized" in operative paragraph 2. However, for reasons of clarity and after being approached by a number of delegations, he proposed that the words "in their respective regions" should be inserted rather after the words "League of Arab States". That was merely a stylistic and drafting change and had no substantive implications.

31. Mr. RYBAKOV (Secretary of the Committee) said that the list of liberation movements read out at the request of the Egyptian delegation had been the same that had been read out at the Third United Nations Conference on the Law of the Sea. The Secretariat would check the additional information provided by the Organization of African Unity.

32. Mr. ROSENNE (Israel) said that he wished to state for the record his delegation's reservations concerning the question of the admissibility in the Sixth Committee of the statement made by the Egyptian representative, since discussion of the item had been closed and the Committee's report on the item had already been adopted for submission to the General Assembly.

33. The CHAIRMAN said that he had been informed by the Secretariat that the proposed change in the draft resolution was merely a question of style. Accordingly, he

* Resumed from the 1488th meeting.

9 Subsequently adopted by the General Assembly as resolution 3276 (XXIX).

had felt that it could appropriately be considered by the Committee despite the fact that the text of the report to the General Assembly had already been circulated. If he heard no objection, he would take it that the Committee agreed to conclude its consideration of the item by endorsing the Egyptian proposal.

It was so decided.

34. Mr. SANDERS (Guyana), Rapporteur, informed the Committee that a revision of the Committee's report on item 88 would be issued to reflect the change that had been agreed upon.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(concluded)* (A/9619 and Corr.1, A/C.6/L.993)

35. Mr. PRIETO (Chile) said that at the 1504th meeting of the Committee the USSR representative had attempted to insult him by saying that he had "dirty hands". Perhaps his subconscious had betrayed him, for such an allegation would apply not to Chile but to the USSR. He had always believed that the Sixth Committee was a strictly technical and legal body, where demagogy, low politics and insults were out of place. The Chilean delegation had, in its statements on all items considered, spoken in a constructive spirit for the success of the Committee's work. It had by no means done anything which might disrupt the serene atmosphere of that work. However, the USSR representative had not respected the customary rules but had misrepresented the truth and introduced political considerations that were alien to the nature of the Sixth Committee and had then proceeded to launch insults against Chile. His mention of "dirty hands" had perhaps been a reference to the General Assembly resolution condemning Chile for alleged violations of human rights. The charge that the Chilean representative had "dirty hands" could be countered by the charge that the USSR representative's were red with blood. The USSR had a past and present that was too dubious to give it moral authority to preach on the subject of human rights. The social cost of the Soviet experience was more than 35 million dead; he had documents to prove that.

36. Chile had always shown respect for human values. People were free to enter and leave the country as they wished, whereas the USSR was surrounded by walls of shame, iron curtains, which had meant death to millions. On the other hand, the International Red Cross and the High Commissioner for Refugees were visiting Chile without any restrictions, and Chile had invited the Secretary-General of the United Nations to observe personally what was happening in the country. Would the USSR allow the Secretary-General or the International Red Cross to visit the "Gulag Archipelago"—which had been denounced by Solzhenitsyn—a vast territory of horror and torture? Such a visit would, indeed, expose the USSR to the eyes of the world.

37. Chile was a country with a democratic tradition dating back some 160 years. It was open to all kinds of social experience and high standards and legal norms were observed in an exemplary fashion. Chile's armed forces remained at home and had always remained obedient to the civil power. Its people and institutions did not change suddenly from one day to the next without strong and valid reasons.

38. On 11 September 1973, Radio Moscow had announced to the world that a "Fascist coup" had taken place in Chile, resulting in the deaths of 100,000 persons. That had been repeated daily at all hours, according to the theory of Goebbels that if a lie was repeated often enough some of it would be believed. Who could have known at that date how many Chileans had died? In Chile, the Congress comprised 200 members, 80 of whom belonged to the so-called Popular Unity Party. Not one single leftist deputy had died, nowever. Apart from the unnecessary suicide of former President Allende, which, as Chileans and Christians, his delegation deeply regretted, not one leader from the Popular Unity Party of any importance had died, nor had any deputy died. Rarely in history had a country been slandered as much as Chile had. The truth was that the military intervention of 11 September had taken a social toll of approximately 1,800 persons from both sides of the conflict.

39. The Soviet Union was accustomed to large-scale massacres, and he recalled in that connexion the Katyn massacre, the death of 80,000 patriots in Hungary as a result of Soviet intervention, and Stalinism, which had been denounced by Nikita Khrushchev himself and which had meant the death of over 25 million persons.

40. He regretted to have been obliged to engage in polemics, but Chile, if provoked, would reply with facts. Chile was a country where women, children and men stood ready to defend their right to live as a free people sovereign over their own fates. He expressed appreciation to those delegations which had supported Chile at the 1504th meeting of the Committee.

41. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the Chilean representative was trying to impose a political discussion on the Sixth Committee. He had first made an attack on the Chair and had now attacked the Soviet delegation. He had done so because the Chairman and then a number of delegations, including that of the Soviet Union, had recalled a well-known rule of procedure that had to be observed in the co-sponsoring of a draft resolution by a delegation. He had no doubt that the Chairman had performed his duties in an entirely objective manner, and that he had the full support of the Committee. The question was, however, why Chile had wanted to co-sponsor a draft resolution on the question of defining aggression. Clearly the reason was that the Chilean junta which had seized power was politically completely isolated and all progressive peoples were making indignant protests against the military clique which was practising a policy of terror against the Chilean people. The junta's acts had been and were being sternly condemned by the United Nations and its various bodies, in the Commission on Human Rights, as well as in the Third Committee and General Assembly.

42. How then could the representative of Chile allege that his country was an example of democracy? Mass execu-

tions were being held there while the ruling military clique declared its support of the International Covenants on Human Rights. Having in effect set itself up against the United Nations, the Chilean delegation was none the less trying to become a sponsor of one of the most important draft resolutions to be adopted at the current session. The Chilean representative had indeed understood him correctly when he had said that the Chilean junta had no moral right to be a sponsor of the draft resolution because its hands were bloody. Having made his foul and slanderous statements, the Chilean representative had merely shown that he was foul-tongued as well. The Chilean delegation's actions had been prejudicial to the Committee's discussion of the item on the question of defining aggression, but even more prejudicial to the Chilean delegation.

43. Mr. ARNELLO (Chile) said that the Committee had just witnessed the customary method of Soviet delegations, namely the distortion of facts even when addressing those who had actually seen the events. The USSR had launched a widespread international campaign against Chile but had not responded to a single charge made by Chile. The USSR representative had merely brought out his customary repertory of slander. Anyone reading between the lines would see that it amounted to absolutely nothing.

44. He had asserted that the intervention of the military junta had put an end to freedom, democracy and law in the country. He drew attention, however, to the words of USSR authors published the previous summer in the *World Marxist Review* and other Soviet publications, analysing and drawing conclusions concerning the events in Chile. The failure of the experience of Soviet intervention in Chile had been explained by the fact that the free press there had not been crushed and stifled with sufficient speed—hardly a statement reflecting love of democracy—by the fact that the Allende Government had moved very slowly in the political and economic fields and had given counter-revolutionary forces time to prepare their defence, by the fact that communist Chile had failed to urge Allende to nationalize all private commercial and industrial activities without compensation and to organize vast organizations of workers and peasants like the Soviets for use as an extra-legal tool, and by the fact that communist penetration of the armed forces had been inadequate to prevent action on their part. In short, they had alleged that the action taken had not been rapid, total, or violent enough to put down law and democracy and had thus given counter-revolutionary forces an opportunity to rise up and put an end to totalitarianism.

45. Many delegations had not understood at the time, perhaps, that those were the facts behind the USSR delegation's calumnies.

46. He felt that the USSR delegation had exposed itself in the Committee when it had brazenly stated that Chile had no moral authority to co-sponsor a draft resolution on the definition of aggression. The USSR and Czechoslovakia were sponsors of that draft resolution, and anyone who recalled the events of six years earlier would understand how disgraceful it was that the aggressor and victim should be sponsors of that draft resolution.

The meeting rose at 1.30 p.m.

1506th meeting

Tuesday, 26 November 1974, at 11 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1506

Tribute to the memory of U Thant, former Secretary-General of the United Nations

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of U Thant, former Secretary-General of the United Nations.

1. U KYAW MYINT (Burma) said that on behalf of the Socialist Republic of the Union of Burma, the Burmese delegation and the family of the late U Thant, and in his personal capacity, he wished to thank delegations for their condolences on the death of the late Secretary-General. He assured Members that he would convey their messages of sympathy to his Government and to the members of the bereaved family.

AGENDA ITEM 105

Diplomatic asylum *(continued)* (A/9704, A/C.6/L.992)

2. Mr. FERNANDEZ BALLESTEROS (Uruguay) congratulated the Australian delegation for having requested the inclusion of the item on diplomatic asylum in the agenda of the General Assembly. He greatly appreciated the references to Latin America contained in the working paper on the subject (A/C.6/L.992). Latin America was proud of its long-standing tradition of granting diplomatic asylum, which had been institutionalized in several regional agreements, beginning in 1889 at Montevideo and culminating in 1954 at Caracas. His delegation agreed with the programme of work proposed in the draft resolution contained in document A/C.6/L.992.

3. He wished to address himself to certain essential aspects of diplomatic asylum which should be taken up by the United Nations in its consideration of the item. Like other Latin American States, his country was prepared to collaborate in any studies and debates on the subject and was open to any suggestion that might lead to improvements in the institution of asylum and further safeguard its humanitarian objectives. His delegation would not, however, consent to any measure that might be detrimental to the principles and rules that had been embodied in Latin American agreements and practice, although he was aware that a perfect statute had not yet been achieved. Moreover, like many others, he suspected that the universalization of the institution might militate against its fundamental principles or weaken its effectiveness.

4. There seemed to be some confusion regarding certain aspects of the question. The first such area of confusion concerned the basis for diplomatic asylum. There had been some insistence that the item on diplomatic asylum should be considered together with the implementation of the provisions of the Vienna Convention on Diplomatic Relations of 1961. Furthermore, some statements seemed to imply that diplomatic asylum was derived from the fictional extra-territoriality that was sometimes attributed to diplomatic missions or the privileges of inviolability and immunity that were granted such missions. There was absolutely no ontological identity between the two items. That was clear, above all, from the fact that the States which practised diplomatic asylum had not found it necessary to have recourse to the Vienna Convention of 1961. The subject of diplomatic asylum had been discussed in an inter-American forum 72 years before the Vienna Convention had been drawn up and the most recent of the five conventions on the subject had been signed seven years before the Vienna Convention. Diplomatic privileges were clearly granted solely by virtue of the diplomatic function itself. That was recognized in the preamble and in article 25 of the Vienna Convention.[1] Diplomatic asylum was based on a principle that went beyond the protection of the granter of asylum, namely the protection of the person receiving asylum. It was surprising that the institution should be regarded with misgiving, because the rights it guaranteed were all recognized and protected by the Universal Declaration of Human Rights and the Charter of the United Nations.

5. He would even go so far as to say that, should a declaration on diplomatic asylum eventually be adopted, its preamble would not be very different from that of the Declaration on Territorial Asylum contained in General Assembly resolution 2312 (XXII). Diplomatic asylum was merely a temporary situation preceding territorial asylum, which was based on the same humanitarian considerations.

6. It had been said that the granting of diplomatic asylum was not one of the functions of diplomatic agents under the Vienna Convention of 1961. It was logical that such a function should not be expressly mentioned in a convention the majority of whose signatories did not practise diplomatic asylum. However, the Convention did not preclude the legitimate exercise of that right—as the Australian delegation had so rightly pointed out at the preceding meeting—by diplomatic missions of countries that had incorporated it in their legal systems.

7. On the question whether diplomatic asylum was indeed a human right or a power of the State granting it, the Caracas Convention of 1954 had taken the latter view. The Government of Uruguay had entered a reservation to the relevant article, as well as to the article which stated that anyone, regardless of nationality, could receive diplomatic asylum. His Government had felt, and still did, that everyone had the right to receive asylum regardless of sex, nationality, opinion or religion.

8. That point was closely related to another criticism that had been raised with regard to diplomatic asylum, namely that it was a form of intervention in the domestic politics of another country. That criticism could also be addressed to territorial asylum. His delegation would answer that criticism by referring to Latin American practice, which was a credit to the nations that had applied it; a high degree of political maturity was required to allow another Government to evaluate coldly what those concerned judged with passion, and even more so to acknowledge that such evaluation was not an unfriendly act but rather the exercise of a power granted by American international law. That was because asylum was, first and foremost, a means for guaranteeing the political liberty inherent in democratic systems.

9. It was to safeguard those humanitarian principles that—taking the Caracas Convention of 1954 as an example—it had been stipulated that the State granting asylum was legally obliged to take unilateral action and to provide a safe-conduct once it decided to grant asylum; those were essential principles of the institution of asylum.

10. There were, however, limits to the granting of such protection, just as territorial asylum was counterbalanced by extradition. Diplomatic asylum should be granted only to those who were persecuted for political reasons or who had committed a political offence—never to common criminals. Furthermore, it should be reserved for those within the first category who had expressed their ideas courageously and altruistically. It should not be granted to those whose hands were stained with innocent blood and who tried to achieve their political goals through the indiscriminate exercise of terror.

11. The humanitarian aspect of asylum could not be disregarded by civilized nations. That was attested to by the fact that that aspect of the subject was currently under consideration by the Third Committee, at the request of the United Nations High Commissioner for Refugees. The legal codification of the subject should be referred to the International Law Commission, which at its first session had included the right of asylum in its preliminary list of international legal matters that required codification. American international law, with its 85-year history, provided a guide which should be expressly mentioned in the preamble to the draft resolution on the subject.

12. Mr. YASSEEN (Iraq) drew attention to a number of problems raised by the question of diplomatic asylum. He did not agree that a comparison could be drawn between diplomatic asylum and territorial asylum. United Nations

[1] United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

documents and publications on the subject of asylum referred to territorial asylum and not diplomatic asylum. Diplomatic asylum had been practised on a regional basis, mainly in Latin America, and the extension of the institution would give rise to a number of questions. The inclusion of the item in the agenda could, however, be justified, as it would have a humanitarian purpose. His delegation did not wish to express its views on the subject at the current stage because it would need time to do the necessary research. It would be useful to study the subject in greater depth at a future session, at which time the Committee should have before it studies and the views' of Governments. He suggested that, for the time being, the Sixth Committee should adopt a draft resolution that would be purely procedural in nature; it should request the Secretary-General to submit a study on the subject to the General Assembly at its thirtieth session. The Australian working paper could be the basis for such a study. A substantive discussion on the subject would be premature at the current stage.

13. Mr. SILVEIRA (Venezuela) said his delegation had read with interest the working paper submitted by the Australian delegation and listened attentively to the statement by the Australian representative. In the Americas, the institution of diplomatic asylum had come into conflict with the spectre of intervention and the rigid wall of sovereignty. Consequently, during the nineteenth and twentieth centuries, the American States had been involved in controversies relating to diplomatic asylum, which had led them to reflect on the conventional rules governing that institution in the Americas. The Havana Convention of 1928 and the Montevideo Convention of 1933 had not fulfilled the objectives of that generous institution; it had therefore been necessary to draw up the Caracas Convention on Diplomatic Asylum of 1954. That Convention contained no really new provisions, aside from the obligation of the territorial State to provide the necessary guarantees to enable the person receiving asylum to leave the country freely and to provide him with a safe-conduct. Nevertheless, the Caracas Convention represented an excellent codification of the existing law on the matter. It was possible that disputes might again arise concerning the interpretation and application of the instruments governing asylum in the Americas. The American States, including his own, had both the instruments and the goodwill that were needed to settle them. The Havana, Montevideo and Caracas Conventions represented the contribution of the Americas to any study of the humanitarian and legal aspects of the institution of asylum carried out by the United Nations.

14. His delegation fully agreed with the statement by the Colombian representative (1505th meeting) to the effect that whatever measure the United Nations might adopt, it should not be detrimental to the principles of diplomatic asylum that the peoples of the Americas had made such a great effort to develop throughout their history.

15. Mr. HAGARD (Sweden) said he welcomed the opportunity provided by the Australian initiative for Member States to submit their views on the question of diplomatic asylum, which was one of great practical importance. While the interpretation of diplomatic asylum differed in various parts of the world, it was generally recognized that the premises of diplomatic missions were inviolable. The purpose of the inviolability was to permit the members of the staff to perform their functions in the proper manner. Consequently, the premises must not, as a general rule, be used in a manner incompatible with those functions, for instance, to prevent the receiving State from exercising its jurisdiction. States Members of the United Nations had further committed themselves to promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. However, that commitment might sometimes need to be reconciled with the other obligations of a State. There might be cases where such other obligations must be set aside in favour of the overriding obligation to protect the life, physical integrity or personal freedom of an individual. There were strong humanitarian reasons in favour of diplomatic asylum in such cases.

16. While his Government strongly felt that it should be possible for missions, in exceptional and urgent cases, to save the lives of people facing a threatening situation, it did not believe it necessary to codify the evident human obligation of every man to give people temporary humanitarian shelter. There was no need for the time being to elaborate further norms or guidelines indicating how States should act in that respect. However, taking into account the different attitudes and ideas presented in the Committee, Governments would be able to consider what further action it would be useful to take.

17. Mr. SA'DI (Jordan) agreed with the view that diplomatic asylum was a question requiring thorough study prior to the formulation of a convention. The granting of diplomatic asylum by some countries and not others had a negative effect on inter-State relations, since any mission taking such action might be regarded as hostile or as supporting the aims of the person granted asylum, thus laying itself open to blame by other States or by the State in which the mission was situated. He therefore supported the aim of the Australian delegation, namely the formulation of an international instrument to define diplomatic asylum, since that would give Governments an opportunity to express their views.

18. Mr. ZALDIVAR BRIZUELA (El Salvador) said his delegation welcomed the initiative taken by Australia with a view to including in the agenda of the General Assembly the question of diplomatic asylum, which it was now more than ever necessary to codify on a world-wide basis. It was a legitimate source of pride for the countries of Latin America that diplomatic asylum had been developed in that region; asylum protected the fundamental freedoms of the individual in circumstances in which it was difficult for the law to operate, maintained a balance in the internal politics of States, preserved their soveriegn rights and safeguarded the principle of non-intervention in the internal affairs of other States. The right of asylum has been institutionalized in Latin America by the adoption of the Convention on Asylum at Havana in 1928, the Convention on Political Asylum at Montevideo in 1933 and the Conventions on Territorial and Diplomatic Asylum at Caracas in 1954. Therefore, the question under discussion was closely related to the political history of the Latin American countries and formed an essential part of their legal order. His delegation consequently associated itself with the remarks of earlier

Latin American speakers concerning the need to safeguard the principles laid down in the inter-American conventions he had mentioned.

19. Mr. ROSENNE (Israel) expressed appreciation of the material made available by the Australian delegation, which would facilitate the work of the Committee in discussing the question of diplomatic asylum. His delegation found itself in a considerable measure of agreement with the suggestion that, following certain important international jurisprudence, considerations of humanity were, in given circumstances, a proper factor to be taken into account in developing and applying the law. That statement referred simply to what might be called the general colouration of current jurisprudence and the sources of its ideological inspiration. Such humanitarian colouring was a modern reflection of historic religious and legal doctrine evolved by the ancient Hebrews in connexion with the concept of "cities of refuge" and the sanctity of the altar–political and territorial asylum in modern terms.

20. His delegation had also noted that the Australian delegation considered that the discretion of a State to grant or refuse to grant diplomatic asylum must be fully recognized. There should be no limitations on such discretion. In other words, the decision of a State regarding the granting of diplomatic asylum was essentially a political matter. In the view of the highly delicate political nature of such decisions, his delegation considered that too rapid and too far-reaching action and too searching an investigation into national practice might be counterproductive, since national practice in a given case might reflect some immediate considerations and not be conducive to generalization. Moreover, there were important local factors that frequently found expression in regional instruments which might not lend themselves to universalization. However, his delegation would not oppose a brief report by the Secretary-General if that was the desire of the majority. Such a report would serve as a catalogue of the standing of diplomatic asylum in current international law and practice. In any such report, account would be taken of paragraphs 372-378 of the "Survey of international law": a working paper prepared by the Secretary-General.[2] In addition, all the views expressed in the current debate would have to be kept in mind; and a careful balance must be preserved so as to ensure that asylum in any of its forms would not become a pretext shielding pure criminality. In view of the delicate political factors involved in any case in which asylum was granted, or requested and not granted, it was doubtful whether Governments ought to be asked at the current stage to submit views and statements on practice to the Secretary-General. The inclusion of such an invitation in any future resolution might prove a source of embarrassment for those Governments which did not wish to make any written observations at the current stage. As a general principle, his delegation considered that a clear distinction must be maintained between territorial aslyum and diplomatic asylum, and that maximum care was needed before any analogies were drawn between them. His delegation's position of not opposing a study on the question of diplomatic asylum by the Secretary-General if that was the will of the majority implied no commitment on its part as to future action. His delegation was not yet satisfied that international practice was sufficiently developed in general to make it feasible for the General Assembly at the current stage to begin the process of converting any existing customary rules into a convention.

21. Mr. YOKOTA (Japan) said his delegation fully understood the humanitarian considerations which had prompted the Australian delegation to request the inclusion in the agenda of the item under discussion. It was also aware of the need for the international community to consider more actively the humanitarian aspect of the problems which might arise in connexion with political refugees. However, there was a need for the utmost caution in attempting to solve humanitarian problems by enlarging the regional practice of diplomatic asylum or by the world-wide institutionalization of such a practice. The first problem involved was fundamental, namely the conflict between humanitarian concerns and territorial sovereignty, including the exercise of criminal jurisdiction by a territorial State. However important humanitarian considerations might be, and they were often very compelling, it was undeniable that the granting of asylum by a diplomatic mission constituted a derogation from the territorial sovereignty of the State in which that mission was situated. As had been indicated by many qualified publicists and also by the International Court of Justice in the Asylum case,[3] international law had not thus far recognized the right of States to grant diplomatic asylum as a part of customary international law. To institutionalize such a right as a rule of general international law by making an exception to the principle of territorial sovereignty would require an extremely difficult readjustment of this well-established principle.

22. Secondly, diplomatic missions should be established primarily for the purpose of maintaining and developing friendly relations between sending and receiving States. The granting of diplomatic asylum by a diplomatic mission was therefore clearly outside the scope of its ordinary activities. There was a danger that the institutionalization of diplomatic asylum as a principle of international law would inevitably increase the number of refugees attempting to escape from the jurisdiction of the territorial State. Such a phenomenon could well hamper the achievement of the very objective of establishing diplomatic missions. His delegation had noted that the representative of Australia, in his introductory statement, had limited the granting of diplomatic asylum solely to urgent and exceptional cases and appreciated Australia's careful approach to the problem. However, it would be very difficult for the international community to establish generally accepted criteria which took into account all the cases of exceptional circumstances without giving rise to the danger of abuse. Admittedly, extraordinary situations might justify extraordinary measures, but their very exceptional nature made it almost impossible to establish general rules applicable to all such situations. His delegation noted that in the past, certain countries had effectively accorded diplomatic asylum on a case-by-case basis despite the rather negative *opinio juris* expressed on the subject.

23. Thirdly, in many cases the problems related to political refugees seemed to be deeply rooted in the

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2 See *Yearbook of the International Law Commission, 1971*, vol. II, part two, document A/CN.4/245, p. 1.

3 *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, p. 266.

political and social environment of the country concerned and the granting of asylum in exceptional cases was only a temporary and partial means of alleviating the suffering of such refugees. A fundamental solution of those problems must be sought, in the final analysis, within the framework of better protection of human rights.

24. Diplomatic asylum could not function properly if the person granted asylum could not leave the country because of the lack of assurances on the part of the territorial State. In other words, the person granted asylum must be given a safe-conduct. In order to cope with that necessity, however, it might be necessary for some countries, including his own, to amend their domestic laws and regulations.

25. In view of those problems the international community must proceed with the utmost caution in any study of diplomatic asylum and it would be premature to take substantive decisions at the current session on the future handling of the item. He commended the careful approach recommended by the Australian delegation, which involved, as a first step, inviting Member States to submit their views on the question, and recognized the usefulness of preliminary studies which would provide the General Assembly with a better perspective for determining the advisability of further consideration of the question of diplomatic asylum.

26. The CHAIRMAN said that, with the Committee's consent, he would declare the list of speakers on the item closed at 1 p.m. that day.

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(continued) (A/9617, A/C.6/L.984, L.994)**

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: report of the Secretary-General *(continued)* (A/9711 and Corr.1, A/C.6/L.991, L.995)

27. Mr. SAM (Ghana) introduced draft resolutions A/C.6/L.994 and L.995 on behalf of the sponsors.

28. Draft resolution A/C.6/L.994, in the first preambular paragraph, referred to the report of the United Nations Commission on International Trade Law on the work of its seventh session (A/9617), and in the second preambular paragraph drew attention to the terms of reference of the Commission. The third preambular paragraph recalled the various resolutions of the General Assembly commending the Commission's work, and the fourth preambular paragraph reflected the views expressed in the Committee that peaceful and beneficial trade relations between nations served to strengthen peaceful coexistence, thus promoting the general economic and social well-being of all peoples in the world, especially those in the developing countries. The fifth preambular paragraph indicated that the Commission had complied with the provisions of section II, paragraph 10, of General Assembly resolution 2205 (XXI), in which the Commission had been requested to submit a copy of its annual report to the United Nations Conference on Trade and Development for comments. The operative paragraphs of the draft resolution closely followed the pattern of resolution 3108 (XXVIII) adopted the preceding session on the Commission's report. Paragraph 1 was almost identical in wording to the latter resolution, and paragraph 2 commended the Commission for the progress made in its work and for its efforts to enhance the efficiency of its working methods. Paragraph 3 reflected the fact that in almost every statement on the report, the Commission had been commended on the progress it had achieved in its work on the liability of ocean carriers. Paragraphs 4 and 5 followed the model of paragraphs 6 and 9 of the resolution of the previous session. Since the draft resolution as a whole contained no controversial issues and the number of sponsors was more than twice as great as in 1973, he hoped that the Committee would adopt it by consensus. In that respect, he announced that Brazil, India and Mali should be added to the list of sponsors.

29. Turning to the draft resolution on the United Nations Conference on Prescription (Limitation) in the International Sale of Goods (A/C.6/L.995), he noted that the Convention on the Limitation Period in the International Sale of Goods[4] adopted by that Conference was intended to replace a tangle of conflicting national laws that provided for limitation periods ranging from six months to 30 years. The basic aim of the Convention was to fix a uniform time-limit within which buyers and sellers who were parties to a contract for the international sale of goods would be entitled to sue to exercise their rights or claims under the contract. The central provision of the contract was article 8, which fixed the limitation period at four years. Further provisions specified exactly when the limitation period began, when it ceased to run, under what circumstances it could be extended, how it could be modified by the parties and how it was calculated. When a party making a claim was prevented by circumstances beyond his control from starting legal proceedings, he could have a one-year extension from the time when those circumstances ceased to exist. The over-all limit for extensions of the limitation period was 10 years from the date on which the period commenced to run. Certain sales and types of goods were excluded from the scope of the Convention in articles 4-6. The draft resolution indicated that the Convention had been adopted by the Conference on 12 June 1974 and opened for signature until 31 December 1975. The Convention had been deposited with the Secretary-General of the United Nations and would enter into force six months after the date of deposit of the tenth instrument of ratification or accession. As stated in the fourth preambular paragraph, the sponsors of the draft resolution were convinced that the provisions of the Convention would contribute to the development of world trade.

30. In document A/C.6/L.991 the Secretariat had informed the Committee that as of 13 November 1974 nine States had signed the Convention. He was pleased to announce that the Government of Ghana had given its

* Resumed from the 1502nd meeting.

4 See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), document A/CONF.63/15.

approval to sign the Convention and preparations for that purpose were nearly complete. The operative paragraph of the draft resolution invited all States which had not yet done so to consider the possibility of signing, ratifying or acceding to the Convention. He hoped that that invitation would have the unanimous support of the Committee and that the draft resolution could be adopted by consensus. He announced that India had joined the sponsors of draft resolution A/C.6/L.995.

31. Mr. SANDERS (Guyana), Rapporteur, informed the Committee that if it wished, as in the past, to include in its report to the General Assembly an analytical summary of the views expressed in the course of the debate on the Commission's report, a decision would have to be taken to that effect in view of the provisions of General Assembly resolution 2292 (XXII) of 8 December 1967 concerning publications and documentation of the United Nations. Such a summary would run to approximately 10 pages and would cost about $2,500. With regard to the related item concerning the Conference on Prescription, it would not be necessary for the Committee's report to contain a summary of the views expressed in the debate, since there had been relatively few substantive comments on that item.

32. Mr. ROSENNE (Israel) thanked the representative of Ghana for introducing draft resolutions A/C.6/L.994 and L.995. He agreed that an analytical summary of the views expressed on the Commission's report should be prepared and hoped that it would be possible to prepare similar summaries in respect of other matters discussed by the Committee, in particular, the review of the role of the International Court of Justice and the report of the Special Committee on the Question of Defining Aggression.

33. In taking note of the Commission's 1974 report, a word of caution should be expressed concerning the contents of chapter VI. The Vienna Convention on the Law of Treaties[5] contained provisions regarding the conclusion of treaties which would make possible the introduction of quite new treaty-making modalities, should the substance of the matter so require. The Commission and other international bodies should be encouraged to explore that matter in the light of their own requirements. Procedures other than those embodied in the constitutions of certain specialized agencies, some which were mentioned in paragraph 61 of the report, could be envisaged. It would not appear to be necessary for the Commission to consult the International Law Commission on that matter, for the law had been well codified and the centre of concern had shifted to the practicalities of its application. In that connexion, he drew attention to the interesting report on provisional application of multilateral treaties, pending their entry into force, submitted by the Secretary-General in document A/AC.138/88.

34. With reference to operative paragraph 4 *(f)* of draft resolution A/C.6/L.994, important remarks concerning the Commission's functions had been made in the course of the debate in the Committee. Attention had been drawn, *inter alia*, to the necessity of avoiding overlapping with the work of other competent bodies. He associated his delegation with what had been said in that regard, in particular by the representative of Italy (1499th meeting).

35. The Commission was to be congratulated on the adoption of the Convention on the Limitation Period in the International Sale of Goods, which had been drawn up on the basis of a draft prepared by the Commission. The competent authorities of his Government, who were sympathetic to the objectives being pursued, had not yet completed their study of the text of that Convention. Some difficulties in that regard were being caused by the fact that the period of limitation under his country's law was longer than that stipulated in the Convention.

36. On more general grounds of principle, his delegation had difficulties with draft resolution A/C.6/L.995, although it would not obstruct the adoption of that text by consensus. The note submitted by the Secretariat at the request of his delegation (A/C.6/L.991), for which he thanked the Secretariat, showed that very few States had as yet signed the Convention, which was open for signature until 31 December 1975. Nothing in the Final Act of the Conference[6] called for any action on the part of the General Assembly. It therefore seemed that at the current stage, when it was impossible to foretell what the fate of the Convention would be, the General Assembly ought not to have had the question on its agenda or invite States to consider the possibility of becoming parties to the Convention. Such matters should only come before the General Assembly when there was a clear need for its action or when a diplomatic conference so requested.

37. Mr. SA'DI (Jordan) said that his delegation would be happy to join the sponsors of draft resolution A/C.6/L.994.

The meeting rose at 12.45 p.m.

5 See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

6 See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8), document A/CONF.63/14.

1507th meeting

Wednesday, 27 November 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1507

In the absence of the Chairman, Mr. Broms (Finland), Vice-Chairman, took the Chair.

AGENDA ITEM 105

Diplomatic asylum *(continued)* (A/9704, A/C.6/L.992, L.998)

1. Mr. BRENNAN (Australia), introducing draft resolution A/C.6/L.998 on behalf of the sponsors, said that his delegation had consulted widely with others in preparing the draft resolution and had done its utmost to accommodate views which differed from its own. As a result, a number of changes had been made in the text originally proposed by his delegation in its working paper on diplomatic asylum (A/C.6/L.992). The draft currently before the Committee made no mention of previous resolutions relating to the right of asylum or of the work already done in the General Assembly in relation to territorial asylum. Certain phrases used in the earlier draft had likewise been deleted, and the Secretary-General was not requested to ask Member States to forward information concerning their laws and practice with regard to diplomatic asylum. The preambular part of draft resolution A/C.6/L.998 referred to the practice of States and existing conventions on the subject and affirmed the desirability of initiating preliminary studies. Operative paragraph 1 offered Member States an opportunity to express their views on the question of diplomatic asylum if they wished to do so. Paragraph 2 requested the Secretary-General to make a survey of existing public materials on the question without, however, analysing the views submitted by Member States, as had been requested in the earlier text. He understood—having confirmed the point with the Legal Counsel—that the views provided by Governments would be reproduced in the same volume as the Secretary-General's report. Paragraph 3 would have the effect of including in the provisional agenda of the thirtieth session of the General Assembly an item entitled "Report of the Secretary-General on the Question of Diplomatic Asylum". The modifications that had been made in the current draft as compared with the earlier text had been accepted by the sponsors as not affecting the essence of the objectives they were seeking to achieve. The sponsors were firmly opposed, however, to the idea of deferring discussion of the item to the thirty-first session of the General Assembly, as two or three delegations had informally suggested. The fact that the inclusion of the item in the provisional agenda for the next session was requested did not necessarily mean that it would have to be discussed at that time, but that option would be left open. He expressed appreciation to the representatives who had spoken on the item in the current debate and expressed the hope that the draft resolution would be adopted by consensus.

2. Miss OLIVEROS (Argentina) welcomed the initiative taken by the representative of Australia in proposing the item on diplomatic asylum and expressed the hope that the objectives mentioned by that representative would be successfully achieved. As preceding speakers had pointed out, diplomatic asylum was a time-hallowed institution of a humanitarian nature whose primary purpose was to protect persons who were being irrationally persecuted in times of intra-State turmoil. The institution had developed basically in Latin America and had been formulated juridically from the end of the nineteenth century onwards. In the present century a number of Latin American conventions had helped to delineate the legal limits within which such asylum was applied. If diplomatic asylum had not been formally embodied in legal instruments in other parts of the world, that was not because it was irrelevant or unnecessary. On the contrary, many tragic events could have been avoided if diplomatic asylum had been recognized as a legal institution in other continents. It should be emphasized that diplomatic asylum was a humanitarian institution, which had been recognized in international law and could therefore be adopted to a greater or lesser extent at the world level. The studies to be carried out should take into account the humanitarian aspect of asylum and, on that basis, consider whether it would be desirable for the United Nations, with the participation of all interested States, to elaborate rules of universal application on the subject. A United Nations study would be welcome, as it might serve to bring asylum into line with current needs and set forth rules which could represent a minimum common denominator for all countries. It would be of particular interest to study the practical functioning of diplomatic asylum rather than focus on a purely academic description of its characteristics. The formal aspects of the institution were not as important as recognition of the need for asylum and of the fact that its advantages clearly outweighed the possible technical short-comings which might be noted. It would be entirely appropriate to undertake a study of diplomatic asylum as a humanitarian institution which had already been embodied in major legal instruments. Since the aim was to achieve a universal formulation of the rules governing diplomatic asylum, it would be fitting to consider the subject in the Sixth Committee.

3. Her country recognized diplomatic asylum and practised it with a generous spirit. Argentina was a party to the Montevideo Treaty of 1889 and a signatory of the Havana, Montevideo and Caracas Conventions on diplomatic asylum. In accordance with the provisions of those instruments, the right to grant asylum rested with the State granting it, which also had the power to qualify the act in respect of which asylum was sought. She recalled that her country's Minister for Foreign Affairs had expressed his satisfaction with the Australian proposal during the general debate at the current session of the General Assembly (2240th plenary meeting).

4. Mr. SARCEÑO MORGAN (Guatemala) said that the Latin American countries' long tradition of diplomatic asylum would enable them to make a valuable contribution to the debate on the item. His country recognized the institution of diplomatic asylum in its Constitution and was a party to the Havana Convention of 1928 and the Montevideo Convention of 1933, and it applied the Caracas Convention of 1954, which incorporated the content of the first two. The transformation of those inter-American instruments into a universal convention which would develop and perfect the principles of diplomatic asylum would provide an effective means for the protection of human rights.

5. Some delegations feared that if diplomatic asylum was established as a universal institution it would be abused and would lead to an increase in common crimes. Latin American experience with diplomatic asylum showed that that would not be the case because, in the first place, the State granting asylum had to decide whether there was justification for doing so; logically, no State would voluntarily give shelter to persons who came within the category of common criminals in other States. In the second place, before granting a safe-conduct, States requested information from the courts as to whether the person seeking asylum had committed common crimes. It should be noted that if in the view of a State granting asylum a person was persecuted because of his political ideas, the State was required to grant him a safe-conduct, which served the purpose of a passport. It would be worth while to consider the possibility of ensuring multilateral recognition of such safe-conducts, in order to enable the holder to travel more freely.

6. The foregoing considerations touched on the substance of the problem, whereas the draft resolution before the Committee was aimed merely at opening the way for its consideration. If the draft resolution was adopted, the information that would be supplied by Governments would be most important for the examination and understanding of the institution. The development of diplomatic asylum was being carefully studied in his country, and he had noted with satisfaction that the Australian and Uruguayan delegations had mentioned the work done by the Guatemalan jurist Francisco Villagrán Kramer. He expressed his appreciation to the Australian delegation for showing interest in the subject and for introducing the draft resolution, which his delegation enthusiastically supported.

7. Mr. KUSSBACH (Austria) said that, at the current stage, it seemed impossible to comment in depth on the masterly introductory statement made by the Australian representative at the 1505th meeting; however, he wished to make some preliminary remarks on the position of his Government.

8. In the first place, he wished to recall his country's political tradition in the field of territorial asylum. For purely humanitarian reasons, Austria had never hesitated to grant territorial asylum to refugees, in strict conformity with the general rules of international law. In that spirit, his delegation took note with satisfaction of the Australian proposal on diplomatic asylum; it shared without reservation the humanitarian concerns that had prompted that proposal. Nevertheless, he wished to stress that diplomatic asylum was essentially different from territorial asylum. Territorial asylum was a well-established institution and was universally recognized in customary international law, whereas diplomatic asylum was not. The noble tradition of the Latin American countries had not gained general acceptance outside that continent. There was only one exception where international law had sanctioned the custom of granting diplomatic asylum, namely in exceptional and rare cases where a person was exposed to an immediate and serious threat.

9. That being the current legal situation, which had been confirmed by the International Court of Justice, he could only interpret the Australian proposal as a suggestion *de lege ferenda*. If it was agreed that in the absence of a conventional or customary rule, the exercise of the right of diplomatic asylum constituted a violation of the sovereignty of the State in whose territory the right was assumed, the only solution to the problem would be the elaboration of a multilateral convention. However, before that task was undertaken, Governments should be given the opportunity to study in greater depth the question whether such a convention would be necessary or useful. It would also be necessary to consider whether diplomatic asylum was compatible with the principles and purposes of the Vienna Convention on Diplomatic Relations. He said that his delegation would be prepared to support any draft resolution that took the foregoing considerations into account.

10. Mr. GÜNEY (Turkey) congratulated the Australian delegation on having requested the inclusion in the agenda of the item on diplomatic asylum and thanked the Australian representative for his introductory statement. A preliminary examination of the humanitarian, legal and other aspects of the question would, in particular, represent a just acknowledgement of the remarkable Latin American tradition of diplomatic asylum. His own country also had some experience in that regard. There was no doubt that neither common criminals nor terrorists could benefit from such a right.

11. Although they were not complementary, territorial asylum and diplomatic asylum pursued the same aims. Outside Latin America, however, the practice of diplomatic asylum was limited and sporadic. The Committee should therefore begin by asking Governments for their views on the humanitarian aspects of the institution and for information on their practice in that regard. Extreme caution should be exercised in any subsequent action on the question, which was highly sensitive and complex. His delegation therefore reserved its position on any future action on the subject. It would be premature at the current stage to comment on the codification of rules concerning diplomatic asylum, although that institution should remain available for anyone who might need it for humanitarian reasons. His delegation had no objection to a procedural resolution, which should request the Secretariat to reproduce and distribute to members of the Sixth Committee, at future sessions, the texts of the Montevideo and Caracas Conventions.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session ***(continued)**** **(A/9610 and Add.1-3, A/9732, A/C.6/L.979, L.996, L.997)**

12. Mr. STARČEVIĆ (Yugoslavia), introducing draft resolution A/C.6/L.996 on behalf of the sponsors, said it was the result of lengthy consultations; he wished to thank all delegations that had taken part in those consultations for the spirit of understanding and mutual accommodation which had made it possible to reach agreement on the text.

13. The first two preambular paragraphs required no comment, as they followed the traditional form used in General Assembly resolution 3071 (XXVIII) on the same item. The third preambular paragraph contained the usual expression of appreciation of the fact that the International Law Commission had completed the second reading of the draft articles on succession of States in respect of treaties; the fourth paragraph stated that the Assembly took note of the draft articles on State responsibility and on treaties concluded between States and international organizations or between international organizations and the fifth paragraph welcomed the fact that the Commission had commenced its work on the law of non-navigational uses of international watercourses. The sixth paragraph reflected the views of many members regarding the achievements of the Commission during its 26 sessions. In that connexion, a minor correction should be made in the second line of the paragraph, where the words "twenty-sixth session" should be replaced by the words "twenty-six sessions". In other words, the paragraph referred to all 26 sessions of the Commission and not only to its most recent one.

14. In section I of the operative part of the draft resolution, paragraphs 1, 2 and 3 were customary and required no comment. Paragraph 4 contained recommendations concerning the work to be done by the Commission at its next session and was in accord with the programme of work outlined in the Commission's report (A/9610 and Add.1-3). Paragraph 4 *(a)* was a follow-up to paragraph 3 *(b)* of the previous year's resolution. The priority assigned to the question of State responsibility had been placed one notch higher, since the Commission had completed its second reading of the draft articles. The paragraph also recommended that the Commission should take up the question of international liability for injurious consequences arising out of acts not prohibited by international law. Paragraph 4 *(b)* assigned priority to the draft articles on succession of States in respect of matters other than treaties and paragraph 4, subparagraphs *(c)*, *(d)* and *(e)*, dealt with other items on the Commission's agenda. In connexion with paragraph 4 *(e)*, he pointed out that the delegations that had taken part in consultations on the draft resolution had not found it necessary to invite States to submit their comments, since that invitation would be sent by the Commission through the Secretary-General.

15. There had been some discussion on the text of paragraph 5, the final form of which represented a compromise. It had been felt that the recommendation that the Commission should have a 12-week session was appropriate because of the importance of its work programme and the need for it to achieve the speedy results the General Assembly expected of it. The experience of the twenty-sixth session of the Commission had showed that the two additional weeks available to it had enabled it to complete the draft articles on the succession of States in respect of treaties and to make further progress on other items that would not otherwise have been possible. An overwhelming majority of members of the Sixth Committee had supported the recommendations contained in paragraph 5. At the same time, the paragraph took into account the view of some delegations concerning the right of the General Assembly to review the duration of the Commission's sessions whenever necessary.

16. There had also been some discussion on paragraph 6, which had been agreed upon by consensus. That paragraph reflected the satisfactory manner in which the sponsors felt the Commission had worked. Paragraphs 7, 8 and 9 were self-explanatory.

17. Section II of the operative part of the draft resolution dealt exclusively with the draft articles on succession of States in respect of treaties. In addition to expressing appreciation to the Commission for its work on the question, it invited Member States to submit to the Secretary-General their written comments and observations on the draft articles, including comments and observations on proposals referred to in paragraph 75 of the Commission's report, which dealt with the settlement of disputes and multilateral treaties of a universal character. Any further steps to be taken would be discussed on the basis of the comments received and the question would be included in the provisional agenda of the thirtieth session under a separate item.

18. He announced that the delegations of Cyprus, Finland, Jamaica, Nigeria and Zaire had asked to be included among the sponsors of the draft resolution.

The meeting rose at 12 noon.

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* Resumed from the 1496th meeting.

1508th meeting

Wednesday, 27 November 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1508

AGENDA ITEM 89

Report of the United Nations Commission on International Trade Law on the work of its seventh session *(concluded) (A/9617, A/C.6/L.984, L.994)**

AGENDA ITEM 90

United Nations Conference on Prescription (Limitation) in the International Sale of Goods: Report of the Secretary-General *(concluded) (A/9711, A/C.6/L.991, L.995)**

1. Mr. STEEL (United Kingdom) said that his delegation was one of the sponsors of draft resolution A/C.6/L.994. It regarded the United Nations Commission on International Trade Law, of which his country was a member, as one of the most useful organs of the United Nations for the promotion of friendly intercourse and prosperity throughout the world.

2. He did not wish to attempt to improve on the explanation given by the representative of Ghana (1506th meeting) when introducing the draft resolution, but would like to explain the attitude of his Government to some of its provisions. First, as he had already explained (1500th meeting), he had doubts about the ultimate value to be derived from the study of the legal problems presented by different kinds of multinational enterprises, referred to in operative paragraph 4 *(b)* on the subject of product liability; however, he would not oppose further consideration of those problems. He none the less reserved the right to raise the question whether work on that topic would not best be left to other bodies.

3. Second, his delegation wished to point out that with regard to operative paragraph 4 *(b)* it should be taken in the literal sense of the recommendation made to the Commission by the General Assembly in resolution 3108 (XXVIII) to consider "the advisability of preparing uniform rules on the civil liability of producers for damage caused by their products intended for or involved in international sale or distribution", and not to undertake substantive work on the topic.

4. Third, with reference to paragraph 4 *(f)*, his delegation thought that it was right to exhort the Commission to keep its programme of work and working methods under review with the aim of increasing the effectiveness of its work, though the members of the Commission and the Secretariat were in fact fully aware of the need to adapt their programme and working methods to the changing exigencies of the situation. Given the financial situation of the United Nations, a similar injunction could properly be addressed to every standing organ of the Organization.

5. With reference to draft resolution A/C.6/L.995, he recalled that his Government could not currently sign the Convention on the Limitation Period in the International Sale of Goods because of certain technical difficulties. That was why his delegation had not become a sponsor of the draft resolution, although it had been honoured to be invited to do so; it would, however, vote for it if it was put to the vote.

6. He congratulated the Commission on its work, of which the Convention was the first practical result.

7. Mr. SCIOLLA-LA GRANGE (Italy) said that his delegation would like to become a sponsor of draft resolution A/C.6/L.994.

8. Mr. FEDOROV (Union of Soviet Socialist Republics) said that his delegation had no objection to draft resolutions A/C.6/L.994 and A/C.6/L.995, which had been drawn up in the light of the general debate on the item in the Committee. However, the Russian version of draft resolution A/C.6/L.994 was not completely satisfactory: paragraph 4, subparagraphs *(b)* and *(f)*, should coincide with the Russian text of paragraph 6, subparagraphs *(b)* and *(f)*, of General Assembly resolution 3108 (XXVIII), concerning the report of the United Nations Commission on International Trade Law. According to his delegation's understanding of the operative part of draft resolution A/C.6/L.995, all States, including the Provisional Revolutionary Government of the Republic of South Viet-Nam, had the right to sign and to become party to the Convention on the Limitation Period in the International Sale of Goods.

9. He hoped that the Committee would adopt both draft resolutions by consensus, without taking a vote.

10. Mr. ROSENSTOCK (United States of America) expressed regret that it seemed impossible for the Committee to adopt even the least controversial draft resolution without some delegations indulging in controversial and deliberately erroneous interpretations. The meaning of the single operative paragraph of draft resolution A/C.6/L.995 was completely unambiguous and was not that which the Soviet Union wished to have attributed to it.

11. Mr. SAM (Ghana) said that the Australian delegation had become a sponsor of the two draft resolutions and that, in view of the comments made and the small number of speakers, the draft resolutions could be adopted by consensus. Replying to the representative of Israel, who had asked at the 1506th meeting why the General Assembly had before it the question of the Conference on Prescription, he referred him to paragraph *(g)* of General Assembly resolution 3104 (XXVIII), under the terms of which the Secretary-General was requested "To report on the results achieved by the Conference to the General Assembly at its

* Resumed from the 1506th meeting.

twenty-ninth session". The General Assembly had, in fact, feared that the Conference might not complete its work, in which case it would have had to renew its mandate. It had therefore been advisable for the Secretary-General to submit a report on the subject. His delegation hoped that the practice would be maintained, since it enabled those delegations which were not members of the Commission to keep abreast of its activities.

12. He would transmit the comments made by the representative of the United Kingdom to the Commission. He assured the Soviet delegation that the Russian text of draft resolution A/C.6/L.994 would be amended as appropriate. He said that the words "all States" in the operative part of draft resolution A/C.6/L.995 must be understood in the light of the agreement reached by the Conference, the text of which was reproduced in the Conference documents.[1]

13. The CHAIRMAN said that draft resolution A/C.6/L.994 was the outcome of lengthy consultations among members of the Committee and he therefore suggested that it should be adopted by consensus.

It was so decided.

14. Mr. JEANNEL (France) said that on the whole his delegation found draft resolution A/C.6/L.994 satisfactory. However, he wished to point out, with reference to operative paragraph 4 *(b)*, that a great many United Nations bodies were already considering the question of multinational enterprises. It would be preferable for the Commission not to undertake the study of that topic until the other bodies had achieved really substantial results. The matter must first be clarified and its scope defined. Draft resolution A/C.6/L.994 did not take such conditions into account but his delegation attached great importance to them, mainly for reasons of logic.

15. His delegation agreed with previous speakers who had expressed doubts as to whether the request made to the Commission in the second part of paragraph 4 *(b)* to establish uniform rules on product liability was opportune, since it was not the proper body for such work, which related to civil and not trade law. Moreover, the Commission worked at the world level, and it was not to be expected that an instrument establishing uniform rules on the topic would be widely ratified at that level. Consequently, the few States which acceded to and ratified it would only be penalizing their own exports. Some regional organizations had begun work on the question and it seemed premature for the Commission to do so at the current stage.

16. His delegation continued to support the other ideas put forward in draft resolution A/C.6/L.994. It had therefore been able, with the aforementioned reservations, to join the consensus reached in the Committee. If the draft resolution had been put to the vote, his delegation would similarly have voted for it.

17. The CHAIRMAN said that draft resolution A/C.6/L.995, too, was the result of lengthy consultations among members of the Committee and he suggested that it should be adopted by consensus.

It was so decided.

18. Mr. JEANNEL (France) said that if draft resolution A/C.6/L.995 had been put to the vote, his delegation would have abstained because it had certain reservations with regard to that text.

19. The international community should certainly be commended for the efforts it had made to draw up uniform rules governing international trade law, for such rules constituted a powerful factor for peace. The Convention on the Limitation Period in the International Sale of Goods adopted on 12 June 1974[2] might, however, give rise to some technical difficulties. The definition of an international sale given in that instrument was not the same as that set forth in other conventions in force on the same subject. His delegation therefore feared that the Convention, instead of achieving its aim, would become a new source of complexity in a field where simplification was needed.

20. Mr. SAM (Ghana), speaking in exercise of the right of reply, said that the aim of the sponsors of draft resolution A/C.6/L.995 was to invite all States which had not yet done so to consider the possibility of signing, ratifying or acceding to the Convention.

21. In order to dispel any doubts which the statement by the French representative might have awakened in the minds of some representatives, he observed that the definition of an international contract of sale of goods finally adopted by the Conference had been considered by the participants as the best of the several alternatives proposed by the Commission. The countries of the European Economic Community had found it difficult to accept that definition because most of them were already using the definition of "international sale of goods" contained in the Uniform Law on the International Sale of Goods annexed to the Convention of The Hague of 1964, which they had ratified. However, the 1964 definition was no longer considered appropriate to modern trade transactions and was now being revised by the United Nations Commission on International Trade Law. Thus, there was justifiable concern that there might be three different definitions of "international sale of goods" when the revision of the Convention of 1964 was completed. The likelihood of confusion arising from such a situation had not escaped the participants in the Conference of May-June 1974, who, after lengthy discussion, had decided to keep the Commission's definition in its draft,[3] on the understanding that after the approval by a diplomatic conference of the revised definition in the Convention of The Hague of 1964, the one in the Convention on the Limitation Period and the 1964 definition would cease to apply, thus leaving only one definition of "international sale of goods" and creating the necessary degree of certainty in legal relations in international trade. The relevant procedure was indicated

1 See *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* (United Nations publication, Sales No. E.74.V.8).

2 *Ibid.*, document A/CONF.63/15.

3 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 21.

in article 38 of the Convention on the Limitation Period. There was thus no ambiguity with regard to the sphere of application of that Convention.

22. The CHAIRMAN recalled that the Rapporteur at the 1506th meeting had proposed drawing up an analytical summary of the discussion on the item under consideration. If he heard no objection, he would take it that the Sixth Committee agreed to that proposal.

It was so decided.

AGENDA ITEM 105

Diplomatic asylum *(continued)* (A/9704, A/C.6/L.992, L.998)

23. Mr. KURUKULASURIYA (Sri Lanka) said that his country had always supported and would continue to support all initiatives made by the United Nations towards the progressive development and codification of international law. There were still many areas of international relations which were not governed by universally accepted international legal norms. That situation was not conducive to international understanding and the maintenance of peace and order. An examination of the principles of law and practice relating to diplomatic asylum would help to dispel the uncertainty and confusion which prevailed in that regard.

24. He did not intend to go into the substance of the problem but would confine himself to the question whether a study of the law and practice relating to diplomatic asylum should be undertaken at the current stage by the United Nations. Everyone was aware that the doctrine of diplomatic asylum had developed in Latin America and that there were many countries outside that region which did not recognize it. Certain countries had not expressed any view on that matter and preferred to treat each case on its own merits. On the other hand, a practice seemed to have been developed among States, particularly outside the Latin American group, according to which asylum was granted on humanitarian grounds in order to protect a fugitive against mob violence. Since such refuge was given on humanitarian grounds it might not be correct to conclude that in granting such refuge no distinction was drawn between a common criminal and a political offender. That practice would therefore appear to be different from territorial asylum and diplomatic asylum. The practice of States seemed to show that in those circumstances refuge might be refused to persons fleeing the pursuit of the legitimate agents of the host Government. There was considerable variance in the practice of States with regard to the grant of temporary or permanent refuge to a citizen of the host country in premises belonging to a foreign country, whether such refuge was called diplomatic asylum or not. His delegation was therefore of the view that it would be useful to make a preliminary survey of State practice in that regard.

25. Concerning the legal basis of diplomatic asylum, he quoted the following passage from the judgement of the International Court of Justice in the Colombian-Peruvian asylum case:[4]

"In the case of extradition, the refugee is within the territory of the State of refuge. A decision with regard to extradition implies only the normal exercise of the territorial sovereignty. The refugee is outside the territory of the State where the offence was committed, and a decision to grant him asylum in no way derogates from the sovereignty of that State.

"In the case of diplomatic asylum, the refugee is within the territory of the State where the offence was committed. A decision to grant diplomatic asylum involves a derogation from the sovereignty of that State. It withdraws the offender from the jurisdiction of the territorial State and constitutes an intervention in matters which are exclusively within the competence of that State. Such a derogation from territorial sovereignty cannot be recognized unless its legal basis is established in each particular case."

26. No State would permit the slightest derogation from its territorial sovereignty unless that was done for the greater good of the international community as a whole and was based on complete reciprocity. Religious sanctuary and extra-territoriality, which had provided a basis for the grant of asylum in the past, had fallen into disuse. His delegation therefore believed that it would be useful to define the legal basis of modern diplomatic asylum.

27. Mr. DIATTA (Niger) said he was pleased that the Australian delegation had requested the inclusion of the question of diplomatic asylum in the agenda of the General Assembly. His delegation considered, however, that that question should be approached with caution and that States should first be given time to express their views on the subject. Unlike territorial asylum, diplomatic asylum implied a derogation from State sovereignty. His delegation would like to study the question more thoroughly before taking a definite position. He noted with satisfaction that the draft resolution submitted by Australia (A/C.6/L.992) did no more than outline the procedure to be followed. At first sight that draft seemed acceptable to his delegation, but that did not mean that his delegation was in favour of making the institution of diplomatic asylum universal.

28. Mr. ARITA QUIÑONEZ (Honduras) expressed appreciation to the Australian delegation for its initiative and pointed out that Honduras had always respected the institution of diplomatic asylum. In view of the humanitarian aspects of that institution, his Government would continue to uphold it.

Organization of work

29. The CHAIRMAN drew attention to a note by the Secretariat dated 26 November 1974. That informal document had been prepared in response to observations made by some members of the Committee concerning the collection and dissemination of information regarding treaty relationships between States, which was referred to in paragraph 47 of the report of the International Law Commission (A/9610).

30. Turning to the programme of work of the Sixth Committee, he observed that the Committee had fallen behind the schedule it had adopted on 24 September 1974

4 *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, p. 266.

(A/C.6/428). It must, however, make an effort to complete its work by the date indicated in the programme of work, i.e. 6 December 1974, because the President of the General Assembly wanted the Main Committees to adhere, if possible, to the date established for the completion of their work. One of the reasons for falling behind schedule was the fact that many meetings had begun later than scheduled, so as to enable delegations to hold consultations. He appealed for punctuality so that the quorum referred to in article 108 of the rules of procedure of the General Assembly could be met as of the time scheduled for the opening of the meeting. Another reason for falling behind had been the absence of speakers who were supposed to take the floor; that had obliged the Committee to adjourn several meetings ahead of time and to cancel others. In that connexion, he asked the members of the Committee to be prepared to speak at the outset of the debate on each of the remaining items. He suggested that henceforth, with the Committee's consent, the list of speakers should be closed at the end of the first meeting at which the item concerned was taken up, but he hoped that some delegations would let the Secretariat know in advance that they were prepared to speak at the beginning of the debate on a given item.

31. Another welcome measure of self-discipline would be the timely preparation and submission of draft resolutions. Draft resolutions gave direction to and shortened most debates by making the discussion more concrete and to the point.

32. The effectiveness of the measures he suggested would of course depend on the goodwill and spirit of co-operation of each delegation. Only in that way could the Commission consider as many as possible of the items which were still on its agenda.

33. After a brief procedural debate in which Mr. SA'DI (Jordan), Mr. NJENGA (Kenya), Mr. SIEV (Ireland), Mr. GODOY (Paraguay) and Mr. COLES (Australia) took part, the CHAIRMAN suggested that the meeting scheduled for the following day should be held, although it was a holiday in the United States.

The meeting rose at 4.50 p.m.

1509th meeting

Thursday, 28 November 1974, at 10.45 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1509

AGENDA ITEM 105

Diplomatic asylum *(continued)* (A/9704, A/C.6/L.992, L.998, L.999)

1. Mr. KOLESNIK (Union of Soviet Socialist Republics) said his delegation had noted the constructive approach of the Australian delegation to the complex and contradictory problem of diplomatic asylum. In its most general form, diplomatic asylum meant asylum granted within the premises of a diplomatic representative to a national of the territorial or any other State who was subject to persecution, guaranteeing him the right to leave the territorial State without hindrance. The right to grant such asylum was based on the fiction of the extra-territoriality of embassy premises and diplomatic residences, which derived from colonial law. That theory had been rejected even in the nineteenth century, particularly in European practice, since diplomatic asylum had been regarded as a violation of the sovereignty of the territorial State. In modern international relations, recognition of the insitution of diplomatic asylum was merely regional; the granting of such asylum had not been included among the functions of a diplomatic mission as set out in article 3 of the Vienna Convention on Diplomatic Relations of 1961,[1] and article 41, paragraph 3, of that instrument clearly precluded it. Moreover, in some cases, the granting of diplomatic asylum gave rise to a negative reaction by the territorial State as, for example, when an enemy of the Romanian people had been harboured by the United Kingdom Embassy in Bucharest. But there was an opinion that such instances were an example of the abuse of the principle of the inviolability of diplomatic premises.

2. The Latin American countries had recognized the right to grant asylum to political refugees in the Havana, Montevideo and Caracas Conventions, drawn up in 1928, 1933 and 1954 respectively. The question of the right of asylum had been examined by the International Law Commission at its first session, and the General Assembly had adopted resolution 1400 (XIV) on the codification of the principles and rules of international law relating to the right of asylum and resolution 2312 (XXII) containing the Declaration on Territorial Asylum. It was therefore no accident that the question of diplomatic asylum had not thus far been examined either by the General Assembly or the International Law Commission.

3. His delegation's position of principle was that it recognized the right of territorial asylum as laid down in the Soviet Constitution, paragraph 129. Persons granted asylum under the Constitution enjoyed the same fundamental freedoms and human rights as other Soviet citizens. Persons to whom such asylum could be granted included those persecuted as leaders of the working class and of the international Communist movement, and persons persecuted for scientific, cultural and artistic reasons, whom his country could help and had had occasion to help, partic-

1 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

ularly in the case of Fascist Germany. However, his delegation adopted a cautious approach regarding diplomatic asylum, on the ground that the extra-territoriality of diplomatic premises was incompatible with State sovereignty; diplomatic missions were established to promote friendly relations with the receiving country, not to interfere in its internal affairs. In extreme cases, of course, humanitarian considerations prevailed, and he had noted the examples given by previous speakers. However, his delegation doubted the advisability of discussing the question of diplomatic asylum in the United Nations at the current stage. There was obviously no broad agreement concerning legal theory or practice and any discussion could only serve to polarize differences and oblige delegations to adopt rigid positions. It would therefore be appropriate to drop the item from the agenda on the understanding that it could be discussed at some future time when circumstances were more auspicious. While his delegation recognized the humanitarian aspect of the question of diplomatic asylum, it felt that there were important political aspects which would give rise to the widest differences of opinion among Governments. That in turn would have a negative effect on the current process of détente and hamper the development of friendly relations between States.

4. He understood that the Australian delegation in working paper A/C.6/L.992 and in draft resolution A/C.6/L.998 had set itself the limited aim of achieving a preliminary examination of the problem. His delegation might be able to support such a measure if the report was carried through consistently and if there was general agreement concerning the need for such a report. He wished to submit an amendment (A/C.6/L.999) to the effect that in paragraph 3 of the draft resolution the word "thirtieth" should be replaced by "thirty-first". Governments would thus have more time to define their positions and the Secretary-General would have more time to prepare a comprehensive report.

5. Mr. ABOUL KHEIR (Egypt) observed that the Australian representative had submitted an excellent working paper on the question of diplomatic asylum, which showed clearly the imperative need for agreement in the international community regarding the scope of such asylum. The international community regarded diplomatic asylum as a humanitarian need; it had endorsed the right of asylum in the Universal Declaration on Human Rights and had laid down principles concerning that right in General Assembly resolution 2312 (XXII). Moreover, the United Nations High Commissioner for Refugees had submitted an international instrument on the subject.[2] Doubts had been expressed about the possibility of finding a legal basis in international law justifying diplomatic asylum. So far diplomatic asylum had been based on humanitarian considerations, but any legal basis for that institution would affect the sovereignty of the receiving State. Apart from individual instances, there was no broad experience, except in Latin America, of the granting of diplomatic asylum on the basis of special agreements. In the case of Latin America, there were both positive and negative aspects to the granting of diplomatic asylum and the results were still being assessed.

6. Any legal basis for diplomatic asylum related to the approach of States to the alleged crime committed by the individual pursued and raised the question of the definition of political crimes as a condition for asylum. In a dispute between two States, where a mission had granted diplomatic asylum to a citizen of the territorial State, the question arose whether such asylum should be temporary or indefinite. In the view of the problems he had mentioned, the question obviously needed careful study. He welcomed the report to be prepared by the Secretary-General which would help to define the scope of diplomatic asylum. If States could agree on an international instrument concerning the principles of diplomatic asylum, a compromise could be achieved between national sovereignty and the very understandable humanitarian considerations involved. His delegation therefore supported draft resolution A/C.6/L.998.

7. Mr. BRACKLO (Federal Republic of Germany) said his delegation welcomed the dialectical approach taken by the Australian representative in introducing the item under discussion and fully understood the humanitarian considerations underlying its initiative.

8. Many lives had been saved under the most different circumstances when diplomatic missions had granted shelter to individuals in distress. The situation in practice seemed to be that the granting of asylum had been tacitly accepted by the host Government above all on purely humanitarian grounds or as an act of courtesy, and, where complications arose, the sending States rarely resorted to legal provisions. Only in Latin America, where there was a long record in that connexion and a notable tradition of international law, were the granting of asylum and the acceptance of the inherent interference with territorial sovereignty founded on a legal concept, culminating in the conventions on diplomatic asylum referred to by previous speakers. It would therefore seem natural to seek to extend the institution which had evolved in Latin America to other regions.

9. He reiterated his delegation's great understanding for the concerns which had prompted the Australian initiative. However, it was precisely because his delegation agreed with the Australian delegation's view that every effort should be made to mitigate the fate of individuals and to ensure a more effective protection of human rights that it had difficulty in agreeing with efforts to undertake a general codification. His delegation had not yet formed a final opinion on whether the cases in which persecuted persons found shelter in foreign missions reflected a general practice which could possibly be considered legal. A first perusal of State practice revealed at best traces of old legal institutions and remnants of past convictions beside occasional signs of emerging law. Diplomatic asylum was hardly compatible with the contemporary concept of the functions and immunities of diplomatic missions. The exceptional character of the humanitarian practice of diplomatic asylum would hardly make it possible to identify typical cases and to establish general rules. Moreover, such an attempt might run counter to the aims sought by codification. Any public discussion of the subject would inevitably focus attention on the numerous aspects involved which were not only legal but also eminently political in character and his delegation was not sure whether any legal

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2 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 12*, appendix.

regulation of the matter could help reconcile conflicting interests and humanitarian concerns. The result might be that States would no longer tolerate any measures on the part of missions accredited with them beyond those which they were obliged to accept under the rules of positive law.

10. If the granting of diplomatic asylum became a legal institution, it would be inseparably linked with the question of granting safe conduct, and that problem presented the greatest difficulties in practice. Moreover, foreign missions had only very limited means and in times of crisis, the granting of asylum, especially to a large number of refugees, might have serious consequences if foreign missions were thereby distracted from performing their proper tasks. In practice, the sending State could be given wide discretion to remedy that situation, but if legal norms were set up, the same considerations would lead to restrictive regulation. His delegation feard that any attempt to bring about such regulation would call existing practice into question.

11. The current uncertainties in the legal assessment of the matter did not present major hazards from a humanitarian point of view. His delegation shared the view of the representative of Sweden (1506th meeting) that there was currently no need to elaborate guidelines or norms for States. The absence of established rules of positive law did not preclude the possibility that foreign missions would in future protect their fellow men when they were in danger.

12. Despite his delegation's doubts whether it was appropriate to proceed to a provisional study of the subject of diplomatic asylum as the first step towards possible codification, it could none the less agree to the Australian proposal in draft resolution A/C.6/L.988. The proposed report by the Secretary-General could provide a useful basis for the definitive formulation of his delegation's position.

13. Mr. GÖRNER (German Democratic Republic) said that the debate on the item under consideration had shown that there were widely divergent views on the question whether or not a State had a right to grant asylum to foreign nationals in the premises of its diplomatic missions. That was to be expected, since the question affected important areas of international law and of international relations, including the general principles of the right of asylum and the international legal norms on diplomatic relations, and particularly the functions of diplomatic missions.

14. His delegation shared the view that it was a sovereign right of every State to grant asylum, in its territory, to nationals of other States and to stateless persons who were subject to persecution for reasons that were incompatible with the purposes and principles of the Charter of the United Nations. That right was in full harmony with the purpose set forth in Article 1 of the Charter. Under Article 23 of its Constitution, the German Democratic Republic could grant asylum to citizens of other States or to stateless persons if they were persecuted for political, scientific or cultural activity in defence of peace, democracy and the interests of the working people, or because of their participation in the social and national liberation struggle. Any person who was granted asylum received permission to reside permanently in the country and was enabled to earn an adequate living and continue his political, scientific and cultural activities. The granting of asylum to such persons had a humanitarian character and no State could term it an unfriendly act.

15. The Declaration on Territorial Asylum contained in General Assembly resolution 2312 (XXII) stated in article 1, paragraph 2, that the right of asylum could not be invoked by any person with respect to whom there were serious reasons for considering that he had committed a crime against peace, a war crime or a crime against humanity. That principle, first formulated at the Moscow Conference of 1943, and later reaffirmed in United Nations documents, helped to ensure that crimes against international law could be punished effectively. The principles of territorial asylum were generally accepted, and their practical application had in many cases helped to alleviate human suffering. Many States, however, denied the existence of a generally accepted principle concerning the right to grant diplomatic asylum, basing their view, *inter alia,* on the judgement of the International Court of Justice in the Asylum case[3] and on the opinions of prominent international jurists. Many States also held the view that the granting of diplomatic asylum, unless justified by a special treaty, was an intervention, incompatible with international law, in the internal affairs of the receiving State, if in that way law-breakers evaded the latter's jurisdiction.

16. In answering the question whether or not there was a right to grant diplomatic asylum, account should be taken, above all, of the Vienna Convention on Diplomatic Relations. The practice of States had shown that the rules of international law codified in that Convention were particularly apt to contribute to the development of friendly relations among nations. The Convention stated in its preamble that the purpose of diplomatic privileges and immunities was to ensure the efficient performance of the functions of diplomatic missions. Article 3 of the Convention provided that the functions of a diplomatic mission consisted, *inter alia,* in promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations. Article 41 set forth the generally accepted principle that it was the duty of all persons enjoying diplomatic privileges and immunities to respect the laws and regulations of the receiving State, and not to interfere in its internal affairs. It also provided that the premises of a mission must not be used in any manner incompatible with the functions of the mission, as laid down in the Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

17. It was doubtful whether at the current stage a majority of States not parties to the regional agreements on diplomatic asylum would be prepared to take part in working out a multilateral convention of a universal character on the question of diplomatic asylum and to accede to such a convention. The legal problems and the practice of States regarding diplomatic asylum were diverse and required further careful study. In considering further steps, the comments of States, including those of States not members of the United Nations, should be taken into

3 *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports, 1950,* p. 266.

account. To ensure that States would be allowed enough time to prepare their comments carefully, his delegation would prefer the question of diplomatic asylum to be considered at the thirty-first session of the General Assembly, and would therefore support the amendment submitted by the USSR to that effect (A/C.6/L.999).

18. Mr. LOPEZ BASSOLS (Mexico) said his delegation had supported the inclusion in the agenda of the item under consideration. His Government not only was a signatory to the three current Latin American regional agreements on diplomatic asylum, but had also complied with them scrupulously at all times. It therefore viewed with interest any initiative aimed at universalizing that Latin American institution. Diplomatic asylum arose in a *de facto* situation, and had been described as an act which could be justified as a social necessity, imposed by circumstances, whose purpose was purely humanitarian and consisted in seeking to ensure that partisanship did not give rise to personal vengeance. The practice, however, was not based purely on humanitarian motives but also on legal principles such as extraterritoriality, inviolability of diplomatic premises and the legal personality of the person seeking asylum.

19. The practice had a long history in Latin America. It had been suggested as early as 1844 and embodied in the Montevideo Treaty of 1889; international agreements between various Latin American and European countries had been signed in 1907 and in 1922. The Conventions that had been concluded at Havana in 1928 and at Montevideo in 1933, together with the Caracas Convention on diplomatic asylum of 1954, constituted the treaty law governing the question.

20. Three principles emerged from those Conventions: it was for the State granting asylum to qualify the act giving rise to, and the nature of the motives for, the persecution; asylum could be granted only in a case of emergency and for the time strictly necessary for the person seeking asylum to leave the country; and the territorial State should provide a safe conduct. Those principles had saved many lives in Latin America and, as the Australian representative had said (1505th meeting), the Chilean situation might recur outside Latin America.

21. His delegation therefore welcomed the Australian initiative, but called to mind the Latin adage: make haste slowly. The Latin American institution had survived the test of time, and the attempt to universalize it should not be allowed to impair it in any way. His delegation trusted that the Secretary-General's report would take into account the experience of Latin America in particular, and provide a sound and thorough analysis which would provide a basis for the future work of the Committee.

22. Mr. FIFOOT (United Kingdom) said his delegation had entertained misgivings about the inclusion of the item under consideration in the agenda, which the course of the debate had done little to allay. It feared that the search for clarity might have the effect of limiting the possibility of a certain kind of action for humanitarian ends which was not currently conceived of in terms of law, but relied on goodwill and toleration.

23. There were broadly two approaches to the question. Some wished to develop an institutionalized system of rights to accord asylum in circumstances more or less defined and of obligations to provide safe conduct; while others denied that there was any generally recognized institution of diplomatic asylum forming part of international law, maintaining that as an institution it was confined to one particular region, namely Latin America.

24. However, to deny the universality of the institution of diplomatic asylum did not necessarily preclude States from seeking to exercise a humanitarian role in mitigating the effects of violence by offering, in exceptional circumstances, a temporary refuge to those in danger. There were States which denied the existence of diplomatic asylum as a matter of law but which, nevertheless, acting at discretion, were prepared to afford a temporary refuge in their missions in times of disorder. Similarly, there were States which denied the concept of diplomatic asylum, but which would be prepared to turn a blind eye to a foreign mission affording a temporary haven during times of disorder. It could be argued that, contrary to the intent of draft resolution A/C.6/L.998, the strength of the humanitarian cause lay, paradoxically, in the perpetuation of uncertainty.

25. The protagonists of the asylum school of thought saw in the concept of refuge an unadmitted practice of asylum, from which a more developed system might be evolved. The protagonists of the refuge school of thought denied any such connexion, pointing to the different basis and purpose of each. Diplomatic asylum, in its Latin American form, was an aspect of political asylum, with its emphasis on political considerations and its exclusion of persons accused of common crime. Refuge, however, merely constituted a place of safety in time of violent disorder; political considerations might be a factor but were not necessarily a qualification for the granting of refuge. It was clear that there were no universally accepted principles of diplomatic asylum, and the question could even be raised whether there was an identity of view on the particular humanitarian need involved. The source of confusion was perhaps the attempt to accommodate two different concepts in the single idea of diplomatic asylum. There was a danger of talking of asylum and refuge as if the former were a developed example of the latter. Such an approach might lead to the diminution of the possibilities of humanitarian action. If States were invited formally to record their views, those opposed to an institutionalized concept of diplomatic asylum would take their stand on principles. The claims of sovereignty, and the inadmissibility of interference by foreign missions in domestic affairs, would be advanced, and it would be argued that an institution of diplomatic immunity was inconsistent with the diplomatic function as recognized in the Vienna Convention on Diplomatic Relations. The search for certainty outside Latin America might result in a denial of an institution of political asylum, with the possible consequence that there would be a hardening of attitudes in relation to refuge. States which had denied the existence of the right of asylum in formal terms might be less willing to tolerate something that looked like asylum. On the other hand, territorial States might claim that other States which had denied the right of asylum were estopped from seeking to accord refuge for humanitarian reasons.

26. However, since the debate on the question had commenced, it might be appropriate for those States which

wished to express further views to do so. In that case, his delegation would hope that those States would not exclude from their consideration that, whatever their opinion of institutionalized diplomatic asylum, there was a humanitarian interest to be served which should not be allowed to become the casualty of doctrine.

27. Mr. BAMBA (Upper Volta) congratulated the Australian delegation on its initiative in submitting both the working paper (A/C.6/L.992) and the draft resolution (A/C.6/L.998) on diplomatic asylum. He readily understood the motives for seeking to universalize that Latin American practice.

28. However, a number of very complex problems were involved, namely: the functions and competence of diplomatic missions; the implications for the relationship between the host State and the accrediting State; the risk of interference in the internal affairs of States; the domestic legislation of States on the question, should any exist; and the criteria and conditions governing the granting of asylum. Africa was not the only continent to have neither tradition nor practice in the matter.

29. His delegation, however, saw no inconvenience in attempting to clarify both the practice and the views of States on the subject. The substance of the question should only be taken up if it became clear that any universal agreement which might be reached would not fall short of what was currently practised in Latin America. His delegation therefore supported the draft resolution.

30. Mr. ROBINSON (Jamaica) observed that diplomatic asylum was a practice inspired by humanitarian motives. The rules concerning it were disparate, with the notable exception of Latin America, and his delegation consequently welcomed the move to rationalize the practice. It had therefore supported the Australian initiative to include the item in the Committee's agenda. There was nothing in the very modest draft resolution which would be prejudicial to the interests of any State. When a substantive discussion was opened on the question, all efforts would be made to safeguard the institution of diplomatic asylum as it had evolved in Latin America.

31. Mr. ARIAS SALGADO (Spain) said his delegation had no objection to the spirit in which the Australian proposal had been made nor to the aim it sought to achieve. Diplomatic asylum had deep humanitarian roots and the Latin American countries had played a decisive role in establishing and developing that institution. His delegation wished to pay a tribute to those countries, with which it shared the same legal, cultural and humanitarian tradition, for their contribution to the development of international law. The institution of diplomatic asylum at the world level was inextricably linked, at the current stage of development of general international law, to all the political and legal problems involved in international relations. The question could be approached from the aspect of *de lege lata*, or from that of *de lege ferenda*. The first called for a thoroughly objective analysis of a given legal institution within the framework of existing international law. It should be remembered that international law, owing to its very nature and its limited institutionalization, could not regulate institutions or relations between States with the precision of an internal legal instrument. In his delegation's view, under existing international law the right of diplomatic asylum existed only in those countries which had decided to accept the existence of that institution either by custom or agreement. From the *de lege ferenda* aspect, any State was entitled to stress the advisability or necessity of developing existing international law towards forms and institutions more consonant with its understanding of the sociological structure of the international community. That was the context in which any discussion on the existence of diplomatic asylum as an institution of general international law with its own character should be conducted. All the questions raised by the institution of diplomatic asylum involved matters of legal policy, which were those on which the views of Governments differed most widely.

32. His delegation did not wish to compromise its future position regarding an item of such great legal and humanitarian importance. It regarded the limited aim of the draft resolution submitted by Australia as appropriate but, from the theoretical and doctrinal standpoint, considered that in the current state of general international law there was not a sufficient legal basis to presuppose the existence of a right of diplomatic asylum without the recognition of such an institution by the receiving State.

33. *De facto* situations involving the granting of temporary refuge to individuals for humanitarian reasons on the basis of the inviolability of diplomatic premises could not, from a legal point of view, be confused with recognition of the institution of diplomatic asylum as established by the conventions elaborated by the Latin American countries.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued) (A/9610 and Add.1-3, A/9732, A/C.6/L.979, L.996, L.997)**

34. Mr. STARČEVIĆ (Yugoslavia) announced that Senegal and the Upper Volta had become sponsors of draft resolution A/C.6/L.996.

35. Mrs. d'HAUSSY (France) said that, in the French text of section I, paragraph 6, of the draft resolution, the words *"se déclare persuadée que la Commission continuera"* should be replaced by the words *"fait confiance à la Commission pour continuer"*, which was a more accurate translation of the English original.

36. The CHAIRMAN said that the appropriate correction would be made. The draft resolution was the result of intensive consultations and the sponsors had tried to take into account all the views expressed in the general debate. If he heard no objection, he would take it that the Committee agreed to adopt draft resolution A/C.6/L.996 by consensus.

The draft resolution was adopted by consensus.

37. Mr. SANDERS (Guyana), Rapporteur, said that the Committee's former reports had contained an analysis of the main trends of thought which had emerged in the course

* Resumed from the 1507th meeting.

of the debate. It was estimated that if the Committee wished to follow the same procedure in its report on the current session, the analysis of views would take up an estimated 60 pages, costing some $15,000. If the Committee wished its report to contain an analysis of the main trends which had emerged in the debate, it must, in accordance with General Assembly resolution 2292 (XXII), take a formal decision to that effect.

38. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed that its report should contain an analysis of the main trends which had emerged in the debate.

It was so decided.

39. Mrs. d'HAUSSY (France) said that her delegation was glad to have been able to support draft resolution A/C.6/L.996 and welcomed the fact that the spirit of co-operation shown by all concerned and their constructive discussions had made it possible to prepare a text that was generally acceptable. However, her delegation regretted that the topic of responsibility of States for internationally wrongful acts had been given higher priority than other topics on the International Law Commission's programme of work. While not underestimating the importance of that topic, her delegation hoped that the Commission, particularly since the duration of its session had been extended to 12 weeks, would make progress on several topics and not neglect certain ones. Since the Commission had organized its work for the coming year with a view to concentrating mainly on the question of State responsibility, her delegation would not insist on the question of priorities. However, it would be advisable in future for the Commission to be more flexible in its arrangements, so as to allow changes where desirable. A problem as complex as State responsibility called for thorough study, taking full account of the comments of States, and the Commission should avoid any excessive haste that might prejudice the results of its work.

40. Her delegation was not opposed in principle to the preparation of a study on international liability for injurious consequences arising out of acts not prohibited by international law. However, as stated in the draft resolution, that was a separate topic, and it should therefore have been the subject of a separate paragraph. Moreover, the Commisson should not take up that topic until the appropriate time; work on it should not be allowed to delay work on topics that were more urgent and might be more easily resolved.

41. Section I, paragraph 5, of the resolution seemed to meet fully the Commission's preoccupations, by extending its session to 12 weeks. The Commission would be able to organize its work on the basis it had wished, and her delegation had therefore supported the paragraph in question, despite the possibility that the extension of the session might have regrettable financial implications.

42. Section I, paragraph 6, of the resolution expressed the Committee's confidence that the Commission would continue to adopt methods of work well suited to the realization of the tasks entrusted to it. It also recognized the efficacy of the methods and conditions of work by which the Commission had carried out its tasks; the present seat of the Commission was not least among those factors.

43. With regard to section II of the resolution, concerning further work on the draft articles on succession of States in respect of treaties, her delegation would have preferred that the time-limit for the submission of comments and observations by Governments should be deferred until 1 January 1976. That would have meant postponement of consideration of the topic until the thirty-first session of the General Assembly, but such postponement would not, in her delegation's view, have had serious repercussions, because the topic, although important for the development of international law, was not one of pressing urgency. Moreover, postponement would have given States more time for reflection. The year 1975 would call for considerable efforts by States in the consideration of questions of international law. She mentioned by way of example the Third United Nations Conference on the Law of the Sea, the United Nations Conference on the Representation of States in Their Relations with International Organizations and the International Committee of the Red Cross diplomatic conference on humanitarian law. The burden on administrations would be heavy, and it would be desirable to establish a general order to priority based on urgency. Governments should be allowed more time if their replies to questionnaires were not to be purely formal in character. However, since the 1 August 1975 time-limit was necessary if the topic was to be included in the provisional agenda of the thirtieth session of the General Assembly, a point to which some delegations apparently attached great importance, her delegation had not opposed it.

44. The Committee had been wise not to establish at the current stage the procedure for the completion of the work on the draft articles, the form it would assume and the time when it would be done. Her delegation had made known its views on the question of form and procedure in the general debate (1492nd meeting) but wished once again to draw attention to the fact that it was difficult for Governments to form a definitive opinion on the draft articles on succession of States in respect of treaties until they had an over-all view of the study on the topic of succession of States in respect of matters other than treaties.

45. She stressed that her delegation's comments on the resolution were merely a proof of its interest and attachment to the fine work being done by the Commission.

46. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation had supported draft resolution A/C.6/L.996 on the basis of a consensus in a spirit of mutual understanding and as a sign of its respect for the Commission. However, his delegation's support for the resolution as a whole did not mean that it was fully satisfied with all its provisions. With regard to section I, paragraph 5, his delegation had discussed in detail the question of improving the methods of work of the Commission and the need to accelerate the codification and progressive development of international law for the consolidation of the legal bases of peace. The extension of the duration of the Commission's session would not necessarily enhance the effectiveness of its work. He stressed that the recommendation of the Joint Inspection Unit in that regard, referred to in document A/C.6/L.979, merited attention. His delegation was firmly opposed to the idea of a 12-week session, because of the extra burden it would place on the United Nations budget; as stated in document

A/C.6/L.997, the extension of the session would require an additional appropriation amounting to $109,000. However, his delegation had not opposed section I, paragraph 5, of the draft resolution, on the understanding that the extension of the Commission's session was an extraordinary and temporary measure.

47. His delegation was not fully satisfied with the wording of section I, paragraph 4 *(a)*, of the draft resolution. He interpreted that paragraph as meaning that the Commission would not begin consideration of the topic of international liability for injurious consequences arising out of acts not prohibited by international law until it had completed its work on responsibility of States for internationally wrongful acts, which had been on its agenda for some 20 years.

48. Mr. GÖRNER (German Democratic Republic) said that his delegation had supported draft resolution A/C.6/L.996, because it had felt that it would accelerate the progressive development and codification of international law, which was particularly important in view of the current trend towards international détente. His delegation endorsed the recommendations contained in section I, paragraph 4, of the resolution. He welcomed the fact that high priority had been given to the vital topic of responsibility of States for internationally wrongful acts. In order to ensure the completion of work on that topic at the earliest possible date, the separate topic of international liability for injurious consequences arising out of acts not prohibited by international law should not be taken up until the completion of the Commission's work on responsibility of States for internationally wrongful acts.

49. He endorsed the invitation to Governments to submit written comments on the draft articles on succession of States in respect of treaties. The Commission should take full account of those comments so that a future convention on the topic would be acceptable to the largest possible number of States. His delegation could agree to the extension of the duration of the Commission's session to 12 weeks, provided that the additional time would be used for work on the topic of State responsibility. In the future, the General Assembly should decide on the length of each session of the Commission separately.

50. Mr. RASOLKO (Byelorussian Soviet Socialist Republic) said that his delegation had supported draft resolution A/C.6/L.996 in order not to break with the Committee's tradition of adopting its resolution on the report of the Commission by consensus. However, the resolution was not entirely satisfactory. The extension of the Commission's session could by no means solve all the problems which arose. It had been argued the previous year that an extension of the Commission's session would make it possible for the Commission to consider all topics on its programme of work. However, that had not occurred, since the Commission had considered only 10 out of 12 items, and the question of succession of States in respect of matters other than treaties and the most-favoured-nation clause had been left pending. The enhancement of the effectiveness of the Commission's work depended on factors other than the length of its sessions, such as improved working methods. His delegation could therefore not fully support section I, paragraph 5, of the draft resolution. He understood that the extension applied for one year only and was subject to revision subsequently. The wording of section I, paragraph 6, was insufficient to reflect the views of delegations. It would have been better to express confidence that the Commission would continue to improve its methods of work rather than "continue to adopt methods of work well-suited to the realization of the tasks entrusted to it". The topic of the law of non-navigational uses of international watercourses could have been dealt with in one operative paragraph rather than being mentioned in section I, paragraphs 4 and 7; that topic did not have priority over the other topics listed in paragraph 4. He found the wording of the fourth preambular paragraph unclear in the Russian text.

51. Mr. NYAMDO (Mongolia) said his delegation welcomed the draft resolution adopted by the Committee on the report of the Commission, because it took into account the views of as many delegations as possible. When his delegation had said in the general debate (1488th meeting) that the highest priority should be given to the topic of State responsibility, it had had in mind responsibility of States for internationally wrongful acts. His delegation had serious reservations concerning the extension of the Commission's session and did not feel that that was the best way to enhance the effectiveness of its work.

52. Mr. BOJILOV (Bulgaria) recalled that his delegation had stressed in the general debate (1495th meeting) that an extension of the Commission's session was not the most appropriate way to improve its efficiency. Nor was his delegation entirely satisfied with the wording of section I, paragraph 5, of the draft resolution. The debate on the subject had resulted in a valuable compromise, namely, agreement that the extension would apply only to the next session of the Commission, and he regretted that the sponsors had been unable to reflect that compromise explicitly. Otherwise, his delegation would have had no reservations on the resolution.

53. The CHAIRMAN recalled that some delegations had requested that the informal note on centralization and dissemination of treaty information distributed the previous day should be issued as an official document of the Committee. He had been informed by the Legal Council that that could be done. If he heard no objection, he would take it that the Committee agreed that the informal note should be circulated as an official document of the Committee.

It was so decided. *

The meeting rose at 1 p.m.

* Subsequently circulated as document A/C.6/L.1004.

1510th meeting

Friday, 29 November 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1510

AGENDA ITEM 105

Diplomatic asylum *(continued)* **(A/9704, A/C.6/L.992, L.998, L.999, L.1000, L.1003).**

1. Mr. JEANNEL (France) said that, in drawing the Committee's attention to the question of diplomatic asylum, the Australian delegation had raised a question that was very interesting but infinitely complex and delicate.

2. The concept of asylum was, as several speakers had mentioned, a very ancient one. The temples of antiquity and then the churches had served as places of asylum. However, the practice of taking refuge in churches had been progressively eliminated, at all events in Western Europe, from the fifteenth century onwards. The sixteenth century had seen the advent of permanent embassies, and for a certain time Grotius' fiction of extraterritoriality had been applied in their regard. That fiction had led to the recognition in certain cities, such as Madrid, Venice and Rome, of quarters over which the local police had no jurisdiction, because an embassy was situated there, and which they were unable to enter without the ambassador's authorization. Elsewhere, such immunity was restricted to the ambassador's residence. Embassies had thus served as a refuge for common criminals as well as for political offenders, although the former were, in view of the social organization of the times, less actively pursued than the latter. The practice of diplomatic asylum had been strongest in the sixteenth and seventeenth centuries, but even in that period no privilege had been the subject of greater controversy. Violations had been frequent and had led to tension between the States concerned. Receiving States soon endeavoured to restrict the practice either by making the right to grant diplomatic asylum subject to the principle of reciprocity or, like Pope Innocent XI, by simply suppressing the practice. Louis XIV, for example, had refused the right of diplomatic asylum to embassies in France.

3. At the present time, in France as in the majority of States, no right of asylum in diplomatic premises was recognized for offenders, no distinction being made between common law offences and political offences, since French laws were applied throughout the whole territory. Recognition of the possibility of diplomatic asylum derived from the fiction of the extraterritoriality of embassies, and even the proponents of that fiction, including Grotius, had restricted it to functional requirements, although practice had gone beyond the alleged legal foundation. At all events, the suppression of diplomatic asylum had been linked with the disappearance of the concept of extraterritoriality.

4. At the present time, no one would deny that, subject to the privileges and immunities deriving from international law, the laws and regulations of the receiving State were fully applicable within the precincts of diplomatic premises. Asylum granted in an embassy thus bore no relation to the institution of territorial asylum. A State granting territorial asylum gave an individual refuge within its own territory. A decision to do so was clearly within its competence, even though it might be subject to certain conditions based on agreements in force and in no way derogated from the sovereignty of the State where the offence was committed. In the case of diplomatic asylum, on the contrary, the person seeking refuge was presumably in the territory of the State from which he sought refuge. A decision to grant diplomatic asylum thus involved a derogation from the sovereignty of the latter State, in so far as it afforded protection to an offender against its judicial system. The Australian delegation had thus been wise to delete from the original model draft resolution annexed to document A/C.6/L.992 those paragraphs which might have given the impression that there was a parallel between territorial asylum and the practice of diplomatic asylum in certain regions.

5. Diplomatic asylum differed from territorial asylum not only in its essence but also inasmuch as it was not universally recognized as an institution of international law. Even the Latin American States apparently regarded it as a procedure proper to Latin America. He recalled, moreover, that, in the Haya de la Torre asylum case,[1] the application submitted in 1949 to the International Court of Justice had been based on certain agreements and "American international law". The Latin American institution was a practice in which considerations of good neighbourliness and political exigencies played an important role and which owed its development, in part, to extra-juridical factors. That practice was exercised to some extent outside of any legal regulation, and the conventions concluded on the subject were perhaps designed more to limit it than to authorize it. In any event, it would be unrealistic and imprudent to attempt to extend an institution intimately linked to a single civilization to the universal level.

6. It was a delicate question to determine what actually constituted "diplomatic asylum". To open an embassy to individuals threatened by violent and disorderly action on the part of irresponsible elements of the population was a simple humanitarian action, since it was a case of rendering assistance to an endangered person. The question arose, however, whether such asylum could be granted when, under the pretext of justice, arbitrary action was substituted for the rule of law, or when the purpose was only to protect an individual from pursuit by legally constituted authorities. To establish fixed rules might mean the removal of ambiguities which had perhaps made it possible in the

1 *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, p. 266.

past to save human lives in the territory of those States which recognized the right of asylum.

7. With regard to draft resolution A/C.6/L.998, his delegation could accept, in a spirit of compromise, the proposal that the Secretary-General should prepare a report on the question of diplomatic asylum. He questioned, however, whether it was necessary to specify so precisely the elements of which that report should take account. Some of those elements did not seem decisive and, in particular, his delegation had reservations concerning the importance to be attached to the work of certain non-governmental bodies and felt that the reference to them in operative paragraph 2 *(d)* was inappropriate. His delegation was, accordingly, submitting the amendment contained in document A/C.6/L.1000, to delete paragraph 2 *(d)* and to replace the letter *(e)* in paragraph 2 by the letter *(d)*.

8. His delegation also welcomed the fact that only those States which so wished were invited to express their views on the question and that the scope of their replies was no longer spelt out, as in the model draft resolution annexed to document A/C.6/L.992, because many States might hesitate to supply specific information on questions that were frequently dealt with at the level of bilateral political relations. On the other hand, he questioned whether it was advisable that the time-limit for the communication of views to the Secretary-General should be set for 30 June 1975. Such haste seemed the less justified inasmuch as the replies from Governments were not among the elements to be taken into account in the preparation of the report by the Secretary-General. His delegation could accept the inclusion in the provisional agenda of the General Assembly of an item entitled "Report of the Secretary-General on the Question of Diplomatic Asylum", on the understanding that in so doing it made no commitment concerning the action to be taken on that report. His delegation was not convinced of the advisability of going beyond the preliminary study currently proposed. The Australian initiative had been prompted by humanitarian concerns which were of unquestionable importance. However, the solution of the problem lay, in his delegation's view, in respect for human rights and not in an attempt to institutionalize the practice of diplomatic asylum.

9. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that the question of diplomatic asylum was a complex problem fraught with many contradictions from both the political point of view and the standpoint of international law. By their attitude toward diplomatic asylum, States could be divided into four groups. First, those which did not recognize diplomatic asylum and did not practise it. That was the most numerous group of States, and it included his own. Secondly, States which did not permit diplomatic asylum in their territory but which granted it. Thirdly, States which granted diplomatic asylum and permitted it to be granted in their territory. Fourthly, States which did not grant diplomatic asylum but permitted it to be granted in their territory. Thus, it was clear that the majority of States did not recognize the institution of diplomatic asylum. While the Latin American agreements on diplomatic asylum testified to its existence as a regional norm, that did not mean that it was a generally recognized norm of international law. Treaties of a universal character provided no justification for granting asylum in the premises of diplomatic missions. That was confirmed by article 41, paragraph 3, of the Vienna Convention on Diplomatic Relations,[2] which stated that "The premises of the mission must not be used in any manner incompatible with the functions of the mission . . .". Clearly, granting asylum was not one of the functions of diplomatic missions. That point had been convincingly made in the Sixth Committee by the delegations of India, Japan, Sweden and other countries. Without the express consent of the receiving State, a grant of diplomatic asylum by a foreign mission constituted an abuse of diplomatic immunities and an act of intervention in the internal affairs of the receiving State. As previous speakers had noted, the International Court of Justice did not recognize the institution of diplomatic asylum. In the Haya de la Torre case the Court had drawn a distinction between territorial and diplomatic asylum. Territorial asylum could be granted only by the territorial State, and diplomatic asylum could not be granted in violation of the laws of the territorial State. The right of diplomatic asylum should not be interpreted loosely. It was unlawful to grant diplomatic asylum in countries which did not recognize that practice.

10. Many of the previous speakers had drawn attention to the fact that the question of asylum had been discussed within the framework of the United Nations and that in 1967 the General Assembly had adopted the Declaration on Territorial Asylum (resolution 2312 (XXII)). In view of its complexity and contradictory nature, the General Assembly had not taken up the question of diplomatic asylum.

11. The Ukrainian SSR recognized the right of territorial asylum, which was embodied in article 109 of its Constitution. Asylum was granted to foreign citizens who were being persecuted for defending the interests of workers, for scientific work or for participation in a struggle for national liberation.

12. In view of the foregoing, his delegation supported the opinion expressed by a number of delegations to the effect that at the current stage conditions were not ripe for a discussion of diplomatic asylum in the United Nations and that that question was clearly not ready for codification in international law. Like others, his delegation doubted that States would be willing to change their positions or their legislation in that regard. The item under discussion raised a number of political problems and concern had been expressed that further discussion of it might do more harm than good. Having had a discussion of the item at the current session, it would be best to remove it from the agenda of the General Assembly and to return to it at a more appropriate time in the future. His delegation supported the amendment of the USSR (A/C.6/L.999) which would ensure that the item should be taken up again at the thirty-first session of the General Assembly. That would give Governments an opportunity to study the matter carefully and to prepare themselves for a useful discussion.

13. Mr. SURENA (United States of America) said that the Australian representative's introduction of the current item had been most informative. In addition, the historical and elaborative statements of various other delegations, in

2 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

particular those of the Latin American countries, had served to elucidate further the considerations relevant to full comprehension of the subject. The succinct analysis presented by the Indian representative (1505th meeting) had been extremely interesting, and his delegation fully shared the Indian representative's view that diplomatic and territorial asylum were two completely different notions.

14. The principles said to underlie the concept of diplomatic asylum were numerous and had not always been articulated in a consistent manner by all proponents of the concept; nor did such principles, in fundamental regards, comport with universally accepted norms of international law. No discussion of those principles could be undertaken without consideration of the argument that a foreign embassy or legation was an extraterritorial aspect of the sending State. That principle had not received general support in the international community, and instances where the international community had been seized of its consideration pointed to the conclusion that the principle was not accepted. The rejection of the concept of extraterritoriality should not be construed as in any way denying the inviolability of diplomatic premises. That principle was clearly recognized, although such premises were considered to be under the sovereignty of the receiving State. The reason for that construction had been succinctly stated in a 1930 circular of instructions to United States diplomatic officers in Latin America, which stated that the purpose of immunity was to enable representatives to fulfil their functions fully and that in other matters they should yield entire respect for the jurisdiction of the territorial Government.

15. From a practical point of view, it should be noted that, owing to the firm observance by States of the inviolability of diplomatic premises, the receiving State could not, as a rule, recover a refugee if the envoy refused to surrender him. It should, however, be recognized that a right to grant asylum could not be deduced from the mere fact that the receiving State had no immediate remedy; it did, however, have the ultimate remedy of declaring the diplomat granting asylum *persona non grata* or severing diplomatic relations. It followed, then, that no right of asylum could be deduced from the position of diplomatic premises in international law. Ordinary diplomatic immunities alone could not justify claims to a right which had no connexion with the central purposes of the diplomatic mission. Indeed, it had been argued, with some cogency, that the exercise of diplomatic asylum not only was not the essential purpose of a diplomatic mission but was inconsistent with such purpose.

16. However, it was necessary to consider whether there did exist, elsewhere in international law, a basis for such a right. It had been suggested that over the years a number of States had from time to time allowed their diplomatic premises to be used for temporary refuge. The differences between the concept of asylum and the provision of temporary refuge in times of disorder had been elucidated by previous speakers. Even if the two concepts were more similar, the references to practice ignored the requisite mental element—the *opinio iuris sive necessitatis*. Morgenstern, in discussing "custom and usage" as a possible basis for diplomatic asylum, had stressed the distinction between custom and usage. Whereas customary rules were rules of law and produced legal rights and obligations, usage did not create legal relationships. Morgenstern had noted futher that official utterances fully bore out the view that no customary law on the subject of asylum had come into being, that the description of that practice as a "custom" was due to loose phraseology and that there was evidence that the grant of asylum, even when it took place, was not regarded as a right; nor was it considered to be in accord with the general principles of international law.[3]

17. On the other hand, the practice of diplomatic asylum had been the subject, in whole or in part, of several conventions concluded among Latin American States, namely the Treaty on International Penal Law, signed at Montevideo in 1889, the Treaty on Political Asylum and Refuge, signed at Montevideo in 1939, which elaborated Title II of the Treaty of 1889, which dealt with asylum, the Convention on Asylum, signed at Havana in 1928, the Convention on Political Asylum, signed at Montevideo in 1973, and the Convention on Diplomatic Asylum, signed at Caracas in 1954. The United States Government had had an opportunity to make known its views on that subject as a participant in several of the inter-American fora in which those instruments had been drafted. The representative of his Government had pointed out with respect to the Caracas Convention on Diplomatic Asylum of 1954 that the United States did not recognize or subscribe to the doctrine of asylum as part of international law and did not, in practice, grant asylum except in a very limited sense, a traditional position which was well understood by the other countries of the hemisphere. Those intra-regional treaties and conventions all contained certain basic points in common, namely: *(a)* that diplomatic asylum was not to be granted to common criminals, but to political refugees; *(b)* that common criminals granted asylum must, on request by the host State, be returned to the local authorities by the legation of refuge; but *(c)* that refuge should be respected for political refugees; and *(d)* that on a demand by the host State that a person granted diplomatic asylum depart from its national territory, the State of refuge might demand that the host State provide necessary guarantees of safe conduct for the departure. It should also be noted that the Organization of American States had agreed that terrorist acts would be regarded as common crimes. However, there were also certain points found in one or more of the aforementioned instruments that were not common to all of them. Several of those points related to whether the State, or legation, of refuge had the unilateral right to determine the qualifications of a refuge, whether a State had an obligation as well as a right to grant asylum, whether such asylum could only be granted under restrictive circumstances of urgency and only for brief periods of time, and the related question of the precise nature of the safeconduct to be accorded by the receiving State. In his delegation's view, those differences in the Latin American Conventions on diplomatic asylum indicated real difficulties in the exercise of the practice, which, perhaps, had only been overcome in the area of application owing to the common diligence and commitment of the Latin American States to the enhancement of that regional practice. In that regard, he recalled that the International Court of Justice, in the asylum case of Haya de la Torre, had arrived at

3 Felice Morgenstern, "'Extra-territorial' asylum", *The British Year Book of International Law*, 1948, pp. 241 and 242.

conclusions of law which would undoubtedly have resulted in a telling blow to the practice, had it not been for the deep-rooted traditions of the Latin American community. The Court had stated that, in the case of diplomatic asylum, the refugee was within the territory of the State where the offence had been committed and that a decision to grant diplomatic asylum involved a derogation from the sovereignty of that State, since it withdrew the offender from the jurisdiction of the territorial State and constituted an intervention in matters which were exclusively within the competence of that State. Such a derogation from territorial sovereignty could not be recognized unless its legal basis was established in each particular case. Moreover, with regard to Colombia's submission in the asylum case that Colombia as the country granting asylum was "competent to qualify the offence for the purpose of the said asylum", the Court had held that Colombia, as the State granting asylum, was not competent to qualify the offence by a unilateral and definitive decision, binding on Peru, the host State.

18. Nevertheless, in his delegation's view, the continued existence of the practice and doctrine of diplomatic asylum in Latin America was undoubtedly due to a number of unique circumstances, being the result of the homogeneous nature of the community—which had a common language, common legal systems and a common heritage—and of the immensely sophisticated nature of the society. The system operated in large measure not through treaties alone but by common unarticulated understandings. Accordingly, practice in Latin America should not be viewed as providing a basis for confidence that the practice could usefully be generalized.

19. His Government had long been committed, both domestically and internationally, to the development and enhancement of measures which served to guarantee to people the full enjoyment of their human rights. In that regard, it had noted that the Australian representative, in commencing the current debate, had stressed what his Government perceived as the great, humanitarian role that could be performed by the exercise of diplomatic asylum by the general international community. His own delegation had drawn attention to some of the difficulties it saw in any attempt to extend to the general international community, in the form of rules containing rights and duties, the practice of diplomatic asylum which had been developed in Latin America as a regional practice for many years. However, it by no means disputed that that practice had had occasion to perform a real humanitarian role in Latin America and, accordingly, it would not wish to engage in any activity which might have an adverse effect on that regional practice. The warnings of the Latin American delegations expressed during the current debate should be carefully observed.

20. His delegation believed that, rather than attempting to have the practice of diplomatic asylum adopted by all States, it would be most appropriate for the members of the international community to reflect seriously on those matters of humanitarian concern which gave rise to requests for asylum and to do their utmost to eliminate, within their own borders, any and all deprivations of human rights. His delegation was thankful that the current debate had given it an opportunity to express that view. It was not convinced that an in-depth discussion of diplomatic asylum, with its concomitant danger of positions being frozen, would serve the humanitarian concerns which all shared.

21. His delegation was mindful of the spirit of compromise in which draft resolution A/C.6/L.998 had been prepared and would seek to approach it in the same spirit.

22. Mr. NYAMDO (Mongolia) said that the right of asylum had hitherto been considered by the United Nations essentially in connexion with the question of territorial asylum. The right of asylum had been studied by the International Law Commission and in 1967 the General Assembly had adopted the Declaration on Territorial Asylum. Territorial asylum was of a more general nature than diplomatic asylum. The right of territorial asylum was recognized by many States and was enshrined in national systems of legislation. Diplomatic asylum, on the other hand, was not widely recognized. It appeared to be a regional institution and was reflected in several international agreements of limited application.

23. It should be emphasized that asylum could not be granted to persons who were guilty of committing international crimes, for which they must bear responsibility. Such crimes included crimes against peace and against humanity, as well as the war crimes defined in the charters of the Nürnberg and Tokyo tribunals. Asylum should likewise not be granted to persons who had committed acts contrary to the purposes and principles of the United Nations.

24. Guided by humanitarian principles and respect for fundamental human rights and freedoms, his country recognized the right of territorial asylum, which was laid down in article 83 of its Constitution. It believed that every State had the sovereign right to grant asylum to foreign nationals in its territory for humanitarian and political reasons. As to the granting of asylum in the premises of a diplomatic mission, he pointed out that by article 41, paragrph 3, of the Vienna Convention on Diplomatic Relations the use of diplomatic premises was prohibited for purposes incompatible with the functions of the diplomatic mission. The functions of a diplomatic mission were basically to promote the development of friendly relations between the sending State and the receiving State. In view of its complexity and contradictory nature, the question of diplomatic asylum should be approached realistically. It deserved careful study in all its aspects. Such a study would require a certain amount of time, and his delegation therefore believed that the amendment submitted by the Soviet delegation proposed the best course of action.

25. Mr. USTOR (Hungary) said there was no urgent necessity to single out the topic of diplomatic asylum for research and discussion. It was extremely doubtful that such research and discussion could change the existing situation substantially. It appeared that the law was fairly well settled in the Latin American region, where a number of conventions recognized the institution of diplomatic asylum within certain limits. The law was also well settled outside that region, where the institution of diplomatic asylum was not recognized and the granting of asylum was considered to be incompatible with the functions of a diplomatic mission and an abuse of the privileges and immunities of the diplomatic mission. Such eminent au-

thorities as Grotius and de Wicquefort had stated clearly that the granting of diplomatic asylum did not form part of the law of nations. The alleged *"droit de franchise"*, which was closely related to the theory of extraterritoriality, had always caused considerable friction between the sending and receiving authorities. The practice of granting diplomatic asylum had gradually been abandoned and by the nineteenth century a *communis opinio* had been developed according to which the granting of diplomatic asylum was—outside the Latin American region—an abuse of diplomatic immunity and a violation of international law. That view had prevailed in the International Law Commission when that body had been preparing its draft on diplomatic intercourse and immunities and at the Vienna Conference of 1961 which had adopted the Vienna Convention on Diplomatic Relations. The members of the International Law Commission and the States represented at the Vienna Conference had obviously not forgotten that scattered cases of diplomatic asylum still existed, but they had been wise enough not to attempt to reintroduce that institution into general international law, notwithstanding the fact that in certain rare cases the granting of asylum might be prompted by humanitarian considerations.

26. The current state of the law—outside Latin America—was that the granting of asylum in the premises of a diplomatic mission was a violation of international law entailing the responsibility of the sending State. Reference to humanitarian considerations did not relieve the sending State of responsibility for its behaviour, although it might serve as an alleviating circumstance.

27. It would be extremely difficult to undertake a study of the humanitarian aspects of diplomatic asylum, and such an undertaking could scarcely lead to a satisfactory determination of uniform criteria. Even if such an effort were successful, it would lead to an unjust and one-sided rule. The granting of diplomatic asylum to a person under the jurisdiction of the receiving State was obviously an intervention in the domestic affairs of that State and as such was prohibited by general international law. The Declaration on the Inadmissibility of Intervention in the Internal Affairs of States and the Protection of Their Independence and Sovereignty and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolutions 2131 (XX) and 2625 (XXV), annex) stated clearly that no State or group of States had the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. His delegation seriously doubted the wisdom of trying to reintroduce through the back door one form of the obsolete "humanitarian intervention" which had been successfully eliminated in those important Declarations. His delegation was not, of course, against humanitarian considerations or against respect for human rights and fundamental freedoms. Indeed, the institution of territorial asylum was firmly anchored in the Hungarian Constitution. Humanitarian intervention, however, was a one-sided measure which could never be exercised by weaker States against more powerful ones. It was of necessity something which only the powerful could use against the weak. A rule which allowed asylum to be granted in diplomatic premises on grounds of humanitarian considerations could not be enforced by the diplomatic mission of a small, weak or developing country in a powerful State, whereas the latter could use such a rule to intervene in matters falling within the exclusive jurisdiction of the former.

28. His delegation's contention was that the granting of diplomatic asylum constituted an intervention in the internal affairs of the territorial State. Such intervention, for any reason whatsoever, was firmly prohibited in two solemn Declarations of the United Nations. The granting of asylum in diplomatic premises—outside Latin America—was a violation of rules of general international law. While it was true that diplomatic asylum had been granted in extraordinary circumstances, it was not appropriate to legislate for such extraordinary circumstances, particularly since such legislation might open the way for possible abuses.

29. His delegation had serious doubts as to the advisability of further study of the item and as to the results that could be achieved. The foregoing was only a preliminary statement of his delegation's views, and he reserved his Government's right to make its views known in greater detail at an appropriate time.

30. Mr. SAM (Ghana) commended the Australian delegation for having requested the inclusion in the agenda of the question of diplomatic asylum. His delegation did not agree with the view that diplomatic asylum constituted an infringement of State sovereignty. As currently practised, such asylum was granted only to persons persecuted for political reasons and never to common criminals. Some speakers had mentioned the rulings of the International Court of Justice on the subject; however, in actual fact, the Court had not taken any definite position on the matter and the question remained unsettled. The time had come to examine the matter more thoroughly with a view to putting forth concrete proposals that would give the international community clear guidelines, particularly in view of the gaps that existed between theory and practice. It was most important to emphasize the humanitarian considerations that had been mentioned by some speakers. The Committee should not evade its responsibility merely because the question was a difficult one.

31. He agreed with the representative of Israel's appreciation (1506th meeting) of the historical background of the institution of diplomatic asylum. In Ghana it had been customary for people to seek asylum in places of worship when their lives were in danger. Furthermore, when Ghana had been a British colony, a person whose life was in danger would stand under the British flag and no one could touch him. In modern times, it would be most significant if someone whose life was in danger could seek refuge under the United Nations flag, where no one could touch him until his case had been examined. He agreed with the representatives who understood that the question of a safe conduct should also be considered, and had noted that some of the countries that had misgivings about diplomatic asylum had laws prohibiting capital punishment. He agreed with the representative of Grenada (1505th meeting) that diplomatic asylum entailed not only the right of the fugitive to seek asylum but also the right of a State to grant asylum on purely humanitarian grounds.

32. Many speakers had argued that diplomatic asylum was an institution that was confined to Latin America. He wished to stress, however, that from time to time countries outside Latin America had granted diplomatic asylum. It would seem pointless to wait until each region evolved its own laws on political asylum before developing a universal code on the subject. No one had yet given any concrete example of cases where the principle had been abused in Latin America; if there were isolated cases, they certainly would not justify a condemnation of the principle itself. The representative of Colombia *(ibid.)* had explained how well the system had worked in Latin America and had mentioned the cases of two eminent Colombians who had sought diplomatic asylum and subsequently become Presidents of the country. In many instances, distinguished persons and potential world leaders had been lost because they had not been able to seek asylum. It was disgusting and shameful when a country lost its best citizens, some of whom were world leaders and had even become Secretaries-General of international institutions.

33. Mr. KEBRETH (Ethiopia), speaking on a point of order, said that the remarks of the Ghanaian representative were quite inappropriate, since they evidently referred to the situation in Ethiopia. The representative of Ghana should not take up his country's case in connexion with a subject whose legal basis was open to question. The practise of diplomatic asylum might even serve as an instrument where one State could intervene in the affairs of another. He understood the Ghanaian representative's humanitarian concern but wished to place on record that any reference to Ethiopia was inappropriate.

34. Mr. SAM (Ghana) said he was sorry that the Ethiopian representative had so quickly inferred a reference to his country. In actual fact, he had been referring to the cases mentioned by the Colombian representative and to certain cases in Ghana itself. He apologized to the representative of Ethiopia for the misunderstanding, but wished to stress once more that important world leaders had been lost who could have been saved if political asylum had existed in Ghana.

35. The examination of the problem would not be as difficult as some thought, because a great wealth of material on the subject was already available, especially in Latin America, whose scholars were familiar with the institution both in theory and in practice.

36. His delegation would support any draft resolution calling for a study of the humanitarian and legal aspects of political asylum, which should be a peaceful, friendly and humanitarian act and should not be regarded as an unfriendly act which impinged on the sovereignty of the receiving State.

37. Mr. ASEFI (Afghanistan) said that at the current stage of the Committee's work it would be premature to take a definite position on the substance of the question of diplomatic asylum. His Government would carefully study all the humanitarian and legal aspects of the matter and state its views in due time. Nevertheless, he wished to make a few preliminary remarks.

38. Despite the legal uncertainty surrounding it, the question of diplomatic asylum should be examined by the international community for humanitarian reasons. His delegation therefore thanked the Australian delegation for having requested the inclusion of the item in the agenda.

39. In the current state of international law, the legal basis for the right of diplomatic asylum was far from being as well-established as that for territorial asylum. In the latter case, the refugee was in the territory of the State granting asylum and a decision to do so did not impinge on any State's sovereignty. In the case of diplomatic asylum, however, the refugee was in the territory of the State where he had committed the offence, if there was an offence, and a decision to grant diplomatic asylum constituted an infringement of the sovereignty of that State. It had been argued that such infringement was justified by the fiction of extraterritoriality. The concept of the extraterritoriality of diplomatic premises did not conform with contemporary positive international law, as was evident in article 3 of the Vienna Convention on Diplomatic Relations.

40. Even though there might not be a valid legal basis for diplomatic asylum, however, his delegation agreed with the Australian delegation that humanitarian considerations could, and in fact should, constitute a source of international law. The basis for diplomatic asylum could be sought in the higher principles of the protection of human rights and human dignity. That would constitute a significant step forward in the progressive development of international law which was expressly envisaged in Article 13 of the Charter of the United Nations. Nevertheless, the question must be approached with extreme caution and realism. The right of diplomatic asylum could not be an absolute one and every effort should be made to prevent abuses. His delegation would support draft resolution A/C.6/L.998.

41. Mr. JACHEK (Czechoslovakia) said his delegation highly appreciated the constructive approach taken by the Australian delegation in submitting a purely procedural draft resolution. At the current stage, his delegation could not take a position on the question whether it was necessary to elaborate a universal agreement or other international document on diplomatic asylum.

42. The Czechoslovak Constitution guaranteed the right of asylum to foreign citizens if they were persecuted for defending the interests of the working people, for participating in a national liberation movement, for their scientific or artistic work, or for activity in defence of peace. As in many other States, the institution of diplomatic asylum was not recognized in his country. That position was based on widely recognized views on the theory of international law according to which diplomatic asylum was not recognized unless it was provided for in agreements between two or more States. His country had not concluded any such agreement. It was a party to the Vienna Convention on Diplomatic Relations, according to which the granting of asylum was not one of the rights or duties of diplomatic missions; the granting of asylum might even be a source of friction between States.

43. These remarks did not mean that his delegation disagreed with draft resolution A/C.6/L.998. His delegation fully understood the humanitarian significance of the institution of asylum. At the same time, it believed it would be premature to arrive at conclusions regarding any future

universal international regulation of that complex question. His delegation would not oppose the examination of the question within the framework of the United Nations, on the understanding that such examination would not prejudge future action on the matter. It should be considered only on the basis of the results of the preliminary examination of sources mentioned in operative paragraph 2 of the draft resolution. His delegation agreed with others that the time-limit for submitting the results of the preliminary studies mentioned in paragraph 3 of the draft resolution was too short and therefore supported the Soviet amendment which would extend it to the thirty-first session of the General Assembly.

44. His delegation would also appreciate it if the sponsors of the draft resolution would take into account the observation originally made by the delegation of the German Democratic Republic (1509th meeting) with regard to paragraph 1, namely that the appeal to transmit views on the question to the Secretary-General should be addressed to all States. That observation was significant because the draft resolution touched mainly on the humanitarian aspects of the problem, which were of universal concern. His delegation supported the amendment proposed by the French delegation (A/C.6/L.999).

45. Mr. SOLTANI (Algeria) congratulated the Australian representative on his informative statement on the question of diplomatic asylum. The institution of diplomatic asylum, which was practised in Latin America, should be universalized.

46. The right of a State to grant asylum within its own territory was undisputed. In cases where a political refugee was outside the territory of the State where he had committed an offence, the decision to grant him asylum in no way infringed upon the sovereignty of that State. In certain circumstances, however, a State could grant asylum outside its own territory–that constituted extraterritorial asylum, i.e. asylum within the territory of another State. Such asylum was usually referred to as diplomatic asylum in the broadest sense of the word. It could be granted in the premises of diplomatic missions (diplomatic asylum in the strict sense of the term), on board ships anchored in the territorial waters of another State (naval asylum) and in other places. Some countries even recognized asylum in consular premises. In such cases, the exercise by a State of the right or so-called right of asylum obviously constituted a limitation of territorial sovereignty as it was normally understood.

47. As in the case of territorial asylum, diplomatic asylum should be granted only to persons who were persecuted for political offences or political reasons. In order for such asylum to be legitimate, the life of the fugitive receiving asylum should be in immediate danger. The problem then became one of guaranteeing the personal safety of the persons receiving asylum; the authorities of the territorial State were never entitled to violate the immunity of diplomatic premises in order to seize such persons.

48. A study of the question raised the question whether asylum was an individual measure on behalf of a few people or a measure benefiting large groups of persons. In the first case, there was no question that the persons seeking asylum were political offenders. In the second case, it had happened that large groups of people against whom there were no charges, not even political, were exposed to acts of violence or personal revenge because of their social class. In such cases, the basis for diplomatic asylum was more humanitarian than political. His country, an Islamic one, had a tradition of generous hospitality and considered it a duty to ensure the well-being and safety of all foreign guests, and particularly of persons enjoying international protection.

49. The Australian proposal invited the Committee to study the problem of diplomatic asylum very thoroughly. In the absence of written sources fo the law of asylum and in view of the uncertainty with regard to practice, its codification seemed necessary. As certain Latin American representatives had pointed out, Latin America was the only region where the law of asylum had been codified and gone beyond the customary stage. The Institute of International Law had dealt with problems connected with diplomatic and territorial asylum. In this regard he mentioned its resolutions of 1888 and 1892 as well as 1900[4] which recognized the rights and duties of foreign Powers in the event of insurrections against established and recognized Governments. Other resolutions recognized the legality of asylum and protected States granting it from protests by the States of origin of those receiving it.

50. The measures set forth in the Conventions of The Hague to which his country was a party, provided new possibilities in the field of asylum. His delegation would welcome any new instrument that would provide supplementary guarantees. Clearly, though, diplomatic asylum must be granted only to political refugees; there had been cases where certain countries had granted diplomatic asylum to common criminals.

51. His delegation was prepared to co-operate fully in the study of the question, which should be open to all, since solutions would only be valid if all countries participated voluntarily in their application. It would be most useful if Governments were first given the opportunity to make known their views on the matter. Only a careful analysis of the various views on the subject could provide the basis for an adequate working method leading to acceptable decisions. The Committee should avoid any hasty decision and adopt a purely procedural resolution.

52. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said the discussion of the question of diplomatic asylum had shown the complexity and contradictory nature of the issue from both the political point of view and the standpoint of international law. Recognition of the institution of diplomatic asylum was of a regional character, but even in Latin America there was no general agreement as to which of the parties to a dispute was entitled to qualify the nature of the offence.

53. Turning to international agreements of a universal character, he noted that article 3, paragraph 1 *(e)*, of the Vienna Convention on Diplomatic Relations specified that

4 See Institut de Droit International, *Tableau général des résolutions (1873-1956)*, Hans Wehberg, ed. (Bâle, Editions juridiques et sociologiques S.A., 1957), pp. 49, 51 and 171.

one of the principal functions of a diplomatic mission was to promote friendly relations between the sending State and the receiving State and to develop their economic, cultural and scientific relations. That definition of the functions of a diplomatic mission was in accordance with Article 1, paragraph 2, of the United Nations Charter and served to promote the strengthening of contemporary international law which was designed to ensure peaceful coexistence among States.

54. The right of asylum had already been considered by the United Nations and by the International Law Commission. In 1967 the General Assembly had adopted the Declaration on Territorial Asylum. The fact that neither the General Assembly nor the International Law Commission had taken up the question of diplomatic asylum was certainly not fortuitous.

55. The Byelorussian SSR recognized the right of territorial asylum, a provision concerning which was laid down in article 104 of its Constitution. However, it had serious misgivings about diplomatic asylum in view of the implications of that institution for the principle of State sovereignty. His delegation therefore doubted the usefulness of considering the complex problem of diplomatic asylum at the current stage. Having had an exchange of views on the subject at the current session, it would be best to remove that item from the agenda for the time being. His delegation supported the amendment proposed by the USSR in document A/C.6/L.999, which would have the effect of including the question of diplomatic asylum in the agenda of the thirty-first session of the General Assembly. For consistency with the USSR amendment, his delegation submitted amendment A/C.6/L.1003, in which it was proposed that two further changes should be made in draft resolution A/C.6/L.998: in operative paragraph 1 the date "30 June 1975" should be changed to "30 June 1976", and in paragraph 2 the word "thirtieth" should be replaced by "thirty-first".

The meeting rose at 1.05 p.m.

1511th meeting

Monday, 2 December 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1511

AGENDA ITEM 105

Diplomatic asylum *(concluded)* (A/9704, A/C.6/L.992, L.998, L.999, L.1000, L.1003)

1. Mr. BRENNAN (Australia) announced that the delegations of Colombia, Costa Rica and New Zealand had asked to be included among the sponsors of draft resolution A/C.6/L.998.

2. His delegation had hoped that a substantive discussion on diplomatic asylum could be held during the current session, but had realized that many delegations were not yet able to take a position on the subject. The purpose of draft resolution A/C.6/L.998 was to have the item included in the provisional agenda of the thirtieth session; the invitation to Governments to express their views and the request to the Secretary-General to prepare a report were ancillary to that purpose.

3. Before requesting the inclusion of the item in the agenda of the twenty-ninth session, his Government had contacted some 50 or 60 Governments asking their views on the question. As a result, it had realized that there was sufficient interest in the subject to warrant its inclusion in the agenda. The USSR amendment (A/C.6/L.999) was aimed at changing the purpose of draft resolution A/C.6/L.998 by having the item removed from the provisional agenda of the thirtieth session and placing it on the provisional agenda of the thirty-first session. While his delegation realized the reasons that might have prompted the USSR amendment, it could not support it. The discussion so far had shown that there was considerable interest in the subject and it was desirable to maintain the momentum that had been generated. His delegation's agreement to postpone the debate until the thirtieth session already represented a considerable concession. A two-year deferment would be too long and would not allow for flexibility in consideration of the item. In proposing its inclusion in the provisional agenda of the thirtieth session, the sponsors of the draft resolution were not necessarily insisting that it must be discussed at that time. They merely wanted the opportunity to have it discussed if conditions were appropriate. At that time, conditions might be inappropriate for various reasons, including political ones, or the Committee might find it necessary to request additional information from the Secretary-General or to make further inquiries of Governments. The appropriate time to take account of such matters was at the thirtieth session; if the Committee waited two years to discuss the item and then found it needed more information, it would have lost a whole year. The USSR amendment therefore introduced an unnecessary element of rigidity. His delegation could not accept the Byelorussian amendments (A/C.6/L.1003) for the same reasons it could not accept the USSR amendment. The Byelorussian amendments were ancillary to the USSR amendment and were predicated on the adoption of the latter.

4. He had held consultations with the other sponsors of the draft resolution and regretted to inform the Committee that they could not accept the French amendment (A/C.6/L.1000). The object of operative paragraph 2 *(d)* of the draft resolution was to ensure that the Secretary-General's

report would cover some of the most important studies on the question. The purpose of including the item in the agenda was not simply to discuss the law of diplomatic asylum, but also to discuss actual practice and what the practice ought to be. It was important that the Secretary-General's survey should cover some of the more important studies carried out by non-governmental bodies, especially the International Law Association, which had done some very significant work on the subject. The French amendment would exclude such studies from the Secretary-General's report; the sponsors of the draft resolution felt that would be a disservice.

5. Mr. JEANNEL (France) said the Australian delegation had not understood the purpose of the French amendment, which was not to exclude the possibility of having the Secretary-General take into account any particular study, but rather to avoid drawing attention to a study such as the one mentioned by the Australian representative, which prejudged the solution of the problem. His delegation was asking for deletion of the reference to studies made by non-governmental bodies because its inclusion eliminated the neutrality that was desirable in the draft resolution. The French amendment would not prevent the Secretary-General from taking account of a study if he so wished, but would not place him under the obligation to stress one possible solution which, in the view of his delegation, was not satisfactory.

6. Mr. KOLESNIK (Union of Soviet Socialist Republics) reiterated his delegation's views on the complex and contradictory nature of the question of diplomatic asylum. The discussion in the Committee had shown that his delegation's misgivings about the advisability of discussing the subject were shared by many delegations. It would seem desirable to allow States more time to study the subject and define their positions. Although his delegation recognized the significance of the humanitarian aspect of the question, the political aspect must also be considered; that was where the divergencies appeared. His delegation feared that any discussion in the General Assembly might polarize positions and force delegations to take a more rigid stand than was necessary. The sole purpose of his delegation's amendment was to enable States to study the problem more thoroughly; since that amendment did not seem to have sufficient support, however, his delegation would not press it. On the other hand, it could not support the draft resolution.

7. He wished to draw attention to the fact that some of the provisions of the draft resolution were not appropriately worded. For example, operative paragraph 2 requested the Secretary-General to prepare and circulate a report containing an analysis of the question, but made no provision for that report to take account of the views of Governments. He did not think the sponsors were opposed to having the Secretary-General take account of those views, but that was, in effect, what would happen if the Secretary-General complied with the request as drafted.

8. His delegation supported the French amendment, since it was not appropriate to place studies made by non-governmental bodies on an equal footing with the texts of international agreements. In actual fact, all the subparagraphs of paragraph 2 could be deleted, since the detailed instructions to guide the Secretary-General in the preparation of his report would strongly emphasize the regional Latin American norms regarding diplomatic asylum, as the only relevant international agreements were the Latin American ones. The studies and views of specialists on the subject would also be based essentially on the works of Latin American jurists.

9. Mr. ESCOBAR (Colombia) said his delegation could not support the USSR and Byelorussian SSR amendments, the stated purpose of which was to postpone consideration of the item. It was quite possible that a further delay would be proposed at the next session. Yet, as far back as 1959 there had been talk of the need to codify the law relating to the right of asylum, and opinions had been expressed on the subject throughout the past 15 years. He did not understand how it could still be argued that the time was not ripe to study such an important question. The sponsors of the draft resolution wanted the Secretary-General to obtain the views of Member States and submit a report on the subject. He was sure the Secretary-General would be responsible and impartial in discharging that task.

10. The humanitarian aspect of diplomatic asylum was its very essence; in fact, it would be more appropriate to refer to it as a question of human rights. Its institutionalization would not merely mean the establishment of regulations to prevent political persecution; it would also make it impossible to take the lives of important people. There was no validity to the arguments that the Vienna Convention on Diplomatic Relations did not include the granting of asylum among the functions of diplomatic missions and that the granting of diplomatic asylum was contraty to the principle of non-intervention in the domestic affairs of the receiving State. Furthermore, such asylum was only granted to persons persecuted for political reasons, never to common criminals.

11. His delegation had listened with interest to the French representative's explanation of that delegation's amendment, but still preferred the original text.

12. It was important to remember that diplomatic asylum had actually been practised on an almost universal scale. He did not want to mention the names of European countries that had applied the principle in Latin America; in fact, they had done so quite recently and protected the lives, if they had been threatened at all, of some very important people in a Latin American country.

13. His delegation believed it was time to vote on the draft resolution. It could not support any of the amendments.

14. Mr. BUBEN (Byelorussian Soviet Socialist Republic) stressed the need to avoid undue haste in the consideration of the extremely complex and contradictory question of diplomatic asylum. However, if the majority of Committee members did not find his delegation's amendments acceptable, he would not press them. His delegation would not be able to vote for the draft resolution.

15. Mr. SAM (Ghana) said that, since the representative of the Byelorussian SSR had said his delegation felt that the item under consideration should be deleted from the agenda, he was surprised that he had submitted the

amendments contained in document A/C.6/L.1003. The Australian representative had explained very clearly the purpose of draft resolution A/C.6/L.998. The Byelorussian amendments were linked with the USSR amendment and both sets of amendments were, apparently, intended to eliminate the item once and for all. Accordingly, his delegation rejected both the Byelorussian amendments and the USSR amendment. The French representative had said with regard to his own amendment (A/C.6/L.1000) that its intention had not been to rule out all consideration of studies made by non-governmental bodies, and, accordingly, his own delegation appealed to the French representative not to press for the deletion of operative paragraph 2 *(d)* of the draft resolution.

16. A comparison of the model draft resolution annexed to document A/C.6/L.992 and draft resolution A/C.6/L.998 showed how far the Australian delegation and other sponsors had gone to accommodate the views expressed by other delegations in lengthy consultations.

17. Mr. PETRELLA (Argentina) said his delegation would prefer the draft resolution to be adopted without amendment. With regard to the French amendment, he felt it was extremely important that operative paragraph 2 *(d)* of the draft resolution should be retained, because it would help to pinpoint the fact that, although the institution of diplomatic asylum had been formulated in regional agreements, the concerns prompting its institutionalization went far beyond the regional framework.

18. Mr. SOGLO (Dahomey) said there appeared to be a great deal of support for the draft resolution A/C.6/L.998, particularly since the study requested did not prejudge future action on the item. Accordingly, his delegation could not support any of the amendments submitted. Dahomey, being a small country, understood the USSR representative's reservations concerning Governments' difficulties about timing, and his own delegation's support of the draft resolution did not mean that his Government would necessarily submit views as requested in paragraph 1. However, because of the dilatory reasons behind the USSR amendment, his delegation could not support it. Nor could it support the French amendment because it did not see why the Committee should not avail itself of all studies available on the subject.

19. Mr. NJENGA (Kenya) said that his delegation's failure to speak in the general debate on the item under consideration did not mean that his Government did not attach great importance to it. He had been very impressed by the Australian representative's introduction of the item and the restrained manner in which he had treated the humanitarian aspects of the item and the difficulties of generalizing the practice of diplomatic asylum. It was clear from the debate that it was a topic on which further discussion was required, and that was the only positive request made by the sponsors of the draft resolution, which in no way prejudiced the merits of the issue of diplomatic asylum. The draft resolution merely requested the Secretary-General to prepare a report for the next session of the General Assembly, and the sponsors had taken a very comprehensive view by requesting that that report should be based on all available relevant material.

20. He could not support the proposals for postponement contained in the USSR and Byelorussian amendments; since there seemed to be general agreement that further discussion of the topic was required, it seemed unreasonable to postpone it. If, at the thirtieth session, it appeared that additional information was required, the item could then be deferred until such information was available. His delegation also opposed the French amendment, because it felt that relevant studies made or being made by non-governmental bodies concerned with international law were relevant for the purposes of the report requested of the Secretary-General. Accordingly, his delegation would vote in favour of draft resolution A/C.6/L.998 and against all the amendments thereto.

21. Mr. SA'DI (Jordan) said that, as a sponsor of the draft resolution, his delegation felt that it was basically procedural in nature. It neither endorsed nor rejected the principle of diplomatic asylum. The time was ripe to hear the views of Member States and Member States would take the final decision as to whether or not diplomatic asylum should be institutionalized in international law. With regard to the question of timing, the sponsors thought that, if there was a general feeling at the next session of the General Assembly that delegations were not ready to deal with the question on a substantive basis, further consideration might appropriately be postponed. He was glad that the USSR representative had decided not to press his amendment. Any subsequent report by the Secretary-General would, of course, include the views of Member States.

22. Mr. BRENNAN (Australia) confirmed the Jordanian representative's statement concerning the status of the views of Governments in relation to the Secretary-General's report. He drew attention to the fact that the model draft resolution annexed to document A/C.6/L.992 had requested the Secretary-General to prepare a report containing an analysis of the information and views provided by Member States and that that provision had been omitted in draft resolution A/C.6/L.998, because several delegations had suggested that it might be inappropriate for the Secretary-General to analyse those views, since that might be construed as passing judgement on them. The sponsors intended that the views of Governments should be contained in the same document as the report of the Secretary-General and taken into account by the Secretary-General in his preparation of the report. He hoped that that would reassure the representatives of the USSR and Dahomey, among others.

23. He appreciated the withdrawal of the amendments of the USSR and the Byelorussian SSR; that was in keeping with the spirit which had prevailed during the discussion of the item under consideration. It had been an admirable discussion, free from acrimony or prejudice. All delegations had expressed their views clearly, the level of debate had been high, and all had learned a great deal from it. He congratulated the USSR representative on the statement which he had made on the item, with such great learning, sensitivity and delicacy.

24. Mr. RYBAKOV (Secretary of the Committee) said that the report by the Secretary-General requested in draft resolution A/C.6/L.998 was provisionally estimated at some

300 pages, which, it was estimated, would cost approximately $51,000. That report had not been foreseen in the programme of work of the relevant administrative services and might require that part or all of the required translation, editing and reproduction would have to be subcontracted. However, in view of the proposal in paragraph 3 of the draft resolution to include the question in the provisional agenda of the thirtieth session of the Assembly, the Secretary-General did not propose at the present time to seek an additional appropriation specifically for the report on diplomatic asylum, as it would form part of the Assembly documentation for which an appropriation of $2.4 million had been included in the programme budget for the biennium 1974-1975. However, should additional expenditure be required for that report, the Secretary-General might have to request additional resources in his supplementary estimates for the biennium 1974-1975.

25. Mr. JEANNEL (France) said that his delegation was somewhat concerned about the interpretations placed on its amendment. Since that amendment did not seem to have general support in the Committee, his delegation would withdraw it, but expressed appreciation to those delegations which had supported it.

26. Mr. BRENNAN (Australia) expressed appreciation, on behalf of the sponsors of draft resolution A/C.6/L.998, to the French delegation for withdrawing its amendment. He hoped that the Secretary-General's report would be acceptable to the French delegation and would deal with all relevant aspects of the question, at the high level that was customary in reports by the Secretary-General.

27. The CHAIRMAN noted that all amendments had been withdrawn, and invited the Committee to proceed to a vote on draft resolution A/C.6/L.998.

At the request of the representative of Argentina, a recorded vote was taken on draft resolution A/C.6/L.998.

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Bahrain, Belgium, Bhutan, Bolivia, Botswana, Brazil, Burundi, Canada, Chile, Colombia, Congo, Cuba, Cyprus, Dahomey, Democratic Yemen, Denmark, Ecuador, Egypt, El Salvador, Finland, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guyana, Honduras, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Khmer Republic, Kuwait, Laos, Lebanon, Lesotho, Liberia, Libyan Arab Republic, Madagascar, Malaysia, Mali, Mexico, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Portugal, Rwanda, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: None.

Abstaining: Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ethiopia, France, German Democratic Republic, Hungary, Mongolia, Nepal, Oman, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Zaire.

*Draft resolution A/C.6/L.998 was adopted by 87 votes to none, with 16 abstentions.**

28. Mr. KASEMSRI (Thailand) said that his delegation had an open mind on the question of diplomatic asylum, because international practice was somewhat meagre and uncertain in the region where his country was situated. However, because of the humanitarian aspects involved, his delegation was interested in the preparation of an impartial study as proposed in the draft resolution adopted. The report should be complete, taking into account all information, without prejudice to the positions of Governments. His delegation had supported the draft resolution because it was procedural and in no way prejudged future action on the report requested or on the item in general.

29. Mr. ROSENSTOCK (United States of America) said that his delegation's vote in favour of the draft resolution did not imply endorsement of or a judgement regarding the wisdom of discussing the topic at the next session of the General Assembly. However, in recognition of the conciliatory efforts made by the Australian delegation to achieve wide support for the draft resolution, and because the draft resolution in no way prejudiced future action on the item, his delegation was able to vote in favour.

30. Mr. JEMIYO (Nigeria) said that his delegation had voted in favour of the draft resolution, because it believed that the humanitarian aspects of the question of diplomatic asylum merited close study. His Government did not recognize that institution as a part of customary international law and would state its views more fully at a later stage.

31. Mr. SCIOLLA-LA GRANGE (Italy) said that his delegation had been able to support the draft resolution because it regarded diplomatic asylum as a humanitarian measure aimed at saving people whose lives were endangered. Diplomatic asylum applied to exceptional cases, and it was difficult, if not impossible, to formulate general principles on the question. Accordingly, it would be extremely useful for the Secretary-General to compile a stock of information that would be made available to States, in their case-by-case consideration of such situations as they arose.

32. Mr. WEHRY (Netherlands) said that his delegation had voted in favour of the draft resolution. The Netherlands Government traditionally gave high priority in international fora to the promotion of humanitarian law and practice, but it had mixed feelings concerning the discussion of the item under consideration. Its sympathy had been tinged with anxiety for a fragile practice governed by human compassion. The draft resolution was purely procedural and in no way prejudged the issue. Governments were free to express views or not, as they wished. However, a discussion of all aspects of diplomatic asylum from a purely humanitarian viewpoint had been rendered possible by the adoption of the draft resolution.

* The delegations of Costa Rica, Grenada and Panama, the latter two of which were sponsors of the draft resolution, later informed the Secretariat that, had they been present during the voting, they would have voted for the draft resolution.

33. Mr. WISNOEMOERTI (Indonesia) said that his delegation had not participated in the general debate because it had not wished to prejudge the Indonesian Government's view. Since the draft resolution was purely procedural, his delegation had been able to support it. It felt, however, that the study should be prepared with the utmost caution because of the importance of the topic and its implications. At the present time, diplomatic asylum as an institution was confined to Latin America, and although States outside that region had granted diplomatic asylum, it was not a part of general international law. Any efforts to embark on a process leading to the global institutionalization of diplomatic asylum must be preceded by a serious study on the implications of such endeavours. The fact that the granting of diplomatic asylum constituted a derogation from or diminution of the sovereignty of the territorial State had prompted his delegation to adopt that cautious attitude.

34. Mr. CAMU (Belgium) said that his delegation had voted in favour of the draft resolution. Belgian embassies abroad had granted diplomatic asylum on more than one occasion in the past. Belgium had always been guided in that regard by strictly humanitarian considerations and a concern for non-intervention in the internal affairs of the State of residence. The institutionalization of the right of asylum might impose on Belgium an obligation to grant diplomatic asylum in cases contrary to the practice it had followed in the past and might give certain individuals a kind of assurance of impunity, which was certainly not in the spirit of the Australian initiative. Accordingly, his country would not consider itself bound by any future studies that might lead to an institutionalization of the right of diplomatic asylum.

35. Mr. LOH Lin Kok (Singapore) said that his delegation had been able to vote in favour of the draft resolution because it was procedural in nature. His delegation's vote did not compromise his Government's position on the substance of the issue, which it would approach with an open mind and appropriate care.

36. Mr. KUSSBACH (Austria) recalled that, in the general debate (1507th meeting), his delegation had said that it would be unable to support draft resolution A/C.6/L.998. Its main objection had been the request for comments from Governments, which it had not regarded as realistic. It would be preferable to limit the debate at the thirtieth session of the General Assembly to the views of delegations on material set forth in the Secretary-General's report and to consider the final views of Governments at the thirty-first session of the General Assembly. The only justification for the Secretary-General's report would be to simplify the work of Governments, so that they could base their views on the necessary documentation when formulating their positions on the usefulness of codifying the practice of diplomatic asylum.

37. After consultation with the Australian delegation, his delegation had been able to vote in favour of the draft resolution, in order to simplify the task of the Committee, which was behind schedule with its work and also because the proposals contained in the draft resolution would distribute work evenly and fairly between Governments and the Secretariat.

38. Mr. STARČEVIĆ (Yugoslavia) said that his delegation had been able to support the draft resolution because it was procedural and did not prejudice the views of any Government or the eventual outcome of future debate on the item.

39. Mr. MANIANG (Sudan) said that his delegation had voted in favour of the draft resolution because it would prompt States to consider the question of diplomatic asylum in all its aspects. However, that did not mean that his Government believed that the practice of diplomatic asylum was generally acceptable.

40. Mr. JEANNEL (France) said that his delegation had abstained in the vote on the draft resolution, although it appreciated the efforts made by the Australian delegation to prepare a text that would be generally acceptable. If the text had been completely neutral, his delegation would have been able to vote for it. His delegation continued to believe it was not desirable to attempt to codify what was essentially a humanitarian practice. That approach would lead to unnecessary rigidity.

41. Mrs. LOPEZ (Philippines) said that her delegation had voted in favour of the draft resolution because it believed it would be useful to have a comprehensive and systematic study of the problem of diplomatic asylum. Her delegation's vote should not be interpreted, however, as prejudging in any way her Government's views on the substance of the question.

42. Mr. LEKAUKAU (Botswana) said that his delegation had supported the draft resolution as a purely procedural proposal. Its support should not be interpreted as prejudging the views of the Government of Botswana on the substance of the matter.

43. Mr. SAID-VAZIRI (Iran) said that, in voting for the draft resolution, his delegation was not prejudging the position of the Government of Iran on the substance of the item; its views on the item would be expressed at the next session of the General Assembly.

44. Mr. GANA (Tunisia) said that his delegation had supported the draft resolution as a procedural measure which did not prejudge the substance of the matter.

45. Mr. MAI'GA (Mali) said that the right of asylum was deeply rooted in history and continued to be applied in modern times. The right of asylum had always been interpreted as being based not only on the sovereignty of the State of refuge but also on humanitarian considerations. The right of asylum had been explicitly recognized in article 14 of the Universal Declaration of Human Rights. The humanitarian aspect of the right of asylum was predominant, but there were also political, social and legal facets of the problem. His delegation had voted in favour of the draft resolution as placing the right of diplomatic asylum in its proper humanitarian perspective. However, it regarded the draft resolution as being procedural in nature. His delegation would state its position on the substance of the question in due course.

46. Mr. SOLTANI (Algeria) said that his delegation had voted in favour of the draft resolution because of the importance it attached to the humanitarian aspect of the

problem. It was to be hoped that the report to be prepared by the Secretary-General would take into account relevant studies made by non-governmental bodies and, in particular, the study carried out by the International Law Association. The draft resolution had also received his delegation's support because of its procedural nature.

47. Mr. OBADI (Democratic Yemen) said that his delegation's affirmative vote on the draft resolution did not prejudge his Government's views on the substance of the matter.

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country (A/9626, A/C.6/429, A/C.6/432)

48. Mr. ROSSIDES (Cyprus) said that in his capacity as Chairman of the Committee on Relations with the Host Country, he took pleasure in introducing the Committee's report (A/9626). In pursuance of General Assembly resolution 3107 (XXVIII), the Committee had continued its work in 1974 in order to examine on a more regular basis all matters within its terms of reference. Pursuant to the request of the General Assembly in the same resolution, the Committee had submitted the present report on the progress of its work and had made the recommendations which were set out in paragraph 88 of the report.

49. As before, the major theme of the Committee's work had been the question of the security of missions and the safety of their personnel. In the course of a general review of that question, the Committee had discussed various documents submitted by the host country and the Secretariat, devoting particular attention to the memorandum from the host country circulated under the symbol A/AC.154/36 that described the United States legal system in the relevant context. The Committee had also directed its attention to complaints by certain missions about incidents affecting their security or the safety of their personnel, together with the replies of the host country.

50. At a number of meetings the Committee had discussed the problem of the parking situation affecting the diplomatic community. The discussion had focused on complaints by a number of missions about the difficulties encountered. Information and suggestions contained in working paper A/AC.154/39 submitted by the host country had also been central to that discussion.

51. Early in 1974 the Committee had considered the energy situation that had arisen in so far as it affected the diplomatic community. However, in view of the improvement that had ensued, the matter had been left in abeyance.

52. The Committee had also considered the public relations of the United Nations community in the host city and certain aspects of the organization of the Committee's work.

53. He drew attention to the report of the Committee's Working Group, which was annexed to the report of the Committee. The central concerns of the Working Group had been the question of insurance for staff of missions to the United Nations and the exemption of those missions from real estate taxes.

54. Mr. FEDOROV (Union of Soviet Socialist Republics) said the report of the Committee on Relations with the Host Country showed that over the past year that body had concentrated on the question of security of missions and the safety of their personnel. The Committee had considered complaints by a number of delegations concerning acts of vandalism by Zionist organizations and groups against missions accredited to the United Nations and their personnel. For example, on 10 November 1974 a group supporting a Zionist organization hostile to the Soviet Union had demonstrated in front of the USSR Mission and behaved in a most unseemly fashion for several hours, while the police stood by and took no action. Despite assurances by the United States authorities that every effort would be made to investigate crimes and punish those responsible, such acts of violence against the USSR Mission were still continuing. The USSR Mission had always sent notes of protest to the United States Mission on those occasions, but the latter simply had expressed regret and indicated that the matter would be investigated. In that connexion, he drew attention to the fact that no person had ever been found guilty of or punished for criminal acts against the USSR Mission, and he suggested that the continuing violence was to a certain extent a consequence of the passive attitude taken by United States officials.

55. Turning to the two notes prepared by the Secretariat with the symbols A/AC.154/20 and A/AC.154/23 and referred to in paragraphs 10 to 18 of the Committee's report, he said that the first note was simply a list of the pretexts used by the host country to justify its inaction with regard to the security of missions and safety of their personnel. His delegation had drawn attention to the inadequacy of the argument of the United States delegation that the basic problem in implementing the federal Law of 1972, the Act for the Protection of Foreign Officials and Official Guests of the United States, was the conflict between the rights guaranteed to United States citizens and the international obligation of the United States with regard to the protection of diplomats. There was no conflict of rights when one considered the irresponsible criminal acts of hooliganism committed by certain Zionist elements and the need to provide normal working conditions for missions and their personnel. Such an argument was simply a pretext for not taking effective action. His delegation had also opposed the statement that permanent missions of States Members of the United Nations in New York should be regarded as different from diplomatic missions in Washington in respect of the scope of the privileges and immunities accorded them.

56. His delegation supported the outlawing of certain terrorist organizations. Criminal elements responsible for acts of hooliganism against a number of missions accredited to the United Nations should be brought to trial. He did not believe that no effective measures could be taken under United States law to prohibit criminal and terrorist activities by members of such organizations. He strongly objected to hostile demonstrations in the vicinity of missions, and did not accept the argument that such acts should be prohibited only within a 100-foot radius of missions and permitted beyond that area. It was essential

that the United States authorities should fulfil their promise and work out procedures for implementing the federal Law of 1972 and that the laws of the State and City of New York should be brought into line with that Law to enhance its effectiveness. The Committee on Relations with the Host Country had not received the promised United States report on measures taken to implement the federal Law of 1972 and had heard no statement by the United States delegation on what the host country had done to implement the recommendations of the Committee that had been approved by the General Assembly.

57. During consideration of document A/AC.154/20 in the Committee, several representatives had put forward valuable proposals. Unfortunately, the Committee had not had time to study practical measures to halt and prevent criminal acts or to discuss with the host country the list of problems that must be solved as soon as possible. He hoped that in 1975 the Committee would be able to consider the proposals submitted by Member States, the documents submitted by the Secretariat, and documents prepared by the United States Mission, and that it would be able to work out practical and effective recommendations and proposals for a radical improvement in the situation regarding the security of missions and safety of their personnel.

58. In connexion with document A/AC.154/23, his delegation favoured the adoption of effective administrative and legal measures against persons who had committed acts of hooliganism, consideration by federal bodies of all matters affecting the security of missions and the safety of their personnel and the launching of an information campaign to improve understanding between the diplomatic corps and the residents of the City of New York. Unfortunately, however, no effective recommendations or measures had been approved.

59. Documents A/AC.154/28 and A/AC.154/36 had been submitted to the Committee by the United States Mission. They did not offer any acceptable solution to the problem and gave a one-sided interpretation of the situation. His delegation had criticized the two documents, particularly document A/AC.154/28, although it did contain interesting, albeit somewhat irrelevant, information about the Police Department of the City of New York. Document A/AC.154/36, concerning aspects of the United States legal system in the context of security of diplomats accredited to the United Nations, did not solve any of the problems of Member States. It began by stating correctly that the protection of the United Nations and its missions and personnel was an obligation fully recognized and accepted by the United States and the City of New York, but it deteriorated into confused and contradictory explanations of irrelevant matters. The document did not define the material, legal, administrative and other measures that should be taken by the United States, to comply with its obligation, but simply tried to differentiate between activities within the purview of the First Amendment of the Constitution and activities that were subject to criminal or civil prosecution under state or federal law. In other words, as indicated in paragraphs 28 to 31 of the report of the Committee, the document, instead of elaborating a series of practical measures and answering the questions asked by Member States had simply described United States criminal procedure in respect of private United States citizens. It stated that a complaint in writing and appearances in court were essential for prosecution; that was contrary to international practice and his delegation could not accept it. The document did not make any constructive contribution to solving the problem and had not led to the adoption of any effective measures.

60. The Committee should tackle the problem of the security of missions with all the seriousness it deserved and work out practical measures to prevent acts of hooliganism against members of missions. If the vandalism continued, it would harm the prestige of the United States, the development of international co-operation and international détente and also the international authority of the United Nations itself.

61. The Committee had also dealt with the problem of parking, as indicated in paragraphs 48 to 69 of its report. In June 1973 the authorities of the City of New York had launched a campaign against representatives to the United Nations; a working group of the Committee and the Committee itself had expressed regret that such measures had been taken without prior consultation with the Committee. In its resolution 3107 (XXVIII), the General Assembly had appealed to the host country to review the recently adopted measures with regard to the parking of diplomatic vehicles, especially with a view to terminating without prejudice the practice of serving summonses to diplomats and towing away their vehicles, with a view to meeting more adequately the needs of the diplomatic community. However, the authorities of the City of New York had simply intensified their campaign. As was pointed out in paragraph 60 of the report of the Committee, the police of New York discriminated against diplomats in issuing parking tickets, and in some cases cars with diplomatic licence plates had even been towed away. Instead of submitting a report on the measures taken to implement General Assembly resolution 3107 (XXVIII), the United States Mission had submitted working paper A/AC.154/39, which did not even mention that resolution but rebuked the 137 Member States for requesting the host country to ensure normal working conditions for their representatives to the United Nations. The position taken in that working paper was completely one-sided and disregarded not only the relevant international legal instruments, but also common sense. It would simply intensify feelings against the diplomats and incite acts of hooliganism and vandalism. His delegation could not accept the statement that the provision of parking spaces was not an obligation of the host country or a right of diplomats; in that connexion he quoted article 25 of the Vienna Convention on Diplomatic Relations[1] of 1961. "The receiving State shall accord full facilities for the performance of the functions of the mission." Nor could he agree that issuing traffic tickets did not violate diplomatic immunity. Traffic tickets were administrative measures, and diplomatic immunity applied to criminal, civil and administrative matters. In that connexion, he referred to articles 31 and 34 of the Vienna Convention on Diplomatic Relations. He regretted that the report of the Committee did not refer to those articles of the Vienna Convention but devoted considerable space in paragraphs 54 to 56 to working paper A/AC.154/39.

1 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

62. It was clear that the authorities of the city of New York did not have a full understanding of the special problems, rights and privileges and obligations of the diplomatic community. The number of parking spaces for diplomats had been reduced from 282 in June 1972 to approximately 259 in June 1974 and the practice of towing away cars with diplomatic licence plates had become more widespread. Another distressing factor was that considerable attention had been devoted to the campaign in the press and on the radio against diplomats as violators of traffic regulations, which had led to more frequent incidents in vandalism against cars belonging to missions and diplomats.

63. His delegation was disappointed that the United States authorities had taken such a negative position with regard to the problem of parking, as reflected in paragraphs 56 and 57 of the report of the Committee, and hoped that good sense would finally triumph and that measures would be taken to abolish all discrimination connected with traffic tickets and towing away cars with diplomatic licence plates.

64. Turning to the question of the organization of the work of the Committee on Relations with the Host Country, he suggested that, as well as considering complaints from various missions, the Committee should hold an annual session of not less than 10 meetings to consider its work and its report to the General Assembly. He endorsed the proposals in chapter VI of the report of the Committee concerning the establishment of better understanding between members of the diplomatic community and local residents. The recommendations in chapter VII were quite acceptable to his delegation and he suggested that a draft resolution based on those recommendations could be prepared for submission to the General Assembly.

65. Mr. ROSENSTOCK (United States of America) said he trusted that no one would consider his delegation to be unduly passive if it waited until a later stage in the debate in order to comment on the statements that were made. It came as no great shock to learn that the preceding speaker had a certain lack of sympathy for such institutions as freedom of speech, the right of free assembly and the rights of accused persons and that he had a great deal of sympathy for the practice of outlawing certain groups.

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General (A/9379, A/C.6/L.1001)

66. The CHAIRMAN announced that the delegation of Bulgaria had asked to be included among the sponsors of draft resolution A/C.6/L.1001.

Organization of work

67. Mr. HASSOUNA (Egypt) requested that the list of speakers on item 94 should not be closed until the next meeting. He would also like to know whether the Chairman envisaged dealing with all the remaining items on the agenda so that the Committee could complete its work by 6 December, as originally scheduled.

68. The CHAIRMAN pointed out that, as he had informed the Committee, arrangements had been made for three additional meetings during the week.

69. Mr. NJENGA (Kenya) expressed appreciation of the Chairman's efforts to obtain the additional meetings and hoped that it would be possible to complete all the items on the agenda in the time remaining. His delegation was particularly interested in having a full debate on agenda item 95. It was essential to close the list of speakers on each item as soon as possible so that the Committee would know how much time each item would require.

70. Mr. ESCOBAR (Colombia) said that it was important for the Committee to have sufficient time to discuss all the remaining items on its agenda. With regard to agenda item 94, the Committee should not exceed the number of meetings originally scheduled for consideration of that item.

71. Mr. TIEN Chin (China) endorsed the views expressed by the two preceding speakers. In order to complete its work as expeditiously as possible, the Committee should adhere strictly to the rule it had agreed upon concerning the closing of lists of speakers. With a view to facilitating the Committee's work, he suggested that at each of the remaining meetings there should be two items on the agenda so that, if there was not a sufficient number of speakers on one item, the Committee could pass on to the other item.

72. Mr. RAKOTOSON (Madagascar) supported the suggestion just made by the representative of China.

73. Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed gratitude to the Chairman for his efforts to obtain additional meetings. He associated his delegation with the request made by the representative of Egypt that the list of speakers on item 94 should not be closed until the following meeting. He realized that the Committee had little time left to deal with the remaining items but wished to emphasize the importance his delegation attached to a discussion of agenda item 112.

74. Mr. TIEN Chin (China) said that items should be discussed in the order in which they appeared in the programme of work adopted by the Committee. He recalled that the Committee had decided to place item 112 last on its agenda.

75. Mr. HASSOUNA (Egypt) agreed that if no speakers were prepared to take the floor on a given item the Committee should proceed to discuss the following item. If more time was needed, the possibility of holding night meetings might be considered.

76. The CHAIRMAN urged delegations to place their names on the list of speakers as early as possible so that the Committee would know how many statements could be expected on each of the remaining items. In the interest of flexibility, he was willing to accede to the Egyptian representative's request that the list of speakers on item 94 should be left open until the following meeting. As had been the case at the current meeting, the Committee would have two items on the agenda for its next meeting. If the

list of speakers on the first item was exhausted, the Committee could take up the second one.

77. Mr. KOLESNIK (Union of Soviet Socialist Republics) suggested that, instead of having only two items on the agenda for each meeting, the Committee's work might be facilitated by placing all the remaining items on the agenda. Once the list of speakers on a particular item had been exhausted, the Committee could move on to the next one.

78. The CHAIRMAN said he would like to avoid a lengthy discussion on the organization of work at the current stage. The USSR suggestion to include all the remaining items in the agenda seemed reasonable, but it would be preferable to continue any further discussion on the organization of work in informal consultations.

The meeting rose at 6.35 p.m.

1512th meeting

Tuesday, 3 December 1974, at 11 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1512

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country *(continued)* (A/9626, A/C.6/429, A/C.6/432)

1. Mr. SIAGE (Syrian Arab Republic) stressed the importance of the question, since the vexations suffered by the personnel of many delegations of Arab countries prevented the missions concerned from properly fulfilling their functions. Some Zionist organizations regularly made assassination threats and organized demonstrations near mission premises, in violation of diplomatic privileges and immunities. Such acts were infractions of common law which should be punished.

2. His delegation thought that the host country should pay particular attention to the substance of recommendations 6 and 9 of paragraph 88 of the report of the Committee on Relations with the Host Country (A/9626). Means must be found to inform the public of the basis and the scope of diplomatic privileges and immunities and to make people understand that missions must enjoy certain advantages in order to be able to carry out their work. For example, it was essential to increase the number of parking spaces made available to the diplomatic community.

3. Mr. BOJILOV (Bulgaria) said that his delegation attached considerable importance to the work of the Committee and was pleased to note the progress made in the past year on security of missions and safety of their personnel and on the parking difficulties of the diplomatic community.

4. The security of missions and the safety of their personnel was the first topic on the list of problems for discussion adopted by the Committee in 1972 because the spirit and letter of resolution 2819 (XXVI), which defined the Committee's terms of reference, gave it high priority. It was true that the host country had taken some measures to ensure the security of missions and the safety of their personnel, but those measures had proved to be insufficient and incomplete. During the past year, eight cases had been considered by the Committee and four others had been brought to its attention. The dangerous nature of the criminal acts that had been perpetrated was revealed by several passages of the report, and it seemed essential for the host country to take further measures, both legal and practical, in order to protect the diplomatic community in New York.

5. The Committee had been supplied with notes A/AC.154/20 and A/AC.154/23, prepared by the Secretariat at its request, and documents A/AC.154/28 and A/AC.154/36, prepared by the delegation of the host country. The latter two documents dealt with the intricacies of the domestic legal system rather than measures planned or taken by the host country with a view to protecting the diplomatic community in New York. His delegation believed that it would have been better if the host country had contemplated measures to be taken so as to bring New York State law into line with federal law, and in particular with the federal Act for the Protection of Foreign Officials and Official Guests of the United States, which had been signed into law on 24 October 1972. It was difficult to see how the implementation of that federal Law could be impeded by a conflict between local and federal law, or by a conflict between the rights of citizens of the host country and the international obligations assumed by that country. In that connexion, he recalled that at the 34th meeting of the Committee, the Legal Counsel of the United Nations had referred to the principle of international law according to which a State might not invoke its national legislation and constitution as an excuse not to comply with its obligations under international law; the Legal Counsel had noted that that principle had been codified by the Vienna Convention on the Law of Treaties and had been referred to several times by the International Court of Justice. His delegation believed that the host country had not yet exhausted all possibilities, legal and practical, of ensuring the security of missions and the safety of their personnel.

6. In its discussions on parking difficulties, the Committee had considered complaints presented by the delegations of Senegal, Zaire, Morocco, and the Soviet Union; several delegations, including his own, had submitted working papers. Some members of the Committee had pointed out that the issuing of summonses to diplomats and the towing

away of diplomatic vehicles were contrary to the Vienna Convention on Diplomatic Relations,[1] article 22, paragraph 3, of which stated that "... the means of transport of the mission shall be immune from search, requisition, attachment or execution". His delegation shared that view; it also felt that the publicizing of those practices by the mass media might discredit diplomatic personnel accredited to the United Nations, which would not improve relations between the diplomatic community and the citizens of New York. Thusk his delegation did not think that the host country had succeeded in implementing fully and effectively General Assembly resolution 3107 (XXVIII), which had asked it to review the recently adopted measures with regard to the parking of diplomatic vehicles. His delegation was not implying, however, that the host country had done nothing to ease the parking situation.

7. He stressed the importance of the recommendations adopted by the Committee, as set out in paragraph 88 of its report, particularly recommendations 1, 4, 6 and 9. He associated himself with the appreciation expressed by the Committee for the work of the New York City Commission for the United Nations and for the Consular Corps in accommodating the needs, interests and concerns of the diplomatic community and in promoting mutual understanding between the diplomatic community and the people of the city of New York.

8. It was obvious that the Committee provided a useful forum for the examination and settlement of several problems which the diplomatic corps was facing in New York. His delegation felt that the Committee should be authorized to continue its work, and commended its report for adoption.

9. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) noted that in 1973 the Committee had concentrated on the question of security of missions and safety of their personnel. It was only natural to wonder whether the situation of the diplomatic community in New York had improved during the past year. The authorities of the host country had taken some measures, particularly the adoption of the federal Law of 1972, but it was clear that those measures were not effective enough and had not had the desired results. They did not ensure normal working conditions for diplomatic missions. Not only was the crime rate very high in the city of New York, but part of the diplomatic community there was the target of acts of hostility by Zionist and other groups, which sought to create intolerable conditions for the functioning of the missions of the Eastern countries, the Arab countries and others. The groups in question were trying to pressure the Governments of those States into changing their policies and to influence the decisions taken in the United Nations. Their activities were also designed to impede the process of international détente and to harm friendly relations between States, particularly between the Soviet Union and the United States of America. In the United Nations several appeals had already been made to the host country, but in vain, to outlaw those organizations.

10. As the Committee's report showed, several acts of violence had been perpetrated during the past year, including burglaries of apartments, explosions, fire-bombing of cars, and picketing in the vicinity of missions. The federal Law of 1972 had raised great hopes, but it had done little to improve the situation. No adequate administrative or legal measures had been taken. The Government of the host country had pointed out that a number of offenders had been arrested, but the fact was that only a few of them had been convicted, despite the seriousness of their crimes. The number of demonstrations and hostile acts against diplomatic missions and their personnel had not decreased. The federal Law which he had mentioned prohibited demonstrations within 100 feet of diplomatic missions, and also parades and pickets, the display of any flag, banner, sign or placard, and the utterance of noise or music which undermined the dignity of a foreign official or hindered a diplomatic mission in the performance of its functions. However, the situation remained the same: the authorities of the host country did not intervene and merely cited the conflict between local and federal law.

11. Since its coming into force, the 1972 federal Law could have been applied on many occasions, but the United States claimed that it was difficult to apply because of certain conflicts between the international obligations of the federal Government and the rights of citizens. His delegation considered it unacceptable that the freedom of expression guaranteed by the United States Constitution should serve as an excuse for insults to diplomats. It was unacceptable that a diplomatic mission should become a fortress besieged by demonstrators. In accordance with articles 22 and 29 of the Vienna Convention on Diplomatic Relations, the receiving State should take all appropriate steps to protect the premises of the mission and to prevent any attack on the person, freedom or dignity of a diplomatic agent. Freedom of expression could not, therefore, be invoked as an excuse by the host country for not fulfilling its international obligations.

12. In August 1974, a demonstration had been organized in the immediate vicinity of the Mission of the Ukrainian SSR in defiance of the federal Law of 1972. His delegation had informed the Mission of the host country, as could be seen from document A/C.AC.154/47. In its reply (A/AC.154/49), the Mission of the host country had tried to justify the demonstration and to shift responsibility for it onto the staff of the Ukrainian Mission. He hoped that the Mission of the host country would show understanding so that the problems resulting from that affair could be resolved.

13. The need to establish an atmosphere conducive to the proper performance of the functions of diplomatic missions in New York had often been affirmed, both in the Committee on Relations with the Host Country and in the General Assembly. His delegation supported the Committee's recommendation that the host country, the United Nations Secretariat and the other organizations concerned should vigorously seek the promotion of mutual understanding between the diplomatic community and the local population. It also favoured the institution of a programme to inform the inhabitants of New York of the privileges and immunities accorded to diplomatic personnel and of the reasons for them. He hoped that the media would participate in that campaign.

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1 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

14. With regard to the parking of diplomatic vehicles, his delegation did not regard the creation of special parking zones as a matter of courtesy on the part of the host country, since that country had an obligation to ensure in every way the proper performance of the functions of diplomatic missions. In its resolution 3107 (XXVIII), the General Assembly had asked the host country to put an end to the campaign against diplomatic vehicles. Yet the local authorities continued to issue summonses to diplomats, although summonses were administrative measures in respect of which diplomats enjoyed immunity from jurisdiction—to which the host country merely retorted that the 1,300 vehicles of the diplomatic community were a threat to the purity of the air and contributed to traffic congestion. His delegation hoped that there would be an end to the practice of issuing summonses to diplomats and towing away their vehicles, which was contrary to international law and international custom.

15. His delegation endorsed the Committee's recommendations contained in paragraph 88 of its report, particularly recommendations 1, 4 and 9. It also appreciated the work of the New York City Commission.

16. With regard to the work of the Committee on Relations with the Host Country, he recalled that the General Assembly, in paragraph 11 of its resolution 3107 (XXVIII), had decided to continue the work of the Committee in 1974 "with the purpose of examining on a more regular basis all matters falling within its terms of reference". It should be noted that the meetings of the Committee had been devoted mainly to the consideration of complaints by missions; it would be advisable for it to meet at least 10 times a year, like other committees of the General Assembly. His delegation favoured the renewal of the Committee's mandate.

17. Mr. JEANNEL (France) observed that the agreements defining the privileges and immunities of international organizations and of representatives of States to such organizations were generally limited to the laying down of principles. However, since the host country had agreed to receive an international organization on its territory, it was obligated to make it possible for the organization to function in the best possible manner, which meant that representatives of States to the organization must be accorded and ensured the full enjoyment of the privileges and immunities necessary for the exercise of their functions, as defined in the applicable agreements. That obligation must take precedence over domestic law; moreover, special facilities might be necessary for representatives of States to enable them to perform their functions freely. Consequently, both in concluding and in implementing the agreements, a balance should be struck between the interests of the sending State and those of the organization and its members.

18. While expressing confidence in the actions of the United States authorities, he said that his delegation attached great value to respect for the inviolability of missions and the safety of their personnel, which was not always adequately ensured. When an incident occurred, irrespective of the provisions of federal or local law, the institution of proceedings should not be made contingent upon a complaint by mission personnel, and prosecution should not require the testimony of the persons concerned. In France a public prosecution could be initiated without the lodging of a complaint and there was a special procedure for taking the testimony of diplomats who agreed to give evidence. His delegation was sure that the United States Government would find satisfactory solutions to whatever problems might result from the conflicting requirements of its domestic law and the international obligations of the United States.

19. The activities of the Committee on Relations with the Host Country were useful, in that the Committee provided a forum for consideration of the problems encountered by the United States and by Member States in implementing the existing agreements.

20. Mr. ELIAN (Romania) noted that the question of security of missions and safety of their personnel also emerged, albeit from a different angle, in connexion with other items on the agenda of the General Assembly. Examples included the role which a diplomatic mission should play in a foreign State, implementation by States of the provisions of the Vienna Convention on Diplomatic Relations, United Nations personnel questions, and even diplomatic asylum. Relations with the host country had not only an administrative dimension but also a legal one. By recognizing the obligations incumbent upon it, the Government of the host country contributed to the implementation of certain principles of international law. The jurists charged with the codification and progressive development of international law also attached some importance to the problem of protection of diplomatic missions and their personnel. Furthermore, the provisions of the Vienna Convention on Diplomatic Relations, the Convention on Special Missions and the Convention on the Privileges and Immunities of the United Nations, among other instruments, gave proof of the importance accorded in international law to diplomatic privileges and immunities and to the security and protection of missions.

21. The chief problem, however, did not derive from any lack of principles and rules of international law, the existence of which was beyond dispute, nor even from the need to write those principles and rules into domestic law. In that connexion, his delegation had welcomed the adoption by the United States Congress in 1972 of the Act for the Protection of Foreign Officials and Official Guests of the United States; what it wished to stress now, however, was the fact that the authorities of the host country and agencies must implement the provisions of that Law as a matter of urgency. His delegation believed that, if a spirit of co-operation existed, a solution satisfactory to all concerned could be found. His delegation supported any measure that the Committee on Relations with the Host Country could take to ensure the protection of missions.

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002)

22. Mr. ROMULO (Philippines) said that the problems besetting the contemporary world could only be solved at the world level, as was proved by the events of the current

year, when the United Nations had played an important role in such areas as the designing of a new world economic order, the mobilizing of world agriculture, population problems, the equitable distribution of world economic resources, disarmament and peace. Those questions required more efficiency on the part of the United Nations, whose value was not questioned but whose ability to adapt was doubted. The mechanisms of the United Nations prevented the Organization from assuming the planetary role it was called upon to play. Prescient as the drafters of the Charter had been, they had not anticipated the speed with which events would carry the world into an era of interdependence. He hastened to add, however, that the Organization had been able to adapt, grow and change over the years in a remarkable fashion, and that all it required now was adjustment and improvement.

23. The suggestion had been made that in advocating the consideration of suggestions regarding the review of the Charter of the United Nations he, one of the founders of the Organization, wished to injure it in some way. That suggestion was baseless and could come only from those who wished the United Nations to remain as it had been in 1945, at the risk of rendering it ineffective in a progressing world. The advocates of that position would condemn the United Nations to uselessness.

24. He would remind the members of the Committee that the atom bomb had been unknown when the Charter was written, that only 51 States had been present at the founding of the Organization, and that whole geographic regions had been unrepresented in San Francisco. In resisting any change in the Charter, certain founding Members were denying the right of the 87 Members which had joined the Organization since 1945 to have their say on suggestions for its improvement. His Government not only upheld that right, but affirmed the obligation to hear the suggestions and comments of those Members which had not participated in the establishment of the Organization.

25. Since the adoption of General Assembly resolution 2697 (XXV) on the need to consider suggestions regarding the review of the Charter of the United Nations, 38 States had responded to the request of the Secretary-General for their views. Some States had made interesting suggestions that they wished to see reviewed by an appropriate body of the United Nations so as to learn the attitudes of the other Members.

26. In 1972, the Philippines with other countries had put forward a proposal to establish a committee of 32 members to consider suggestions regarding the review of the Charter.[2] Its opponents had been unable to defeat the proposal outright and had thus been obliged to settle for a postponement of consideration of the issue until the present session. It was no exaggeration to say that interest in the subject had increased substantially in the interim. The fears of those who resisted discussion of the issue were unfounded. In the first place, all States without exception acknowledged the value of the Charter, and most of them believed that adjustments could be made, or at least contemplated, without undermining its strength. Secondly, many needed improvements in the United Nations might not require changes in the Charter at all. Thirdly, no one had advocated or was advocating the convening of a General Conference for the purpose of reviewing the Charter of the United Nations under the provision of Article 109. None of the sponsors of draft resolution A/C.6/L.1002 was recommending such a step. What his delegation had consistently advocated and was still advocating was a step-by-step approach. The suggestions of Member States should be considered by an appropriate body, which would produce a report of its recommendations. The Assembly could do whatever it wished with the report. If certain suggestions commanded sufficient interest, they could be included as individual items in the agenda of the General Assembly. However, it was not essential to follow that procedure. In the case of recommendations which did not involve any changes in the Charter, the General Assembly could, of course, take direct action; on the other hand, recommendations such as those of his delegation, which did involve changes in the Charter, must be submitted to the Security Council.

27. The question of improving the United Nations was not new. The General Assembly had already adopted measures in that respect and, in collaboration with the Security Council, had already amended the Charter (resolution 1991 (XVIII)). He then proceeded to outline the main provisions of resolution A/C.6/L.1002.

28. His Government had submitted its views in document A/9739 and although it was aware that all Governments did not agree with those views, it considered that, together with the suggestions of many other States, they were worthy of consideration. He proposed that all references to "enemy States" should be deleted from the Charter; that machinery for the peaceful settlement of disputes should be provided; that the Charter should contain specific mention of peace-keeping operations; that the representative character of the Security Council should be improved; that the principle of unanimity should be reserved for vital security questions; that the effectiveness of the International Court of Justice should be increased; that the Economic and Social Council should be strengthened and that bodies dealing with human rights should be rationalized.

29. His delegation had never suggested that those improvements would automatically increase the effectiveness of the Organization. Effective use of the Organization was dependent on the will of States. However, improving the machinery would reduce the possibility of using its defects as an excuse for inaction.

30. The United Nations must lead, not follow. It represented the hopes of mankind for peace and security and the hopes of the world for social and economic justice. After 30 years of existence, the United Nations could not ignore the lessons of history and the needs of the future. As long as he lived, he would not cease to promote the sacred cause of the development of the United Nations. History, which was on the side of the United Nations, would vindicate his Government's position.

31. He requested that that draft resolution which he had submitted be given priority in the voting.

2 See *Official Records of the General Assembly, Twenty-seventh Session, Annexes,* agenda item 89, document A/8798, para. 4.

32. Mr. KLAFKOWSKI (Poland) said that his Government's basic position on the subject under consideration was set out in the report of the Secretary-General submitted at the twenty-seventh session.[3] His delegation noted that according to the relevant documentation, only 38 States had replied to the Secretary-General's circular note dated 18 March 1971. That figure included all the States which were permanent members of the Security Council. At its twenty-ninth session, the General Assembly was composed of 138 Member States. That meant that 100 States had not defined their position in writing. Obviously, the time was not yet ripe for consideration of the question and, in such circumstances, the Committee should avoid any hasty decision, particularly on a matter of such importance.

33. From a strictly legal point of view, the Charter was like a treaty and could be revised or amended according to the procedure set out by those who had drafted the Charter in Chapter XVIII, whose provisions should be fully respected. Proposals which were not in conformity with the rules contained in the Charter could not be discussed by the Committee. His delegation drew attention to the role conferred on States which were permanent members of the Security Council under Article 109, paragraph 2, of the Charter with regard to alterations of the Charter. The position of the five Powers concerned could not be ignored, and not all of them were prepared to ratify substantive amendments. It would not be reasonable to advocate a debate on the review of the Charter without taking account of that situation. Such discussion might create tensions and give rise to undesirable controversy.

34. From the political point of view it should be noted that the role and effectiveness of the United Nations was not entirely dependent on the provisions of the Charter but rather on the manner in which those provisions were applied. United Nations practice showed that, in its existing form, the Charter could perfectly well serve its original objectives, provided that all Member States respected its provisions and applied them in good faith. It would be more realistic to use to the fullest extent the machinery provided under the Charter, instead of encouraging a review which would give rise to serious problems. Over the past 29 years, the Charter had been interpreted in a manner which took account of changes in the international community. The time had come for that new international community to adapt itself to the rules of the Charter.

35. His delegation shared the doubts concerning the advisability of continuing discussions on the item under consideration. For even more compelling reasons, it was opposed to the establishment of a special or auxiliary body to undertake a study of the matter.

36. Mr. NICOL (Sierra Leone) said that his delegation was one of the sponsors of draft resolution A/C.6/L.1002. Certain delegations felt that the Charter was a sacred document which required no revision; but it was sacred to them only because it satisfied their purposes. They reacted in a hostile manner to any suggestion to review the Charter. Might not that reaction be due to the power of veto which those States possessed? After 29 years' existence, and bearing in mind the growing universality of the United Nations, it was reasonable to assume that the Charter was not now as satisfactory as it had originally been. Why, therefore, should the text not be adapted to the needs and aspirations of all the present Members of the United Nations?

37. Draft resolution A/C.6/L.1002 was concerned only with the establishment of an *ad hoc* committee of 32 members to study the proposals submitted by Governments and any other suggestions concerning the review of the Charter. Its operative part called for co-operation between the Secretary-General and the proposed *ad hoc* committee, which would be requested to submit a report on its work to the General Assembly at its thirtieth session. The draft resolution was a simple one and the mandate of the *ad hoc* committee was limited to consideration of the possibility of revising the Charter, without stipulating which sections of the Charter should be given particular attention. In other words, it dealt only with procedural questions and was non-committal. In such circumstances, his delegation hoped that it would receive the support of the majority of the members of the Committee.

38. Mr. ESCOBAR (Colombia) recalled that, since the first session of the General Assembly of the United Nations, his delegation had constantly emphasized the need to ensure that the provisions of the Charter were adapted to the changing conditions of the contemporary world. Many statements proved that that aspiration also existed in other countries, the sole aim being to improve the functioning of the Organization. Thus the idea was making headway, but prudence was needed, because the review of the Charter could only be undertaken in an atmosphere of concord.

39. While reaffirming the principles of the Charter, his delegation felt that self-criticism by the United Nations was in the interests of the international community. Such self-criticism must be done with sincerity and in the recognition that, in many respects, the Organization worked in a vacuum and its decisions frequently had no effect although they were adopted by consensus in the General Assembly. For example, the General Assembly was powerless to settle the problem raised by the attitude of South Africa. The triple veto which had recently occurred in the Security Council proved just how critical the situation was, since the position of Member States on that question was clear-cut. The United Nations should, of course, be given credit for its considerable successes, but thought should still be given to ways to ensure greater justice in relations between States. The debate was not in vain, because the cause was just and those who were opposed to any review would have to answer for their attitude sooner or later. Moreover, the proposal to examine the possibility of reviewing the Charter of the United Nations was not unexpected; it had been mentioned in several resolutions adopted at previous sessions of the General Assembly.

40. The representative of Poland had maintained that the proposed discussion would be pointless because any review must be ratified by the permanent members of the Security Council, which were not unanimously in favour of such an undertaking, and the cause was therefore already lost. He recalled, in that context, that when the group of Latin

3 A/8746 and Corr.1.

American countries had proposed that the General Assembly increase the number of members of the Economic and Social Council, the same countries which were now opposed to the study of a possible review of the Charter had then been opposed to that change. The countries of the Latin American group had, however, continued their struggle and had finally triumphed. Obviously, the Polish delegation was right to think that the discussion of such a fundamental question should not be undertaken in haste. Indeed, no one wished to impose his point of view and any decision must be the result of a dialogue between civilized nations whose intention was to improve the effectiveness of the United Nations in safeguarding international peace and security, in accordance with the Charter of the United Nations and, thereby, to facilitate friendly relations between States. The representative of Poland had also stressed that only 38 Member States had replied to the circular note issued by the Secretary-General. But that did not necessarily mean that only 38 States were interested in the question of a possible review of the Charter. The representative of Poland was well aware that the vast majority of States supported the project. At the current stage, all that was involved was the establishment of an *ad hoc* committee to analyse the replies of States, which would subsequently be studied by the Secretariat and then examined by the General Assembly. Doubtless those who were opposed to the review of the Charter feared that it might weaken the power conferred on them by the right of veto. However, everyone was well aware of the excesses and inequalities which could result from the right of veto. Those who supported a review of the Charter knew that powerful political interests were in favour of maintaining the instrument unchanged. But, as the representative of the Philippines had urged, they should not allow themselves to be intimidated by the spectre of the veto.

41. The sponsors of draft resolution A/C.6/L.1002 merely wished to make the United Nations more dynamic and effective and his delegation warmly supported them. It also endorsed the Philippine representative's request that priority should be given to the draft when a vote was taken.

42. Mr. BOUAYAD-AGHA (Algeria) said that his delegation had become a sponsor of draft resolution A/C.6/L.1002. That decision was entirely logical, because Algeria and the non-aligned countries had always been very concerned about the need to consider suggestions regarding the review of the Charter, and the establishment of an *ad hoc* committee could only increase the effectiveness of the United Nations. Furthermore, if the Charter really belonged to everyone, there was no reason why States should not make observations which would subsequently be examined by a committee. The action of the sponsors of draft resolution A/C.6/L.1002 was simple and had no ulterior motives; it opened up promising prospects for the Organization.

43. The CHAIRMAN announced that Liberia, Rwanda and Trinidad and Tobago had joined the list of sponsors of draft resolution A/C.6/L.1002.

The meeting rose at 1.15 p.m.

1513th meeting

Tuesday, 3 December 1974, at 3.20 p.m.

Chairman: Mr. ŠAHOVĆ (Yugoslavia).

A/C.6/SR.1513 and Corr.1

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country *(continued)* (A/9626, A/C.6/429, A/C.6/432)

1. Mr. M'BODJ (Senegal) commended the Committee on Relations with the Host Country on the work accomplished in 1974. As the Committee had made clear in its report (A/9626), the situation with regard to the security of missions and the safety of their personnel was still far from satisfactory. His own Mission had been obliged to submit a complaint to the Committee and to the competent host country authorities on 20 August 1974 concerning an incident in which a diplomatic bag addressed the Mission of Senegal had been unlawfully opened on the way from Dakar to New York. That was a flagrant violation of the inviolability of diplomatic correspondence, which was one of the privileges essential to the functioning of diplomatic missions. The host country had not given a satisfactory reply to the letter from the Permanent Representative of Senegal to the United Nations concerning that incident, and since then another bag had been received which had obviously been opened in transit.

2. Proper implementation of the Act for the Protection of Foreign Officials and Official Guests of the United States of 1972 would go a long way towards solving many of the problems confronting the diplomatic community in New York. He hoped that the United States Government would do its utmost to bring the provision of local law into line with its federal legislation so that diplomats could receive the protection to which they were entitled. If necessary, local legislation should be changed to conform to that federal Act. His observations should not be taken as an attack on the host country but rather as a constructive criticism of the situation affecting the diplomatic community in New York.

3. Mr. BAULIN (Byelorussian Soviet Socialist Republic) said that during 1974 the Committee on Relations with the Host Country had studied a number of important problems which affected the interests of the overwhelming majority

of diplomatic missions accredited to the United Nations. During the past year that Committee had considered a number of specific cases brought to its attention by Member States, as well as several general problems concerning relations with the host country. His delegation agreed that the Committee on Relations with the Host Country was a useful forum for the consideration of problems affecting the diplomatic community.

4. The recommendations of that Committee objectively reflected the existing state of affairs and the inadequacy of the measures taken by the host country authorities to put an end to acts of violence and dangerous attacks on the premises of a number of missions accredited to the United Nations. Stress was rightly laid on the need to adopt more effective measures in respect of organizations and individuals engaging in hostile actions or making threats directed at certain missions and their personnel.

5. The question of the security of missions and the safety of their personnel had become a perennial item on the agenda of the Committee on Relations with the Host Country. As the report indicated, the existing situation was far from satisfactory. His delegation shared the view expressed by many members of that Committee that that body should not confine itself to considering complaints by various missions and the replies of the host country; rather it should give greater attention to a systematic review of the problem. In its discussion of note A/AC.154/23 prepared by the Secretariat on the security of missions and the safety of their personnel, the view had been expressed that although the host country had taken some legislative measures to implement its international obligations it had neglected to adopt the corresponding administrative and judicial measures necessary to discharge its obligation to provide missions and their personnel with adequate protection. Among the measures which could be endorsed were those which lent themselves to a more active investigation of criminal activities and the imposition of stricter sentences. Judicial proceedings should be speeded up and missions fully informed of the progress of investigations. Demonstrations and picketing which were in violation of the federal laws could not be validly supported on the grounds of freedom of speech or on any other ground. His delegation endorsed the proposal that such activities should be prohibited altogether in front of missions and permitted, if at all, only in the immediate vicinity of the Headquarters buildings.

6. Commenting on the memorandum prepared by the New York City Corporation Counsel and entitled "Aspects of the American legal system in the context of security of diplomats accredited to the United Nations" circulated as document A/AC.154/36), he expressed disappointment and dissatisfaction with the interpretation given to the provisons of the federal Law of 1972 concerning the prohibition of picketing or other demonstrations within 100 feet of any diplomatic premises. The memorandum attempted to limit the scope of that Law of 1972 and to legitimize the practice of picketing and demonstrating in the immediate vicinity of diplomatic premises. It was argued that if picketing was orderly, did not prevent ingress and egress, was not abusive and did not aim at intimidation, harassment, coercion or obstruction of official duties, it fell within the area of freedom of speech protected by the First Amendment of the United States Constitution. The memorandum further stated that the mere presence of demonstrators within 100 feet of a protected building was not in violation of that Law. As an example of what went on at such "permitted demonstrations" he drew attention to the hostile gathering organized by a large group of demonstrators on 26 December 1973 outside the building which housed the Missions of the USSR, Byelorussian SSR and Ukrainian SSR. That demonstration had been described in two notes verbales addressed by the Mission of the Union of Soviet Socialist Republics to the Mission of the United States and circulated to the Committee in document A/AC.154/10. The incident had been the subject of the twenty-fourth meeting of the Committee, held on 28 December 1973. Many other instances could be given of such demonstrations and picketing in the immediate vicinity of the Mission of the Byelorussian SSR, all of which had been accompanied by insults and abusive language directed at members of the staff of the Mission. In referring to the lawful nature of certain types of demonstrations and picketing, the host country was attempting to justify its failure to adopt the measures necessary to implement the federal Law of 1972. The argument that the basic obstacle to enforcement of the laws to protect diplomats was the conflict between rules concerning United States citizens and the host country's obligations under international law concerning the protection of diplomats was unfounded. The host country should comply with its promise to adjust the federal and municipal laws so as to make the protection of the security of missions and mission personnel more effective. Document A/AC.154/36 had not made any positive contribution towards solving the problem of the security of missions and the safety of their personnel. In connexion with the requirement that a complaint must be made in writing and the complainant must be prepared to appear as a witness in court, he observed that to impose the burden of prosecution upon the diplomat was not in accordance with the Vienna Convention on Diplomatic Relations.[1]

7. With regard to the parking situation, his delegation was of the view that the removal of reserved parking signs, the towing away of diplomatic vehicles and the continuous issuance of summonses were violations of article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations and represented a failure on the part of the host country to fulfil its international obligations. The campaign being conducted by the authorities of the city of New York to ticket diplomatic vehicles was an administrative measure that was contrary to the provisions of international law concerning diplomatic immunities. In many cases the police of the city of New York discriminated against diplomatic vehicles, singling them out as targets for parking tickets. The publicizing by the mass media of statistics concerning the ticketing of diplomatic vehicles did not help to improve relations between the diplomatic community and the general public. The attempts by the representatives of the host country to prove the premise that the main reasons for crimes against diplomats was misunderstanding by them of the intricacies of the United States legal system rather than the ineffectiveness of the existing legislation or the absence of measures to prevent violations of the law would not contribute to a positive solution of the problem of

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1 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

protecting missions and their personnel. It was the duty and obligation of the host country to prevent crimes against diplomats and missions.

8. The host country authorities should take steps, through the mass media, to establish a more normal atmosphere for the work of the United Nations and the missions accredited to it by explaining their functions and importance for the strengthening of international peace and security and for the promotion of co-operation among States with different social systems. If the Organization as a whole was to function effectively, the staff of missions to the United Nations must have normal working and living conditions. It was unacceptable that diplomats should have to live and work with a constant feeling of lack of security.

9. His delegation endorsed the recommendations of the Committee set out in chapter VII of its report and hoped that they would be reflected in the resolution on the item. A speedy and effective solution of the problems being dealt with by that Committee, and above all the question of the security of missions and the safety of their personnel, would have a positive effect on the work of missions and would be of benefit to the host country by eliminating unnecessary friction. Moreover, such a solution would further the cause of détente and the promotion of friendly relations among all States.

10. Mr. PARRY (United Kingdom) said that his country had always been an active member of the Committee on Relations with the Host Country and was directly concerned with the problem of the security of missions, since there had been a number of occasions when the premises of the United Kingdom Mission had been the target of demonstrations or threats or other unpleasant incidents. His Mission also shared the inconvenience and vexations which other missions had experienced as a result of the difficulties of parking in New York. Finally, the fact that the United Kingdom served as a host country to a number of international organizations as well as ordinary diplomatic missions gave his delegation a perspective that others might lack.

11. The problem of the security of missions and the safety of their personnel appeared to loom largest among the various problems on the agenda of the Committee on Relations with the Host Country. While not as active as it had been a year or two ago, the problem was still there and from time to time it came to the surface in a particularly distressing way. The report of the Committee contained a catalogue of illustrative incidents. While all of the incidents were regrettable, not all of them were serious. Some might well have been aggravated, if not actually provoked, by the unwise or tactless attitude of the diplomat concerned. Not every affront or discourtesy to a diplomat was necessarily to be construed as an attack upon him in his official status or as an attack upon the dignity or security of his mission, still less as a deliberate affront to his country. Even when dealing with serious incidents involving real violence or the threat of violence, a sense of proportion must be maintained. The problem of violence was not confined to diplomats accredited to the United Nations or to diplomats in general but was rather a distressingly common aspect of modern life. Nor was the problem confined to New York or the United States alone. Nevertheless, the phenomenon of violence against diplomatic missions and their personnel, and of illegal harassment, was a particularly dangerous manifestation of that aspect of public life, striking as it did at the very machinery of international intercourse. Since attacks against diplomatic missions and their personnel were often related to concern about a particular international problem, it was ironic that the effect of such attacks might be to impair the attainment of a solution to that problem. His Government had consistently defended the right of individuals to free expression, one of the basic freedoms set out in the Universal Declaration of Human Rights and all related instruments. It condemned violent action which claimed to be in exercise of that freedom but which was actually designed to impose the views of one group on another. The view that violence was a legitimate means of attaining just ends was highly dangerous, and particularly dangerous when used to justify attacks on diplomatic missions and their personnel.

12. It was easy enough to point to actual cases where the security of missions and their personnel had been infringed or imperilled. It was also easy to say that it was the duty of the host country under international law to take all reasonable steps to prevent the commission of such acts against missions and to secure the arrest and prosecution of those who perpetrated them. But to describe the problem and to define the duty of the host country in abstract terms was of little avail. In considering concrete measures that could be taken by the United States authorities, there were two factors which should not be overlooked. The first was that the problem of offences against diplomatic missions in New York was merely one facet of the larger problem of crime in New York, and that in turn was merely one aspect of the world-wide problem of crime in modern cities. It was unreasonable to demand that the United States authorities should immediately solve that problem for the benefit of the diplomatic community when they could not solve it for their own benefit and when no other Government, in comparable circumstances, had yet found a solution to it. The most that could be asked was that, in so far as crime against diplomatic missions presented special features, the host country should take special measures to deal with them. In the view of his delegation, the United States authorities were aware of their duty in that respect and discharged it to the best of their ability, and at least as well as any other Government could do in the circumstances. The second factor to bear in mind was that United Nations Headquarters was situated in a country which honoured and observed the rule of law, where the judicial process was followed and the rights of an accused person were respected, and where people could not be deprived of their liberty, or punished in other ways, on the basis of an administrative fiat or at the will of an official or politician or on the mere assertion of an accuser. That might be less convenient than the situation which would obtain if United Nations Headquarters were situated in a totalitarian country. But it seemed to his delegation to be more consistent with both the letter and the spirit of the Charter of the United Nations, under which delegations operated and which they were here to serve. If there was indeed a price to be paid in terms of inconvenience, it was a price which his delegation was willing to continue to pay. Nevertheless, the United States authorities could be required to be alert to the changing conditions of the situation and to carry out their duty with the utmost vigour. His delegation had no

occasion to complain of any lack of interest or vigour on the part of those authorities in any case in which it had been involved or in any case that had come to its attention through the Committee on Relations with the Host Country. On no occasion could the host country authorities have been charged with lack of good faith or proper diligence in discharging their responsibility. But there was no room for complacency. The institutionalized dialogue with the host country provided by that Committee clearly played a most useful role, for the host country could not be expected to meet a problem presented by changing circumstances unless it had an opportunity to discuss that problem with representatives of the diplomatic community.

13. In that connexion, considerable concern had been expressed over the handling of demonstrations and picketing, particularly in relation to the implementation of the federal Law of 1972. Paragraph 88, recommendation 3, of the report of the Committee on Relations with the Host Country constituted a reasonable and carefully phrased recommendation on that subject. That recommendation, which his delegation had helped to formulate, had been accepted as fair and appropriate by the delegation of the host country as well as by other delegations, such as that of the USSR. His delegation had no reason to doubt that the recommendation would be fully implemented, and that would go a long way towards resolving the difficulties.

14. His delegation noted with interest the Secretariat studies on the problem, contained in documents A/AC.154/20 and A/AC.154/23. One of the conclusions that his delegation drew from those papers and from the discussions to which they had given rise was that the diplomatic community perhaps underestimated the difficulties inherent in balancing freedom of speech against the requirements of security precautions; another conclusion which it drew but which some delegations seemed unready to acknowledge was that the host country could not be expected to pursue prosecutions without the co-operation of the diplomatic ommunity. Unless members of missions were prepared to lodge complaints and to give evidence, the administration of justice was rendered much more difficult, or even impossible. The voluntary giving of evidence in a criminal case did not necessarily involve a waiver of diplomatic privileges and immunities. Nor, to the extent that a waiver might be involved in certain cases, would his delegation regard that as in any way improper or unreasonable or inconsistent with the status and special position of the mission concerned or its personnel. Delegations perhaps stood a little too much on their supposed dignity on those matters and seemed to overlook the provisions of section 14 of the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)), which stated, with regard to the status of the representatives of Member States, that privileges and immunities were accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations and that, consequently, a Member not only had the right but was under a duty to waive the immunity of its representative in any case where, in the opinion of the Member, the immunity would impede the course of justice and could be waived without prejudice to the purpose for which the immunity was accorded. In his delegation's view, if there was more attention to the letter and spirit of that provision and less tendency to make demands on the host country authorities without offering co-operation in return, the number of cases of unpunished offences against diplomatic missions might well be drastically reduced.

15. It was the standing policy of the United Kingdom Mission to be willing to make formal complaints and to give evidence in the local courts whenever that was reasonably required in the interests of justice—which of course included the prosecution of criminals—and where the real interests of Her Majesty's Government were not likely to be prejudiced by such action. In the exceptional cases where that was not possible, his delegation recognized that it could not complain if, as a result, the United States authorities were unable to initiate and proceed with prosecution.

16. His delegation also welcomed the two documents submitted to the Committee on Relations with the Host Country by the host country itself. Document A/AC.154/36 gave a detailed exposition of the law and procedures of the host country relating to the security of diplomatic missions and their personnel. That exposition was of great utility and interest and gave all a better understanding of the legal and practical framework within which the problem had to be tackled. In the last analysis, however, the laws and procedures of the host country were its own concern. The primary concern of delegations —perhaps their sole concern—was to ascertain whether those laws and procedures in fact enabled the United States, as host country, to comply with its obligations under international law. In his delegation's view, the laws and procedures described in document A/AC.154/36 did enable the host country to comply with its international obligations, and in their practical execution the host country was undoubtedly doing its best under admittedly difficult circumstances. In particular, it was encouraging that the facilities of the Executive Protective Service had now been made available to certain missions that were especially in need of them. That reassuring move illustrated the host country's constructive approach.

17. With regard to the parking situation, there seemed to be a general feeling that further concrete measures were needed in order to enable the diplomatic community to carry out its functions efficiently. The report contained a number of suggestions which should be given consideration. Nevertheless, the difficulties of the situation could not justify deliberate violation of the laws of the host country by the diplomatic community. However inconvenient it might be, it was their duty to respect those laws. On the other hand, the host country authorities must also respect the diplomatic community's special status in international law, however wrong its behaviour might be. The parking of a DPL vehicle outside the permitted parking zones did not justify the towing away of that vehicle, except in the infrequent case where it might be stolen, involved in a wreck, completely obstructing traffic or otherwise creating a serious public hazard. His delegation was gratified to learn of the new arrangement worked out by the United States Mission with the Police Department of the city of New York whereby diplomatic cars would be towed away only when they presented a danger to public safety.

18. A further aspect of the parking problem in New York which had emerged from the consideration given to it by the Committee on Relations with the Host Country was a striking illustration of the existence of a certain constructive tension between the just claims of the diplomatic community and the just claims of the host country which was present in almost all the topics with which that Committee had to concern itself. In the case of parking, a balance had to be established between, on the one hand, the requirements of the diplomatic community to have its business facilitated and, on the other, the very proper needs of the inhabitants of the city of New York in respect of the free flow of traffic and the diminution of pollution. His delegation did not agree with those who claimed that diplomats were exempt from making their contribution to satisfying the needs of the city in which they lived and worked. If New York had a traffic problem and a pollution problem, diplomats must share them; if the inhabitants were called upon to make sacrifices to help solve those problems, diplomats must bear their part of the burden. If diplomats asked for and were accorded special parking facilities, those were not a right but a privilege and a courtesy. They were nevertheless a very necessary privilege and courtesy in New York, and their absence would undoubtedly impair the functioning of missions. For that reason, diplomats were entitled to ask the authorities of the city, through the United States Government if necessary, to make such special arrangements to the greatest extent that was reasonably possible. His delegation was not convinced that the right balance had yet been struck by the host country authorities or that the needs of the diplomatic community had been properly accommodated. It therefore proposed to continue to press the host country authorities to see what more could be done in that connexion. However, his delegation proposed to do so in a spirit of friendly co-operation and not in a spirit of angry and petulant confrontation. Quite apart from that being a more effective negotiating technique, it was just as important a part of the public relations of the United Nations community in the host city as were the proposed measures discussed in chapter VI of the report of the Committee.

19. As the report pointed out, the public relations problem was, undoubtedly, a two-way affair; paragraph 88, recommendations 6, 7 and 8, of the report reflected that. On the one hand, the various information exercises would undoubtedly serve to promote a better understanding of the problems of the diplomatic community, while, on the other, the elimination of specific issues between individual missions and the host country, such as long-standing indebtedness incurred by individual diplomats or missions and complaints of discourtesy not satisfactorily cleared up, would no doubt serve to prepare the soil. So also would compliance generally with the laws and regulations of the host country.

20. With regard to the energy situation in relation to the needs of the diplomatic community, his delegation noted that consultations were continuing on arrangements for providing a petrol station in the vicinity of the Headquarters building to service official mission and United Nations vehicles. Although the energy situation had improved, it would, in his delegation's view, be sensible not to lose sight of that problem altogether.

21. His delegation was generally satisfied with chapter V of the report, dealing with comments and suggestions on the organization of the work of the Committee on Relations with the Host Country. It agreed that it was not advisable for that Committee to hold an annual session as a matter of routine; it was preferable to deal with problems as they arose and to make greater use of its Working Group. Given the continuing nature of the problems before the Committee, it was appropriate that the work of the Committee should continue in 1975.

22. Mr. OMAR (Libyan Arab Republic) said that the report of the Committee on Relations with the Host Country dealt with a number of important topics, the most important being the security of missions and the safety of their personnel. Paragraphs 32 to 47 of the report described a series of lamentable events which had occurred in respect of missions, such as hostile demonstrations, vandalism and other criminal acts, all of which did not help to create the calm atmosphere essential for the functioning of those missions. The report showed clearly the extent of the sincere efforts made by the members of the Committee and by the public security authorities and the lengthy dialogue undertaken with the host country with a view to finding positive solutions to ensure the security of missions and the safety of their personnel. Nevertheless, his delegation wished to express extreme concern that no positive solutions had been found to put an end to the problems faced by missions, which constituted a daily increasing danger. The events of the current session of the General Assembly were ample proof of the tense atmosphere which currently prevailed.

23. In that connexion, he drew attention to the acts perpetrated by elements motivated by Zionist organizations against the New York office of the Palestine Liberation Organization and the aggression committed against one official of that office, who had been wounded and hospitalized as a result. He drew attention also to the rabid campaign and hostile demonstrations organized by Zionist elements in New York in a futile attempt to disrupt the session of the General Assembly before and during its consideration of the question of Palestine. That senseless mob had increased its unruly behaviour when the General Assembly had decided to invite the Palestine Liberation Organization to participate in the debate on that issue.

24. His delegation fully appreciated the efforts made during that period by the host country police to ensure protection and security for both the United Nations Headquarters building and the Arab missions. However, the prevailing atmosphere had not been appropriate to the nature of the work of the United Nations. His delegation noted with regret that certain individuals in the State of New York who had a responsibility to assist in the creation of an appropriate atmosphere for the work of the United Nations had co-operated with the irresponsible elements in their hostile campaign against the United Nations. In that connexion, he drew attention to the press campaign led and financed by the Governor of New York himself, who had devoted a whole page of *The New York Times* of 4 November 1974 to a so-called protest against terrorism, stating therein that he, as Governor of New York, totally disapproved of the United Nations decision to allow the Palestine Liberation Organization to be represented in the

General Assembly. The Governor had stated further that he was proud that his country stood side by side with another three countries in protesting what he referred to as an unjustified and extremist act on the part of the United Nations. That was surely a distortion of the truth; his delegation was convinced that the people of the United States was not opposed to the right of peoples to self-determination. Pressure from Zionist groups and the opportunistic attitude of certain authorities had given that impression. His delegation felt pity for such individuals; despite their rabid campaign, their efforts had failed.

25. The security of missions and the safety of their personnel and the creation of an atmosphere that would enable them to perform their functions in the best possible manner was a most urgent issue, and the necessary steps should be taken to ensure such safety and security. That could only be achieved by sincere co-operation between the host country, United Nations security personnel and the Committee on Relations with the Host Country and by the host country's full commitment to implement the obligations set forth in the Headquarters Agreement (General Assembly resolution 169 (II)).

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002)

26. Mr. YOKOTA (Japan) said that his delegation wished to express sincere appreciation to the Minister for Foreign Affairs of the Philippines for his highly comprehensive, impartial and articulate statement at the previous meeting on the item under consideration. That forceful statement by one of the founding fathers of the United Nations had added fresh momentum to the debate on the extremely important question of Charter review. Members would be doing a disservice to the Committee if they failed to heed the voice of reason coming from a statesman whose deep attachment to the original Charter was second to none. All knew the great part he had played in drafting that historic document as well as in building up the United Nations. It was the foresight of the founding fathers that was responsible for the inclusion of Articles 108 and 109, which foresaw the necessity of Charter review.

27. The basic position of the Japanese Government on the question was well known. His delegation had been among those which had raised the question at the twenty-fourth session of the General Assembly. At that session (1756th plenary meeting), the Minister for Foreign Affairs of Japan had expounded in detail the basic thinking of his Government on the question when speaking on the twenty-fifth anniversary of the United Nations, then about to take place, and had put forward a number of concrete suggestions. Furthermore, his Government's views had been submitted to the Secretary-General in accordance with General Assembly resolution 2697 (XXV).[2] At the twenty-seventh session of the General Assembly, his delegation had again in the Sixth Committee (1375th meeting) dwelt at length on the question of Charter review.

28. It was the carefully studied view of his delegation that the desire of a number of delegations to consider the question of Charter review remained undiminished, despite repeated attempts to keep the item off the agenda of the General Assembly. That was demonstrated by the number of delegations which had set forth their views on the question at the twenty-seventh and at the current session of the General Assembly and which had submitted views and suggestions in accordance with General Assembly resolutions 2697 (XXV) and 2968 (XXVII). The General Assembly's renewed endorsement of a debate on the item had provided additional evidence that the majority of Member States continued to take a lively interest in the topic.

29. His delegation was convinced that the time had come for all responsible Members of the United Nations, advocates and opponents of Charter review alike, to face that supremely important issue squarely, in order to reflect on the achievements of the 29 years that the Organization had been functioning. Critics of Charter review had used arguments that were familiar to all: that there was nothing wrong with the Charter if only all Member States would comply with it; that a review of the Charter would inevitably give rise to an endless debate and possible polemics; that it would magnify the frustrations of some Member States; that it would discredit the present provisions of the Charter and that, as a result, the function and prestige of the United Nations would be undermined. His delegation respectfully took issue with those views, although it, too, fully recognized that if the international community embarked on a review of the Charter, it should proceed at an orderly pace and carefully explore the merits and demerits of each proposal. His delegation considered the criticisms made over-cautious, because it was precisely as a result of the growing frustration of a considerable number of Member States, and the increasing danger to the future of the United Nations which that had engendered, that his delegation had long stressed the need for Charter review.

30. To avoid any misunderstanding, however, he wished to reassure the Committee concerning the unchanging and unconditional commitment of his Government to the purposes and principles of the United Nations, as evidenced by the statement made by the Minister for Foreign Affairs of Japan in the general debate at the current session (2241st plenary meeting). Because of that commitment, Japan felt deeply concerned about the dissatisfaction with the performance of the Organization which was increasingly evident not only within the United Nations but outside also. Although, from its inception, the United Nations had made significant contributions to the maintenance of international peace and security, it must be admitted that the Organization had not fully lived up to the great expectations that mankind had entertained for it when it had been founded.

31. While his delegation did not deny the need for more faithful implementation of the Charter and the resolutions of United Nations bodies, it nevertheless felt that the dissatisfaction with the performance of the Organization was attributable, at least to a considerable extent, to the failure of the Charter, nearly 30 years after its adoption, to function properly in relation to the constantly changing political, economic and social realities of the international

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2 See A/8746 and Corr.1.

community. Truly epoch-making changes had occurred in the world during the past three decades, and it was inevitable that the Charter, having been adopted by the 51 original signatories on the basis of the international situation prevailing at the end of the Second World War, should be adjusted to the new realities and adapted to meet adequately the challenges offered by the altered circumstances of the contemporary world.

32. His delegation fully understood the spontaneous and legitimate desire of a growing number of delegations to bring the Charter up to date in order to strengthen institutionally the functioning of the United Nations. It was high time that every Member State should apply its wisdom to try to evolve an orderly forum for initiating an in-depth study of the various issues involving Articles of the Charter. The question of Charter review could not remain unsettled much longer, and his delegation was convinced that preliminary work should begin on the problem. He stressed, however, that his delegation was by no means unaware of the extremely delicate nature of the problems involved. The position of the great Powers, the aspirations of newly emerging States, the balance of power relations and all the stark realities of the actual world must be duly taken into account. In fact, any mishandling of the question of Charter review could produce more dissatisfaction than satisfaction in the international community, weakening the support of those States which wished to preserve the Charter in its original entirety and creating major damage to the existing framework of international co-operation. A study of the question must, therefore, be conducted with the exclusive aim of achieving long-term benefits for the entire family of nations and with the utmost unselfishmess, so that no Member State or group of Member States would seek short-term gains for themselves at the cost of potential long-term damage to the indispensable world organization.

33. All Member States, both advocates and opponents of Charter review, should further study the implications and ramifications of their arguments and scrutinize their positions more closely in the light of contemporary realities and prospective future developments. No useful purpose would be served if radical changes in the Charter gave rise to serious disillusionment on the part of a considerable number of Member States, thus giving them occasion to bypass the Organization and produce a serious setback for existing efforts to promote international co-operation. On the other hand, it would be equally unfortunate if some Member States flatly rejected the sincere desires of a considerable number of Member States to promote consideration of that question, for that might lead them to despair of the future of the United Nations and to break away from the purposes and principles of the Charter.

34. The Members of the Orgnaization should not seek hasty conclusions on the substance of that important question. Priority should be given to developing an appropriate method for carrying out a revision of the Charter when, after careful thought, the conclusion was reached that that revision was desirable. Careful attention should be paid to the procedure adopted in dealing with specific amendments considered necessary in the past. In view of the harm that might be caused by further delay in consideration of the question of Charter review and in view also of the number of difficult problems involved, the most realistic first step would be to embark on a preliminary study of the views of Member States on the question through machinery to be established by the General Assembly. The views set forth in documents A/8746 and Corr.1 and Add.1-3 and A/9739, as well as the relevant statements by various delegations, would certainly provide sufficient material for the initiation of such a study. Even a cursory study of those views would make it clear that there was general agreement among the advocates of Charter review regarding the possible breadth and scope of that highly delicate task. Not one of those delegations saw a need to review the provisions setting forth the purposes and principles of the Charter. As they envisaged the proposed review, it would include solely the provisions for the implementation of the purposes and principles. Moreover, most of the advocates of Charter review seemed to prefer a step-by-step approach, limiting the review to specific provisions requiring urgent attention for up-dating, rather than embarking on a general and comprehensive re-examination of the entire Charter. Many of the delegations which had expressed their views on that question had rightly recognized the importance of securing widespread support among Member States if meaningful results were to be obtained from the study.

35. His delegation warmly commended to all members of the Committee draft resolution A/C.6/L.1002. As a sponsor of the draft resolution, it wished to support the request made by the Minister for Foreign Affairs of the Philippines at the previous meeting that the draft resolution be given priority so that it would be put to the vote before any other draft resolution on the item under consideration. While stressing the need to take a concrete step on the question of Charter review, he stressed that that difficult task should be tackled with the solemn reaffirmation that all were profoundly dedicated to the noble ideals and principles embodied in the Charter.

36. Mr. AN Chih-yuan (China) said that profound changes had taken place in the world situation since the signing of the Charter of the United Nations. In particular, the vigorous emergence of the third world was a great event in contemporary international relations. Suffering greatly from colonialist, imperialist and hegemonic aggression, oppression and exploitation over a long period, the numerous Asian, African and Latin American countries and peoples had found themselves in a powerless position in international affairs. Now the third world countries had become increasingly awakened and stronger. They had become the main force in the struggle of the peoples of the world against imperialism and colonialism, and particularly against super-Power hegemony, and were playing an ever greater role in international affairs. That profound change in the world could not but affect the United Nations.

37. When the United Nations had been founded, there had been on 51 Members. There were currently 138, with the third world countries comprising some three fourths of them. They were mostly countries which had obtained independence after prolonged and arduous stuggles. In the United Nations, the voices of the Asian, African and Latin American countries had become increasingly articulate and their influence was being increasingly felt on major international issues. Their strong demands for the defence of State sovereignty, independence and national economic rights

and interests against super-Power hegemony and power politics had broken the dull atmosphere prevailing in the United Nations over a long period, thus leading to certain changes in the situations in the United Nations. In particular, the sixth special session of the General Assembly and the Third United Nations Conference on the Law of the Sea had given expression to the strong desire of the numerous small and medium countries for the establishment of a new international relationship based on equality. The current session of the General Assembly had also achieved successes in opposing big-Power hegemony, colonialism, racism and zionism. All that testified to the great strength of the united struggle of the third world countries and would exert a far-reaching influence on the future work of the United Nations. Nevertheless, his delegation could not but note that to date the United Nations had not yet completely got rid of super-Power control and had remained weak and impotent on a number of major international issues. Sometimes it had even done the wrong thing. A great number of legitimate demands and proposals of the numerous small and medium countries had failed to be duly reflected in the United Nations. A number of draft resolutions upholding justice had not been adopted owing to obstruction and sabotage by the super-Powers. Even if some were adopted, they had not been implemented, for the same reason. In short, the United Nations in its current state fell far short of the needs of the contemporary world. Such a state of affairs was most unsatisfactory to the numerous small and medium-sized countries, particularly the third world countries. The United Nations must be reformed, and an important aspect of that reform was the review of the Charter.

38. The Charter, which had been drawn up near the end of the Second World War, contained quite a few provisions which were irrational or outmoded in the light of the current situation. It was only natural that quite a number of countries should have requested a review of the Charter so as to make it fully reflect the current world state of affairs.

39. However, the Committee had also heard a super-Power which categorically opposed the review and amendment of the Charter. The Soviet representative had asserted that, despite the change in the world situation, no amendments in the Charter were admissible. He had openly accused those States which favoured a review of the Charter of undermining it and destroying the very basis of the existence of the United Nations. He had even resorted to threats and intimidation with the preposterous assertion that the review of the Charter might lead to a nuclear war. The Charter had been formulated by man and was by no means immutable and infallible. Now that almost three decades had elapsed since the Charter had become effective, why was it not permissible to ask for a review of the Charter and amendments thereto? Apparently there were still people who wanted to monopolize the floor in the United Nations and attempt to continue their hegemonic policies there. That would be of no avail. There was a rising demand for reform of the United Nations and a review of the Charter. Yet some people were mortally afraid of changing the irrational and outmoded provisions and of losing their privileged status. That unravelled the mystery of their obstinate opposition to the review of the Charter.

40. His delegation had consistently held that all countries, big or small, should be equal. The affairs of the United Nations should be managed jointly by all States Members of the Organization. His delegation was resolutely opposed to the United Nations being controlled and manipulated by one or two super-Powers. The Chinese Government and people had always maintained that the review and amendment of the Charter was an important and serious problem. Now a number of States had proposed in a draft resolution (A/C.6/L.1002) the establishment of an *ad hoc* committee on the Charter to present some constructive recommendations in a report to the next session of the General Assembly on the basis of a study of the views of various countries. That was a positive and feasible proposal which his delegation supported and hoped would be adopted by the Committee.

41. The Soviet Union had submitted a draft resolution (A/C.6/L.1001) opposing any action on the review of the Charter. In its draft, the Soviet Union had put forth some untenable arguments in a deliberate attempt to obliterate the fact that in recent years many small and medium countries had made known on different occasions their just demand for the review and amendment of the Charter. Everyone could see that it was the Soviet Union which had been particularly desperate in opposing a review of the Charter. His delegation firmly opposed the persistent Soviet attempt to obstruct the review of the Charter and was firmly opposed to the Soviet draft resolution.

42. The whole world situation was now developing increasingly in favour of the peoples of the world. The United Nations should defend the sovereignty and independence of various countries, in support of the just cause of the peoples of all countries and the maintenance of international peace and security. It should not continue to be used by the super-Powers as a tool for pushing their power politics and hegemony. His delegation was ready to work with all the peace-loving and justice-upholding countries to enable the United Nations to play a useful role in opposing imperialism and colonialism, particularly hegemony, and in promoting the cause of human progress.

43. Mr. OGBU (Nigeria) said that draft resolution A/C.6/L.1002, of which his delegation was a sponsor, was modest and non-controversial and intended to permit further consideration of the observations already submitted by Governments in response to General Assembly resolutions 2697 (XXV) and 2968 (XXVII) and also of the views expressed by Member States at various sessions of the General Assembly.

44. His delegation strongly believed that if there was nothing wrong with the Charter of the United Nations, all well-meaning Member States should support the idea of considering its review without any hesitation. It had been said that some of the delegations who resisted the idea of a review did so because they feared the veto might be denied to permanent members of the Security Council. While his delegation did not necessarily say that that was the major or only intention of a review, it likened the situation of the Charter to the individual who had survived for the past 29 years and yet was afraid to go to a physician for a check-up. If, as some delegations said, there was nothing wrong with the Charter, then Members would be further reinforced in

their commitment to the Organization and its Charter if they received a clean bill of health after the review of the Charter. The fact that the rival draft resolution before the Committee (A/C.6/L.1001) made reference to changing conditions suggested that there was room for improvement in the Charter. The Organization should not be deprived of the benefit of 29 years of experience. He wished to point out that, although in many languages the terms "review" and "revision" were interpreted as having the same meaning, his delegation understood them as having different meanings; a review did not necessarily lead to revision. If it did, however, he saw nothing wrong with that.

45. Turning to draft resolution A/C.6/L.1002, he pointed out that the first four preambular paragraphs contained the necessary background information for an understanding of the operative paragraphs. He saw no problem in the last preambular paragraph, since it was conventional to use such wording in a draft resolution dealing with the Charter of the United Nations.

46. The core of the draft resolution was operative paragraph 1, which provided for the establishment of an *ad hoc* committee on the Charter of the United Nations which would serve as machinery for the thorough examination of any action already taken in conformity with General Assembly resolutions 2697 (XXV) and 2968 (XXVII). The paragraph had been couched in simple and straightforward language and had been so drafted as to avoid any controversy which might prevent its adoption by consensus. Operative paragraph 2 was merely a follow-up to General Assembly resolution 2697 (XXV).

47. The sponsors of the draft resolution were mindful of the important role of the Secretariat as one of the principal organs of the United Nations. Under Article 99 of the Charter the Secretary-General could bring to the attention of the Security Council any matter which in his opinion might threaten the maintenance of international peace and security. It therefore seemed to his delegation inevitable that the Secretary-General should make available to the *ad hoc* committee his views on the experience acquired in the application of the provisions of the Charter with regard to the Secretariat. Operative paragraph 3 was intended to serve that purpose. The remaining operative paragraphs dealt exclusively with administrative and procedural matters. His delegation hoped the Committee would adopt the draft resolution by consensus.

48. Mr. GALINDO-POHL (El Salvador) remarked that efforts to embark on a careful study of possible amendments to the Charter had been consistently put off, year after year. Some delegations had advocated postponement in order to wait for more propitious circumstances; others had done so as a means of rejecting review efforts outright. However, the subject was still alive, not so much because of the tenacity of those favouring review as because it reflected real problems within the international community and its highest organization, the United Nations. During the Charter's 30 years of existence the world had moved more rapidly than during the previous two centuries.

49. None of the advocates of review was suggesting that efficiency should be sacrificed in the name of urgency or that a majority vote should be replaced by consultation and broad-based agreement. Any amendment to the Charter would have to be the result of a lengthy process; it was precisely for that reason that a definite and timely start must be made.

50. The best works, both national and international, required adjustment over the course of time, in the light of social and political developments. Legal bodies had to be periodically modified as a result of inevitable social evolution and the need to take reasonable account of experience.

51. The Charter of the United Nations was far from having become a social fossil. But circumstances in 1945 had been quite different from circumstances in 1974. That was a result of the normal, ongoing process of history, which could not be contained within a legal instrument. In domestic legal systems, judicial and administrative practice made it possible to up-date codes and political constitutions. Such a method was not very effective in the case of international organizations. The up-dating of an instrument adopted by contracting parties with equal rights and duties had to be carried out through a procedure consistent with the procedure used for its formulation. Structural questions could not be solved through application and interpretation, but had to be dealt with through constituent norms.

52. The time had come to study the structure of the United Nations, without prejudging the conclusions that might be reached. Any refusal to undertake such a study reflected defeatism or prejudice. In recent years, tensions between the great Powers, particularly those having the veto, had lessened considerably. The atmosphere was therefore more favourable for such an exercise.

53. The effectiveness of the United Nations, particularly in the economic and social fields, was constantly being questioned, not only by the public but by those responsible for directing the Organization. The body which had been conceived as an instrument of peace and security following the Second World War would acquire a new dimension once international distributive justice was ensured, the system for protecting human rights strengthened and development programmes conceived from a global viewpoint.

54. The establishment of an *ad hoc* committee to consider the possibility of amending the Charter would ensure proper reflection and caution. It was wise to study national or international legal instruments at the appropriate time, before institutional or constitutional crises arose.

55. His delegation had found ample reason to sponsor draft resolution A/C.6/L.1002, and requested that it be given priority in the voting.

56. Mr. MIGLIUOLO (Italy), noting that the item on Charter review had been on the agenda of the General Assembly for quite a few years, said it was unfortunate that a subject which undoubtedly could have a fundamental and positive impact on the life of the Organization should have come up so late in the current session. It was also regrettable that such a limited amount of time should have been allowed for its consideration in the Committee. Nevertheless, positive results could be achieved because draft resolution A/C.6/L.1002, of which his country was

one of the sponsors, did not require a lengthy discussion, as the proposals it contained were purely procedural.

57. In that respect, his task at the current meeting had been made much easier by the lucid and convincing presentation of the draft resolution by the Minister for Foreign Affairs of the Philippines, who had spoken with the authority of a signatory of the Charter, a former President of the General Assembly and a statesman whose prestige was soundly established in the international community.

58. In the 30 years that had elapsed since the approval of the Charter, dramatic changes had taken place in the international community While endorsing the opinions expressed by other sponsors of the draft resolution, he wished to stress that 87 of the present Members of the United Nations, including Italy, i.e. the overwhelming majority of the membership, had been unable to attend the San Francisco Conference, that the tasks entrusted to the Organization had expanded enormously since then and that the practice followed in its daily activity had developed into totally new patterns of work.

59. Nobody could deny that there was a rising wave of criticism of the United Nations. It was necessary to see how the United Nations could cope more efficiently with its new responsibilities and whether every rule of the Charter was still consistent with the reality, the structure and the expectations of the contemporary international community. That was the meaning and aim of the exercise that a number of delegations, including his own, were submitting for the approval of the Committee. Concern over the possible outcome of a Charter review was unwarranted. Nobody wanted to do away with the principles and purposes of the Charter. Nor were the sponsors suggesting taking the path indicated by Article 109 and embarking on a conference for a general review of the Charter. They were not even proposing actual changes or amendments They were only pressing for the establishment of appropriate machinery to examine the views that many Governments had expressed since 1969. That, in his opinion, would be feasible only within a highly qualified *ad hoc* committee.

60. Some delegations had maintained that there was widespread opposition to the idea of reviewing the Charter. However, only one geographical group had solidly voiced such a preclusive attitude; that group was composed of far less than 10 per cent of the United Nations membership. Moreover, even the members of that group, by approving paragraph 5 *(c)* of General Assembly resolution 2499 A (XXIV), had recognized the necessity of considering proposals and suggestions for increasing the effectiveness of the United Nations. Subsequently, by endorsing paragraph 12 of the Declaration on the Strengthening of International Security (resolution 2734 (XXV)), those same countries had acknowledged the need to enhance by all possible means the authority and effectiveness of the Security Council and of its decisions.

61. It had not yet been possible to examine the proposals and suggestions submitted by Governments pursuant to General Assembly resolutions 2499 A (XXIV), 2697 (XXV) and 2968 (XXVII). His delegation considered that it would be undemocratic, indeed, contrary to the principle of sovereign equality of States, to deny such Governments the possibility not only of making their views known but also of having them carefully considered by the Organization. If, after such a thorough examination, a consensus emerged that no review of the Charter was necessary, his delegation would comply with the wish of the majority. But it believed that it was of paramount importance that a soul-searching exercise should be carried out. If Members did not take stock of the changes that had taken place since 1945, the Organization might face a real danger of being doomed to irrelevance, a danger which certain trends, including the tendency of some great Powers to bypass it, clearly portended.

62. He strongly urged, therefore, that the opportunity for an in-depth discussion of all the views expressed on the subject by Member States should be ensured through the establishment of the *ad hoc* committe proposed by the sponsors of draft resolution A/C.6/L.1002. He strongly supported the plea of the Minister for Foreign Affairs of the Philippines that the draft resolution, which had been submitted by a widely representative number of countries, should be given priority.

63. Mr. SA'DI (Jordan) said the subject of the review of the Charter must be approached with great caution. The approval of the Charter in San Francisco, had been preceded by intensive regional and international deliberations and compromises which had culminated in a consensus. That consensus had been the result of a decision to strike a balance between theory and reality and had been guided by the position that while all Member States were equal, there were still some States which were more equal than others, as reflected in the Security Council.

64. If the Member States believed that it was high time for a general review of the Charter in order to take into consideration the new world reality, his delegation contended that such an endeavour required an international conference at the highest level. It would be in essence a constitutional conference. An *ad hoc* committee was not the correct forum for such a gigantic and profound task. Also, deliberations at the regional and international levels must be initiated in preparation for any such conference.

65. In view of the complexity of the subject, his delegation believed that it would be more functional to approach it on a limited rather than on a general basis. If there was a particular aspect of the Charter that Member States felt needed review, as had been the case in the past with the Economic and Social Council and the Security Council, then the correct course was to focus on that particular matter.

66. The CHAIRMAN announced that the delegations of the Congo, Jamaica, Spain, and the United Republic of Tanzania had asked to be included among the sponsors of draft resolution A/C.6/L.1002.

67. Mr. FEDOROV (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said the representative of China had expressed certain fantastic ideas about the USSR and its foreign policy. Everyone present knew that that line of conduct had been followed by the Chinese delegation from the outset of the restoration of the

lawful rights of the People's Republic of China in the United Nations. That slanderous attack was aimed at diverting the attention of members to an unnecessary polemic that had nothing to do with the United Nations. He reserved the right to expose that slanderous attack at a forthcoming meeting.

68. Mr. AN Chih-yuan (China) said that, in view of the lateness of the hour, he would reserve the right of his delegation to exercise its right of reply to the Soviet delegation's attack at a forthcoming meeting.

The meeting rose at 5.55 p.m.

1514th meeting

Wednesday, 4 December 1974, at 11 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia)

A/C.6/SR.1514

Letter dated 7 October 1974 from the Chairman of the Second Committee to the President of the General Assembly concerning Chapter VI, section A.6, of the report of the Economic and Social Council *(concluded) (A/9603, A/C.6/431, A/C.6/L.1005)**

1. The CHAIRMAN recalled that the Chairman of the Second Committee had addressed to the Sixth Committee, through the President of the General Assembly, a communication dated 7 October 1974, in which the Sixth Committee was requested to give its views on the wording of the draft agreement between the United Nations and the World Intellectual Property Organization (see A/9603, annex IV). The draft agreement had been considered and approved by the Economic and Social Council on 31 July 1974 (see resolution 1890 (LVII)). The Council had recommended to the General Assembly that it should approve the draft at the current session. The draft would be considered by the Second Committee as soon as it received the Sixth Committee's views on the wording of the agreement. At its 1490th meeting, on 1 November 1974, the Sixth Committee had set up a Working Group, presided over by the representative of Tunisia, which had been instructed to consider the draft agreement in the light of the communication from the Chairman of the Second Committee.

2. Mr. GANA (Tunisia), introducing the report of the Working Group (A/C.6/L.1005), said that the Group had considered the draft agreement article by article from the standpoint of wording, with the help of the competent language experts of the Secretariat. The Working Group had agreed that certain changes should be made in the wording of the English, French, Russian and Spanish texts of the draft agreement, and those changes were set forth in annex I of its report. The Working Group had also recommended that the Secretariat should be asked to bring the Arabic and Chinese texts into line with the other versions. The Working Group's report was the result of the unanimous agreement of all its members. There was, however, one point which the Working Group had considered and on which it recommended that no change should be made in the text of the proposed agreement. It concerned the last sentence of article 3 *(b)*, which read: "Written statements presented by the Organization shall be distributed by the Secretariat of the United Nations to the members of the above-mentioned bodies, in accordance with the relevant rules of procedure." The Secretariat had informed the Working Group that the rules of procedure of the United Nations bodies concerned appeared to contain no specific rules concerning the distribution of written communications emanating from specialized agencies. The Working Group had not reached an agreement as to whether it was necessary to amend the sentence in question. However, the Secretariat could draw that question to the attention of the Economic and Social Council for consideration by the latter in the context of the review it was to undertake, in 1975, of the agreements between the United Nations and the specialized agencies.

3. Mrs. D'HAUSSY (France) agreed that the French version of article 3 of the draft agreement raised certain difficulties. Whereas the French text of annex IV of the report of the Economic and Social Council (A/9603) referred to "les dispositions pertinentes du règlement intérieur", the French text of the annex to Economic and Social Council resolution 1890 (LVII) referred to "les dispositions des règlements intérieurs pertinents". The Working Group, having been asked to decide which version should be adopted and corresponded to the English text, had not taken a decision because it concerned a question of substance. The Second Committee should therefore be consulted on the subject. Moreover, as the French delegation had proposed another version for article 11 of the draft agreement and as that proposal had not been accepted, it maintained its reservations on that point.

4. Mr. PARRY (United Kingdom) observed that, although the United Kingdom was one of the sponsors of Economic and Social Council resolution 1890 (LVII) embodying the draft agreement, it recognised that the draft agreement, which represented a compromise, was not entirely satisfactory. His delegation agreed with the French representative's views on the wording of article 11 and drew attention to his own delegation's comments on the subject appearing in the summary record of the 1918th meeting of the Council and in document E/5535.

5. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee approved the changes recommended by the Working Group in the English,

* Resumed from the 1490th meeting.

French, Russian and Spanish versions of the draft agreement. As recommended by the Working Group, the Sixth Committee would also request the Secretariat to take the necessary steps to ensure that the Arabic and Chinese texts of the draft agreement were in conformity with the other language versions.

6. With regard to the comment made by the Chairman of the Working Group concerning the last sentence of article 3 *(b)* of the draft agreement, the Sixth Committee could ask the Secretariat to draw the attention of the Economic and Social Council to the question so that the latter could study it in the context of its review, in 1975, of the agreements between the United Nations and the specialized agencies.

7. If there was no objection, he would send a letter to the Chairman of the Second Committee, through the President of the General Assembly,[1] with the Working Group's report in which were indicated the changes in the wording of the draft agreement recommended by the Sixth Committee.

It was so decided.

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country *(continued)* (A/C.6/429, A/C.6/432)

8. Mr. ALARCON (Cuba) said that his delegation had already had an opportunity, at the twenty-sixth session (1286th meeting), to refer to the situation adversely affecting the normal functioning of missions in New York, and that it had at that time mentioned acts of provocation and hostility directed against the Cuban Mission. Certain events had been described in the report of the Committee on Relations with the Host Country (A/9626) but the incidents had not ceased and nothing had been done to apprehend the perpetrators.

9. His delegation had examined that Committee's report and approved, as a whole, of the recommendations it contained. However, he thought that that Committee should not content itself with meeting only when the need was felt to deal with specific questions, but should meet more regularly to consider the different aspects of the questions that fell within its competence.

10. In addition, he wished to mention a particular incident of which the Cuban Mission had recently been the target and which was dealt with in two documents, namely, a letter addressed to the Secretary-General by the Permanent Representative of Cuba to the United Nations (A/C.6/429) denouncing the act of provocation in question and a note verbale addressed to the Secretary-General by the Permanent Representative of the United States of America to the United Nations (A/C.6/432) refuting the allegations of the Cuban delegation. In that connexion, he observed that a regrettable error had appeared in the French text of the penultimate paragraph of document A/C.6/429 and he asked that a corrigendum be issued in that language. The Permanent Representative of Cuba had been referring to the authorities of the United States and not the United Nations. Describing the incident in question, he recalled that in October 1974, a group of persons had gathered in front of the door giving entrance to the premises of the Permanent Mission and had remained there for about one hour in a provocative manner, but the local authorities had not for one moment intervened. It was only after the Secretary-General had been informed of the incident that the group had dispersed. He drew the attention of the members of the Committee to the note verbale from the Permanent Representative of the United States of America which made it clear, on the one hand, that the demonstration had indeed taken place outside the Cuban Mission and, on the other hand, that the host country gave official approval to activities which were unjustifiable under international law and violated domestic legislation. In his note verbale, the Permanent Representative of the United States spoke of a "press conference"; however, it was unusual to convene a press conference on the sidewalk. The United States authorities appeared to find it normal that access to a mission should be blocked for one hour by a "press conference" and certain electoral activities. While acknowledging the facts, they tried to justify them by arguing that such activities were completely legitimate and they thus confirmed the Cuban delegation in its conviction that they were unconcerned about the obligations incumbent on them. That situation proved that the host country did not offer the necessary conditions for the normal functioning of missions and, consequently, of the United Nations itself.

11. Mr. ROSENSTOCK (United States of America) assured the Committee that his delegation would give due consideration to the statements made during the examination of the report of the Committee on Relations with the Host Country. Even though only a small number of delegations had experienced problems, his delegation wished to explain the steps taken to eliminate them.

12. Although the problem of security of missions affected only a small number of diplomats, his delegation recognized that it was potentially most serious. Since the establishment of the Committee on Relations with the Host Country, the number of incidents had been considerably reduced. Indeed, while a number of diplomats had recently been victims of acts of violence in various countries involving serious injury and even death, the efforts undertaken by the United States had prevented any such incident in New York and diplomats enjoyed relative peace and tranquillity there. The United States would continue to take all appropriate measures to ensure that no mission would have any cause for complaint or reason for apprehension.

13. It had been suggested that little effort had been made to apprehend the perpetrators of incidents. One or two delegations had even said that no one had been arrested or prosecuted. That was not the case and, the year before, his delegation had submitted a document[2] refuting that charge. In fact, the competent authorities had made a number of arrests and had obtained convictions. In the past few months, more than 15 persons had been arrested, two convicted and a number of cases were currently before the courts. Moreover, he wished to stress the fact that federal legislation was being applied, contrary to the allegations of certain delegations.

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[1] Subsequently circulated as document A/C.2/293.

[2] A/C.6/424.

14. Furthermore, the United States was proud of the freedom of speech and assembly granted to all its citizens, including those accused of crimes. He would not go into details of the matter since his delegation had submitted to the Committee on Relations with the Host Country document A/AC.154/36 on the legal system of his country. He wished, however, to make it clear that complaints were not required for serious crimes under local law and were not required at all under Federal law. All that was required was sufficient evidence to establish that the accused was guilty. In the event that the diplomat was the only witness to the act in question, he would have to appear in court because the accused had the fundamental right to face his accuser and was presumed innocent until his guilt was proven. There was no question of a diplomat waiving his immunity when he appeared as a witness in a criminal case, although, pursuant to section 14 of the Convention on Privilèges and Immunities of the United Nations (General Assembly resolution 22 A (I)), a Member was under a duty to waive the immunity of its representative in any case where the immunity would impede the course of justice. His delegation was certain that all members of the diplomatic community were aware of the efforts made by the United States to punish the perpetrators of incidents.

15. Furthermore, several delegations had commented on the question of parking space. Some had even suggested that diplomats, under international law, had the right to reserved parking spaces. There was no convention that could lead to such a conclusion. There was no usage, much less any custom, relating to the matter. Nevertheless, the competent authorities were striving to provide as many reserved spaces as possible. Some delegations had also raised the question of the towing away of vehicles. For a brief period, the local authorities had, on their own, towed away illegally parked diplomatic vehicles and the word "illegally" should be stressed. That practice had been terminated and diplomatic cars were no longer being towed away unless they presented a serious hazard. For example, fire hydrants must be accessible and ambulances and fire trucks must be able to move about freely in the city. With respect to violations, he was surprised that diplomats, who were expected to obey the law, complained at being notified when they committed violations, and it should be noted that the administrative procedure in such cases had been considerably simplified.

16. One delegation had complained that its diplomatic pouch had been opened on two occasions. Those incidents had been thoroughly investigated and, in order that they might not be repeated, he suggested that, instead of paper envelopes, the more resistant and traditional canvas bags might be used.

17. Turning to another aspect of the relationship between the host country and the members of the diplomatic community, he referred to the case of the diplomats who had neglected to pay their bills and who, in the dead of winter, moved out of houses and left windows and doors open without giving notice to the owners whose houses they had ruined. Those were isolated incidents and he would not dwell upon them, but they did not contribute to improving relations between diplomats and the local community.

18. On that subject, a series of seminars had been organized at the Ralph Bunche Institute of the United Nations with a view to studying the question of the treatment of diplomats by the information media and a number of other topics of interest to the diplomatic community. His delegation hoped that the Office of Public Information would assist in making the problems of diplomats known to the larger community.

19. Owing to lack of time, he had not mentioned the numerous acts of hospitality offered by the New York community, the services provided by the New York City Commission for the United Nations and for the Consular Corps or the Travel Programme for Foreign Diplomats. His delegation had not sponsored those activities, but it was none the less proud of them and hoped that they would contribute to making the stay of the guests of the United States as pleasant and interesting as possible. His delegation would continue to co-operate with the diplomatic community in solving its problems and the United States would do its utmost to be the best possible host.

20. Mr. BAROODY (Saudi Arabia) said that since the construction of the Headquarters buildings, many demonstrations had been held in their immediate vicinity, sometimes blocking the streets leading to them. Those situations created a danger, due to the excitement generated by such activities. Some people had been injured, others simply feared the hostile crowds and the functioning of the Organization had thus been impeded.

21. Respecting the tradition of freedom of speech prevailing in the Anglo-Saxon countries and referring to the example of Hyde Park Corner in London, he asked the United States delegation whether it would be possible to provide a place expressly reserved for demonstrations, regardless of whether they were favourable or hostile to the United Nations.

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations' report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002)

22. Mr. MALIK (Union of Soviet Socialist Republics) recalled that his country had already stated its position of principle on the item at earlier sessions of the General Assembly and also when the question of its inclusion in the agenda had been considered by the General Committee of the twenty-ninth session at its 218th meeting. His delegation had thus repeatedly stressed that the Charter was a vital document for the strengthening of friendly relations between States. It reflected the facts of international life, and particularly the fact that States were required to co-operate despite the differences separating their economic and social systems. His country had always been in favour of increasing the effectiveness and authority of the United Nations on the basis of the provisions of the Charter and in observance of them. That idea had been stressed in the historic programme of peace of the twenty-fourth Congress of the Communist Party of the Soviet Union. It was important to use the means provided by the United Nations to eliminate aggression and lawlessness from the international arena, reduce international tension and promote

co-operation between States on the basis of the principles set forth in the Charter.

23. All the attempts which were made to undermine the foundations of the Charter ran the risk of dooming the efforts made by peace-loving States to strengthen international peace and security and improve the climate of relations between States. Since the very inception of the United Nations, the forces of reaction and imperialism had not ceased their attempts to destroy the legal system established by the Charter. Those manoeuvres had met with the opposition of the USSR and of all countries which sincerely wished to prevent a return to the dark hours of the cold war. The States which were struggling to establish the necessary conditions for the creation of a lasting peace were in favour of observance of the principles of the Charter, and against any change. Experience showed that the attempt to review that fundamental instrument had the support of the reactionary forces. It should surprise no one to find Maoists in that camp who asserted the need to control the so-called "power of the super-Powers" and to adapt the United Nations to the changes which had taken place in the world. Such a position was purely opportunist and aimed at altering the Charter according to changes prepared in Peking, since it was perfectly clear that China did not intend to renounce its own rights and privileges as a permanent member of the Security Council.

24. Clearly, the attempts to review the Charter would not solve the problems of the contemporary world. The fundamental purpose of that instrument was to strengthen international peace and security. For 30 years, co-operation between States with different economic and social systems had been able to develop on the basis of the Charter and in respect for its provisions. The USSR was wholly in favour of increasing the effectiveness and authority of the United Nations, on the basis of that vital instrument for the strengthening of peace and the development of friendly relations between States. He emphasized that only co-operation between capitalism and socialism on the basis of the principles of the Charter had brought about the victory over fascism and militarism. His country had contributed to that victory and paid a heavy price to save the world from that scourge. That victory had brought liberty to the peoples of the world and made possible the adoption of the Charter of the United Nations. The President of Zambia, Mr. Kaunda, had been quite right to emphasize recently that without the victory of the Soviet Union over fascism, the Soviet people would have been enslaved and the peoples of Africa would have remained in slavery. It was for such reasons that the Charter was so valuable to all. The attempts to undermine it were in fact a threat to the whole structure built upon it: the principle of the sovereign equality of States, the right to self-determination of peoples, the renunciation of the threat or use of force, the principle of the peaceful settlement of disputes and the principle of non-interference in the internal affairs of States. The main task envisaged by the authors of the Charter, namely, to save succeeding generations from the scourge of war and to maintain international peace and security, remained imperative in the contemporary world. The Charter, which the USSR had helped to draft, had become the charter of peaceful coexistence between States; the United Nations, which had emanated from it, had been helping for almost 30 years to strengthen peace and prevent the outbreak of a new world war.

25. The considerable increase in the membership of the United Nations since its creation proved, if need be, that the Charter on which the Organization was based met the needs of the modern world in the domain of international relations. Every State, upon joining the United Nations, declared that it recognized the Charter without restrictions and undertook to observe its provisions and entertain good-neighbourly relations with other States. The proposals for a review of that instrument raised the question whether certain States had become Members with the sole intention of employing the Trojan horse stratagem to destroy the Organization from within, and pull out the corner-stone without worrying about causing the total collapse of the institution, which indeed was perhaps their ultimate aim.

26. The position expressed by the delegations of the Philippines and Colombia at the 1512th meeting was well known. Those countries had already begun their efforts even before there had been time for the original situation to change, and the course of events had, strangely enough, not made them change their minds. The United Nations was fortunate, however, in that the majority of Member States did not share their views.

27. They were doubtless aware that no serious criticism could be levelled against the Charter, whose effectiveness was in no way affected by changes in the international situation. The changes which had occurred would rather indicate that the evolution of the international community confirmed the value of the purposes and principles of the Charter. It was as a result of such favourable changes that the United Nations had been able to progress towards the settlement of important political questions upon whose solution the fate of the world depended: peaceful co-operation with respect for the sovereign equality of all States, regardless of their social and economic systems, the extent of their territory or the size of their population; universal collective security; the limitation followed by the cessation of the arms race and, ultimately, by complete disarmament. It was true that some of those problems were still not yet completely settled, but the fault lay exclusively with the Member States and not with the Charter. It was not because of the Charter that it had not yet been possible to hold an international conference on disarmament: it was because two Member States were opposed to it. It was not because of the Charter that the Security Council had still not been able to consider the question of the prohibition of the use of atomic weapons: the responsibility lay with China, which had voted against the consideration of that question, siding with Fascist Portugal and racist South Africa. It was not because of the Charter that there had thus far been no agreement to reduce annual expenditure on arms by 10 per cent in order to assist the developing countries: the fault lay with China and the three other States which had not accepted that suggestion in the Security Council. Nor was it because of the Charter that Israel behaved like an aggressor and that South Africa maintained its racist régime. The Charter could not be held responsible for the tragedy of the Cypriot people. One could therefore say that it was not a review of the Charter that was imperative but a review by certain Member States, and particularly by China, of their position regarding

international peace and security and disarmament. Since it had been a Member of the United Nations, China had taken no positive initiative in any field. It was concerned only with anti-Sovietism, and many Members of the United Nations were growing weary of its attitude. China criticized, condemned and rejected every suggestion. When confronted with a constructive proposal, particularly if it originated from the USSR, China voted with its feet by leaving the room, or placed its hands under the table and declared that it would not participate in the vote.

28. Everyone knew that various United Nations documents reflected the changes in the international situation and the progressive trends which were apparent throughout the world. From a political and practical viewpoint, those different documents supplemented the Charter. Such was the case with the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, or the Definition of Aggression (General Assembly resolutions 1514 (XV), 2625 (XXV), annex, and 3314 (XXIX), annex), to quote only a few examples. All those decisions had led to the elaboration, on the basis of the text of the Charter, of a set of principles and international rules. If the very foundation of the United Nations was allowed to be destroyed, the result would undoubtedly be the destruction of those super-structures and the annihilation of 30 years of work.

29. It was idle to claim that the Charter had aged and had to be renovated. In point of fact, it was on the basis of that instrument that the peace-loving forces had succeeded in changing the course of international relations and bringing about the liberation of Africa, Asia and Latin America. Such success did not militate in favour of a review but rather argued in favour of retaining the text as it stood. Indeed, that was one of the arguments adduced by Cuba in its observations communicated to the Secretary-General in compliance with General Assembly resolution 2697 (XXV).[3] That country stressed that the deep divisions which could be noted within the General Assembly on certain issues fundamental for the international community would become even deeper if attempts were made to reconcile them through a review of the Charter, particularly in view of the fact that the need for that exercise was expressed in so general and imprecise a way that it might well cause the downfall of the United Nations. No one could forget, moreover, that the success of the national liberation movements would certainly not have been possible without the recognition of the principles of self-determination and equality of all without distinction as to race, sex, or religion. Moreover, without the efforts of the peace-loving forces and particularly the countries of the socialist community, on the basis of the Charter, the abolition of colonialism and the admission to the United Nations of the new States which had emerged as a result would not have taken place.

30. Those who advocated a review of the Charter also emphasized that the membership of the United Nations had more than doubled since 1946 and that it was important that the new Members should be allowed to express their views in a revised Charter. Obviously, that argument was not valid since, on the contrary, the increase in the membership reflected not the defects but the advantages seen by States in that instrument. The recognition by States of the authority of the purposes and principles proclaimed in the Charter must not be an opportunity to assail the basic provisions of a universally accepted text.

31. It was surprising that a small number of Member States had been advocating a review of the Charter for a number of years, while most Member States were realistic enough to reject their proposals. At the present time, there was a flurry of activity among the advocates of review. When one studied their position, one saw, however, that they were seeking not to strengthen the role of the United Nations and to guarantee international peace and security, but to defend individual or group interests. Today, the world was divided into two major groups, the socialist countries and the capitalist countries. Those who favoured a review of the Charter no longer sought to change the balance of power but to obtain a sweeping change in the nature of the activities of all United Nations organs and, in particular, of the Security Council. Thus, as the French Government had indicated in its observations communicated to the Secretary-General in compliance with resolution 2697 (XXV),[4] by calling in question a universally accepted whole might destroy that whole, unless new and effective provisions were adopted. Those who wanted a review of the Charter were advocating not minor drafting changes but a transformation in the activities of the United Nations, whose main task was to strengthen peace and security in the world and to solve major economic and social problems. To comply with their suggestions would be tantamount to reducing the United Nations to the status of an ordinary specialized agency. Without international peace and security, there could be no more economic and social development, particularly since many States were devoting huge sums to the arms race.

32. Those who advocated a review of the Charter claimed that it placed greater stress on peace than on justice, since it had been drawn up immediately after the Second World War. That was by no means a defect: if justice was to prevail, the United Nations must first guarantee peace. That trend, moreover, had not prevented it from solving many problems relating to justice in matters such as decolonization and economic and social development.

33. The advocates of a review of the Charter claimed that the United Nations had not responded to the aspirations of mankind and that, in consequence, the structure of the Charter must be altered. Although it was true that the United Nations had on occasion lacked effectiveness, that was solely because certain Member States had contravened the Charter or bypassed its provisions. It was not in the Charter that the causes of present-day tension and conflicts should be sought, but in the attitude of the States which pursued policies of aggression and annexation and repressed the struggles of the national liberation movements. Both Israel and South Africa acted in a manner contrary to the Charter and scorned the decisions of the United Nations; they were avowed enemies of peace, security and equality for all peoples.

[3] See A/8746/Add.1.

[4] See A/8746 and Corr.1.

34. The States favouring a review of the Charter were challenging the right of veto in the Security Council. They wanted to limit the principle of unanimity and were proposing that the General Assembly should be allowed to disregard a veto by a permanent member of the Security Council. However, the principle of unanimity was the corner-stone of the Charter. Given the opposing positions of the socialist and capitalist States, that principle was essential. Neither of those groups would agree to submit to the tyranny of the other within the Security Council or the General Assembly. To modify or abolish that principle would shake the structure of the United Nations and could bring about its paralysis and collapse. In the nuclear age, if certain permanent members of the Security Council attempted to force their decisions on other permanent members, the confrontation between the two groups would only worsen and could lead to a new world war. It was well known that those advocating a review of the Charter were the allies of a permanent member of the Security Council and that, in votes within the United Nations, they generally came out against the socialist countries. It was for that reason that the Soviet Union would continue to oppose the review of the Charter.

35. The short-comings of the United Nations must be sought elsewhere. Firstly, it was important that the decisions of the Security Council should be implemented, whether they concerned Cyprus, the Middle East, Namibia or Rhodesia. As long as certain Member States showed themselves unwilling to discharge their obligations, any review of the Charter would be useless. The principle of unanimity had made it possible to avoid hasty decisions which would have had serious consequences for the whole world. On a number of occasions, the Soviet Union had exercised its right of veto not simply to protect its own interests or those of the socialist countries, but also to defend the peoples struggling for their freedom and the small States. The principle of unanimity was therefore vital to the majority of Member States. On rare occasions, the right of veto had been exercised by certain permanent members of the Security Council in defence of the racist or colonial régimes, but such cases were exceptional and did not warrant a review of the Charter. It was the implementation of the provisions of the Charter and the observance of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted at the initiative of the Soviet Union, which would bring about the liberation of the whole African continent.

36. Nor was it true that a review of the Charter could be justified on the ground that the interests of the third world were not adequately represented in the Security Council. Since the enlargement of the Security Council to 15 members, the third world States had been so well represented that they were able to exercise a sort of collective right of veto. Without their votes, no decision could be taken by the Security Council or, for that matter, by the General Assembly. Any assertion to the contrary would be a denial of the facts.

37. The current campaign for a review of the Charter was being waged by a small number of dissatisfied States, which were concealing their aims by declaring their support for the Charter. It should be noted, in that connexion, that of the 138 States Members of the United Nations, only 38 had submitted comments in writing on that question over the past four years, and only 13 had declared themselves in favour of the review. Although for the moment the Committee was simply being asked to consider the proposals for a review of the Charter, the very fact that the question had been raised indicated the existence of doubts about the justness and moral authority of the Charter. The review of the Charter would ultimately benefit only those who were unwilling to guarantee international peace and security.

38. As a founder Member of the United Nations and a permanent member of the Security Council, the Soviet Union was strongly opposed to a review of the Charter. Its attitude was dictated not by its own interests or those of its allies but by its desire to strengthen international law, which was the only basis for friendly relations between States. The advocates of a review of the Charter should ask themselves whether they could produce alternative solutions acceptable to all States. It would be unrealistic to think that it was possible to reconcile utterly divergent points of view, when it was so difficult to draft a Charter of economic rights and duties of States. The review of the Charter could ultimately benefit only those who wanted chaos to reign throughout the world. It was for that reason that the Soviet delegation was opposed to the establishment of an *ad hoc* committee on the Charter of the United Nations, which would first consider the proposals for increasing the effectiveness of the United Nations and would them probably embark on a full-scale review of the Charter. As Mr. Gromyko, the Minister for Foreign Affairs of the Soviet Union, had said during the twenty-eighth session of the General Assembly (2126th plenary meeting), the United Nations had proved that it was strong as long as it adhered to the purposes and principles of the Charter, but had shown its weakness each time it had departed from them.

39. His delegation believed that the only proper attitude that the Committee could adopt was to recommend that the General Assembly should take note of the observations of Member States but should not continue its consideration of the question at subsequent sessions.

40. Mr. BAROODY (Saudi Arabia) said that he was opposed to a review of the Charter and that the two draft resolutions before the Committee (A/C.6/L.1001 and A/C.6/L.1002) were unsatisfactory since they had the effect of dividing the Committee into two factions. Consequently, his delegation had drafted a new draft resolution, based on both the previous drafts; it had not yet been distributed.[5] Operative paragraph 1 of that draft was taken in substance from the corresponding paragraph of draft resolution A/C.6/L.1001. However, the words "the spirit and letter of" had been added, since a State might believe itself to be respecting the letter of the provisions of the Charter scrupulously, while it was acting contrary to its spirit.

41. In view of the lateness of the hour, he reserved the right to reintroduce his delegation's draft resolution at the Committee's afternoon meeting.

[5] Subsequently circulated as document A/C.6/L.1008.

42. The CHAIRMAN announced that the Israeli, Chinese and Philippine delegations had asked to exercise their right of reply. Recalling that the General Assembly had adopted a suggestion by the General Committee that delegations wishing to exercise their right of reply should do so at the following meeting when that meeting was to be held on the same day (see A/9750, para. 7), he asked the delegations concerned whether they were willing to speak at the afternoon meeting. He invited the representative of Israel to speak.

43. Mr. BAROODY (Saudi Arabia), speaking on a point of order, said that the General Assembly's decision must be respected. He himself had interrupted his statement to allow the Chairman to adjourn the meeting. If delegations wishing to exercise their right of reply were invited to speak, he would ask to be allowed to continue his statement. In order to facilitate the task of the Chairman, he proposed that the meeting should be adjourned.

The meeting rose at 1.10 p.m.

1515th meeting

Wednesday, 4 December 1974, at 3.35 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1515 and Corr.1

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002, L.1008)

1. Mr. ROSENNE (Israel), speaking on a point of order, asked the Chairman for a ruling on the following. At the previous meeting he had asked for the floor in order to make a brief reply to the incorrect allegations about Israel made by the representative of the Soviet Union. His request had been granted, but he had hardly started to speak when another representative, who had managed to waste much of the Committee's time—more than he himself would have required for his reply—had, on a point of order, moved for the adjournment of the meeting. The Chairman, without asking whether any representative wished to speak on that motion, had formally closed the meeting. That was the second time during the current session that his right of reply had been abruptly cut off. He assumed that his right of reply would be reserved for the current meeting.

2. The CHAIRMAN assured the representative of Israel that his right of reply would be reserved for the final part of the meeting.

3. Mr. USTOR (Hungary) recalled that his delegation had stated its position on the item under consideration at the 1379th meeting of the Sixth Committee, on 4 December 1972. The head of the Hungarian delegation had pointed out then that the Charter of the United Nations had stood the test of time and continued to prove a suitable basis for co-operation in a changing world. Certain major changes in the world situation had occurred precisely because of the implementation of the provisions of the Charter. Those results included the liquidation of the colonial system, the accession to independence of colonial countries and peoples and the admission of the newly independent States to the United Nations. The fact that 81 States had acceded to the Charter since its adoption had been clear evidence that the Charter had been a time-tested instrument. The multifarious and ever-expanding activities of the United Nations had demonstrated the flexible and dynamic character of the Charter.

4. The institutions established under the Charter had made a positive contribution to the maintenance of peace and had made it possible to avert a number of international crises. The Charter had continued to reflect the basic interest of all countries and the peaceful coexistence of States notwithstanding their differing economic and social systems, and there was no evidence that any change in the text would bring about improvements in international relations. As had been rightly stated by a previous speaker, the effectiveness of the United Nations depended not on institutional changes but rather on the collective will of its Members. A fuller utilization of the opportunities provided by the Charter would yield more beneficial results than changes in the existing United Nations structure. Full compliance with the provisions of the Charter would be more fruitful than their revision. The efficacy of the Organization clearly depended on the determination of Member States to strive for the consistent realization of the peaceful aims which had been set.

5. Chapter XVIII of the Charter stated the conditions in which amendments could be made. On that basis, it was not realistic at the present time to envisage any change in the Charter in the near future. His delegation fully agreed with the view set forth in draft resolution A/C.6/L.1001 on that point. It was true that times changed and that laws should change with them. However, the sponsors of draft resolution A/C.6/L.1002 had included a preambular paragraph reaffirming support for the purposes and principles set forth in the Charter. In that case, it was not the law but the basic structure of the Organization which they sought to change. In that respect, however, his delegation believed that the requirements of stability and security were paramount and that it would be extremely dangerous to upset the delicate balance of the structure of the Organization. Even if the Committee had before it concrete proposals for the changes to be undertaken in that structure, it would not deem it advisable to experiment with them. However, the sponsors of draft resolution

A/C.6/L.1002 were seeking not the consideration of such concrete proposals but the establishment of a machinery to find out what viable proposals could be made, i.e., to find ways and means to change for change's sake. Of course, behind those tendencies certain ambitions were hidden which might or might not be justified in themselves, but his delegation did not think that the time had come to put forward claims to a redistribution of power positions in the Organization. If the need for constant change was mentioned in that connexion, he would cite Montesquieu, who had said that there was a limit to the possible sacrifice of security to the interests of change. If the relation of change to the requirements of justice was referred to, one should not forget the admonition of a modern writer who had pointed out that stability and security were in themselves powerful constituent elements of justice. If those words sounded conservative coming from a delegation which claimed to be progressive, he would point out that the changes in the world which had taken place since the adoption of the Charter had come about precisely because of the implementation of tis provisions and not in spite of them and not against the will of the socialist countries but with their help. The socialist countries would continue to work for further progress in the world, for the elimination of existing injustices, for the maintenance and further extension of the current détente and for the co-operation of all States for the full implementation of the purposes and principles of that instrument. There was much to be done in that regard, and there was nothing in the organizational provisions of the Charter which could hinder such co-operation and the full realization of the purposes of the Charter.

6. Mr. BAROODY (Saudi Arabia) recalled that, when the Charter had been signed at San Francisco, many States, including his own, had complained that it had certain short-comings. They had been told that the Charter was, however, the best instrument on which agreement could be reached. Many States had taken exception to the veto, while others had thought that colonial peoples had been neglected. However, as the years passed, those States had found that the fault lay not so much in the Charter itself as in those who were rationalizing certain of its provisions or misinterpreting some of its phraseology. That had not been apparent during the early sessions, when there had still been a euphoric belief that the Charter could create a Utopia. In the mid-1950s there was still talk of a "world Government" after the anguish that had been the legacy of the Second World War. Many learned articles had been written on the topic, and philosophers and political scientists of the past had been cited concerning the possibility of creating a new world order. The Arabs, too, had once thought that they could establish a single Arab State reaching from the Atlantic to the Arabian Gulf. The Arab League had been established, and he himself had been a torch-bearer of pan-Arabism. There was nothing wrong in such dreams, but it was time to recognize them as such. The Arabs had their differences like any other group of countries. Thus, Utopia still seemed far off. Similarly, the moral codes of religions and the constitutions of States were very hard to live up to. What was required were not tribunals but moral advancement.

7. The Charter should be considered from two aspects: the substantive, and the structural and organizational. The Preamble and the statement of the purposes and principles of the United Nations, which took up a very small part of that instrument, reflected the hopes and aspirations of the survivors of the anguish of the Second World War. The Preamble was a masterpiece and had met with no criticism at San Francisco. The purposes and principles were succinct and non-controversial, although they set a very high ideal for human conduct. The Preamble and the purposes and principles were almost perfect and formed the corner-stone of the Charter. It was the remainder of the Charter, which was devoted to structural and organizational aspects, which could be manipulated. The fault did not lie in the phraseology but in the fact that States might manipulate those provisions to serve their petty self-interests or to extend their power. The tremendous increase in the membership of the United Nations since its establishment had been cited as grounds for making changes in the Charter to reflect the universal will of the United Nations rather than fossilized decisions taken by the 51 founding Members. The amendments which had been made so far to the Charter were all structural in nature and related, for example, to increasing the membership of the Security Council—although he did not feel that the Council was acting more efficiently as a result—and the enlargement of the membership of the Economic and Social Council, which had rightly been done in order to enable more States to participate. Such structural amendments were like changes in the doctrine of a religion; the basic moral code remained unalterable.

8. He wondered, however, what lay behind all the clamour for new amendments to the Charter. Many had had misgivings originally concerning the veto, since it was to be the prerogative of the five permanent members of the Security Council, for them to use in their own interests, which they had done. In retrospect, however, the veto, which had been agreed upon by the two Powers that had emerged from the Second World War, namely, the United States of America and the USSR, had proved not to be so hazardous. Those two Powers had demanded the veto because they knew that States could be manipulated and they had had misgivings concerning what a majority could achieve, not so much by force as by propaganda. The veto had indeed become a blessing when later the general cry had been for détente and consensus had replaced the veto. Consensus, when not genuinely based on equity and justice, was much more dangerous than the veto; the cry for consensus "in the name of détente" was a complete sham. The consensus which had paved the way for détente worked entirely in favour of the two super-Powers. The USSR representative, speaking on the question of Korea in the First Committee, had referred to the capitalist system and the socialist system. That was not the issue; the world was groping towards a world system. The purposes and principles and the Preamble of the Charter were indivisible and emanated not from capitalism or socialism, but from humanism, which was the only valid "ism" for the United Nations.

9. Why tamper even with the structural part of the Charter? He had heard that some States wished to become permanent members of the Security Council or members for a term of three or five years, in order to derive advantages. Such considerations as the size of a State's population or its wealth were not conditions for admission

to the United Nations or to the Security Council. Fiji and Mauritius were fine examples of small States admitted to the United Nations and they had contributed a great deal to its deliberations.

10. Another reason behind the urgent call for changes in the Charter was rumoured to relate to the emergence of the so-called third world as a power. Saudi Arabia was labelled as belonging to the third world. Other States were labelled as belonging to the socialist world, others to the democratic world. Who could ensure the small States that, if the structural part of the Charter was tampered with, the practice of such groupings could not be used for manipulations? A group would lend its name as sponsor of a draft resolution on a basis which recalled the Arabic proverb, dating from tribal days: "I and my brother against my cousin, and my cousin and I against the stranger", In the United Nations, the principle should be: "I and the stranger against my cousin or my brother if my cousin or my brother is wrong". The tribal code had been modified with the development of custom and religion, because no society could be based on the principle that might was right or on family ties. Accordingly, if the General Assembly opened the door to a revision of the Charter, things might be inadvertently introduced which would lead to grief. At the time of the drafting of the Universal Declaration of Human Rights, he had said that people fought not for human rights but for more wealth, more power or more glory; at the level of nations or groups of nations those motives gave rise to three phenomena, namely power politics, the balance of power and spheres of influence. There was trouble with the Charter because no new approach had been taken to questions which should be tackled on the basis of that instrument. The combining of small Powers into one group could injure their cause, depending on the issue involved. Voting by group was, as Vishinsky had said, tantamount to a "mechanical majority". When the United States had had the greatest influence with the Organization of American States, it had been able to induce them to vote *en bloc*. Some of the States members of OAS had needed United States aid and had therefore voted with the United States, particularly in the difficult period following the Second World War. He recalled that Mr. Romulo, who had introduced the item currently under discussion, had once refused to vote on a certain item, even though it had been intimated to him that the Philippines, which had just been weakened by the Second World War, would not get United States aid if it refused to cast its vote as advised. Experience had proved that the "mechanical majority" would have been much worse without the veto and that consensus could sometimes be worse than the veto. Unfortunately, the powerful and wealthy were apt to be self-righteous and act on the principle that might was right.

11. Some Members wanted a surgical operation on the Charter. Was that really necessary? Was the Charter dying? Who could guarantee that there would be no more confusion if a revised Charter was applied? The patient might even die under surgery. If States would live up to the high ideals of the Preamble and the purposes and principles of the Charter, there would be no complaints from most of the small nations.

12. Two draft resolutions had been submitted on the item: draft resolution A/C.6/L.1001 sponsored by socialist States and draft resolution A/C.6/L.1002, sponsored by capitalist States. The former said that the Charter should be left as it was and appealed to States to try hard to implement it fully, while the latter wanted to tamper with the Charter in order to achieve better results. Both texts were unsatisfactory to his delegation, and accordingly he was submitting draft resolution A/C.6/L.1008. Both of the other draft resolutions referred to various General Assembly resolutions and someone would no doubt see double meanings in the wording of those texts. The fourth preambular paragraph of draft resolution A/C.6/L.1001 was perhaps the longest preambular paragraph he had ever seen. Even so it was not exhaustive. Operative paragraph 1 of the same draft resolution, although constructive, was prosaic; it should stress the importance of compliance not only with the letter but also with the spirit of the Charter, as was done in draft resolution A/C.6/L.1008. The last preambular paragraph of draft resolution A/C.6/L.1002 was very useful, and he had adopted it as the first preambular paragraph of draft resolution A/C.6/L.1008. The second preambular paragraph of the latter draft resolution noted that the purposes and principles of the Charter had not been consistently observed; that was a statement of fact and should be admitted. Paragraph 2 appealed to all States to endeavour to judge controversial issues on their merits rather than on the formal solidarity of groups regardless of ideological systems or narrow national interests. He had actually wished thereby to shock the third world and Europe. The practice of grouping was becoming general, and he had already stated the grave dangers that entailed. If the practice of a "mechanical majority" was to be followed, delegations might just as well obviate lengthy debates by merely placing their votes in a ballot box and using a computer to obtain the results. While the recommendations contained in paragraph 2 of the Saudi Arabian draft resolution could not be observed completely, it was at least an ideal which States should try to live up to, in accordance with the Preamble and the purposes and principles of the Charter, rather than trying to manipulate the structural and organizational chapters of that instrument, which were the target of the intended review. The instrument was adequate, and should not be tampered with, because it might not work thereafter.

13. Paragraph 3 of the Saudi Arabian draft resolution was procedural in nature. The words "future date" had been used, because he could not foresee the future. As many States still felt strongly that revision of the Charter was necessary, it would still not be wise to tamper with it until there was a very large measure of agreement. At present, with the draft resolutions reflecting the division of the Committee into two groups, it would be impossible to achieve good results. The Charter was the best instrument currently available to the United Nations. Members should try to reform themselves before trying to reform others, and he appealed to representatives to plead with their leaders to endorse a new approach to the solution of international issues.

14. Mr. ARITA QUIÑONEZ (Honduras) said that the representative of the Philippines, in introducing draft resolution A/C.6/L.1002 at the 1512th meeting, had ably expressed the feeling of all the sponsors. Honduras had become a sponsor because it firmly believed that by supporting the draft resolution States could increase the

efficiency of the United Nations. A review of the Charter was necessary because only 51 States had been present when the United Nations had been founded. Membership was now almost universal and it was completely ridiculous to think that the United Nations today, with its 138 Member States, could have the same outlook as it had had at the time of the signing of the Charter. The United Nations must move with the times.

15. His delegation fully supported the purposes and principles of the Charter but at the same time felt that consideration should be given to its review. It agreed that an *ad hoc* committee on the Charter of the United Nations should be established, because its report was necessary for further study of the question, particularly by those States which did not believe a review of the Charter was needed. The *ad hoc* committee would be established with due regard for the principle of equitable geographical distribution and would submit its report to the General Assembly at its thirtieth session. It was inconceivable that any delegation should have anything to fear from the establishment of such a committee with the mandate set forth in paragraph 1 of draft resolution A/C.6/L.1002. His delegation wished to participate in joint action that would achieve more effective and more dynamic implementation of the principles of the Charter. For that reason Honduras had sponsored draft resolution A/C.6/L.1002 and requested that it should be given priority in the voting.

16. Mr. GÖRNER (German Democratic Republic) recalled that in 1973, when the German Democratic Republic had become a Member of the United Nations, it had solemnly declared (2134th plenary meeting) its readiness to assume the obligations arising from the Charter of the United Nations. Universal respect for the Charter was a basic prerequisite for peace. The principles of the Charter, in so far as they had been observed, had fostered positive changes in international relations and to the present day the viability of those principles had remained undiminished. Especially in the recent past, the substance of the purposes and principles of the Charter had been embodied in numerous treaties, thus showing that, in the light of new international conditions, there were growing possibilities of applying the Charter with even greater effectiveness.

17. The purposes and principles of the Charter also provided the foundation for the structure and procedures of the Organization itself. The rules it laid down ensured the proper functioning of the United Nations in the pursuit of its main aim of securing peace. Since those rules were based on such principles as the sovereign equality of States, non-interference in internal affairs and respect for the right to self-determination, the German Democratic Republic considered them to be also in conformity with the interests of States which had joined the United Nations after its founding.

18. The Security Council, on which primary responsibility for the maintenance of international peace and security had been conferred, occupied a special position in the United Nations system. The principle of unanimity among its permanent members reflected the particular responsibility of the great Powers for the maintenance of international peace and had proved its worth in the settlement of conflicts. The fundamental importance of that principle as a means of averting imperialist aggression, maintaining the equality and sovereignty of States and defending the rights of peoples fighting for their liberation from colonialism had been proved time and time again by the actions of the USSR as a permanent member of the Security Council.

19. His delegation had carefully considered the arguments in favour of a review of the Charter. But neither the failure of the United Nations always to live up to expectations, nor the time that had elapsed since the Charter was adopted, nor the possibility of review provided for in the Charter itself, were convincing reasons for such a review. If, since its founding, the United Nations had not always been able to fulfil its tasks, the fault lay not with the Charter but rather with those Member States which had not always shown the necessary readiness to co-operate in solving outstanding problems.

20. Nor could review be justified by the fact that the German Democratic Republic, for instance, had for years been denied equal participation in the work of the United Nations. The Charter was based on the principle of universality. Despite the time that had elapsed since 1945, it had proved so flexible that it had kept pace with far-reaching changes in international affairs and the Organization had easily coped with the doubling of its membership. To review a document that had proved to be so dynamic presented an unforeseeable risk for the existing system of international relations. It was because the Charter prevented the States of one social system from predominating over those of another system that the Organization had preserved its viability. The German Democratic Republic therefore shared the view of those States which saw no need to revise the Charter.

21. After drawing attention to the observations of the German Democratic Republic set forth in document A/9739, he recalled that so far only 38 Member States had communicated their observations to the Secretary-General in compliance with General Assembly resolution 2697 (XXV) and most of them, including the German Democratic Republic, had declared themselves opposed to it. His delegation therefore considered that the proposal set forth in draft resolution A/C.6/L.1002 to establish an *ad hoc* committee was neither necessary nor appropriate. His delegation strongly opposed the establishment of such a committee, whose only aim was to keep an artificial item on the agenda. Since it was not advisable at present to take any step to revise the Charter, the German Democratic Republic had become a sponsor of draft resolution A/C.6/L.1001.

22. His delegation was not unaware that the effectiveness of the United Nations was susceptible of improvement. But that could also be achieved by making wider use of certain provisions of the Charter which had so far played a minor role. For example, the authority of the United Nations would be enhanced if greater use were made of the sanctions provided for in Articles 41 and 41 against those States which stubbornly refused to adhere to Security Council decisions. Whenever Member States and organs were guided by their obligations under the Charter, the United Nations made effective contributions that had favourable repercussions on the international situation. At the current stage of détente in international relations,

structural and organizational questions should not be placed in the foreground. The United Nations should rather make use of all means at its disposal to promote the process of détente, since in that process the very purposes and principles of the Organization were being implemented.

23. Mr. NYAMDO (Mongolia) said that his delegation completely agreed with the convincing arguments against any review of the Charter advanced by the Soviet representative at the preceding meeting. His delegation's views on that subject were well known, having been explained at earlier sessions of the General Assembly and in his Government's observations communicated to the Secretary-General in compliance with resolution 2697 (XXV).[1] The Charter was the most important modern international treaty embodying the fundamental principles and rules of general international law. The principal purpose of the United Nations, according to the Charter, was the maintenance of international peace and security. The Charter was also designed to promote co-operation among States with different social systems. The Charter placed the primary responsibility for the maintenance of international peace and security on the great Powers, which were required to concert their efforts and to reach unanimous agreement on questions affecting the maintenance of international peace.

24. The principle of unanimity among the permanent members of the Security Council, which was a characteristic feature of the United Nations, guaranteed peaceful coexistence between the two world social systems. Many of those who were in favour of reviewing the Charter considered the principle of unanimity among the permanent members of the Security Council as a major shortcoming of the United Nations. They advocated abolishing the veto on the grounds that it constituted a privilege of the great Powers and was contrary to the principle of the equality of all States. His delegation could scarcely agree with that view. The principle of unanimity was not a privilege of the great Powers but rather placed a special responsibility on them for the maintenance of international peace. The overwhelming majority of States were convinced that abolition of the principle of unanimity would undermine the very foundations of the existence of the United Nations.

25. The advocates of Charter review pointed to the increased membership of the United Nations as one of the reasons necessitating such a review. In his delegation's view, the increase in the Organization's membership merely confirmed the value and vitality of the Charter. By acceding to the Charter as an international treaty, States gave notice that the provisions of that treaty were in keeping with their interests. It was widely felt that the Charter had stood the test of time and had demonstrated its value for the co-operation of States with different social systems.

26. The fact that only 38 Member States had communicated observations to the Secretary-General concerning the review of the Charter, and that most of them had opposed such a review, showed the lack of general support for the idea. Moreover, the consent of the permanent members of the Security Council was an essential condition for a review of the Charter. In the absence of general support among the membership and of the consent of the permanent members of the Security Council, there would appear to be no need to review the Charter at the present time.

27. For all the foregoing reasons, his delegation strongly opposed the establishment of the *ad hoc* committee proposed in draft resolution A/C.6/L.1002. At the current stage attention should be focused on the strict implementation of the provisions of the Charter by all Member States and on how best to utilize the possibilities provided by the Charter. In the final analysis, the effectiveness of the United Nations depended on the compliance of Member States with their obligations under the Charter. Accordingly, his delegation supported the draft resolution submitted by five socialist countries in document A/C.6/L.1001.

28. Mr. IKOUÉBÉ (Congo) supported the views expressed by the representatives of the Philippines and Colombia (1512th meeting) concerning the need to review the Charter. The arguments which had been advanced in the debate should serve to dispel any doubts still present in the minds of certain delegations. His country, which fully subscribed to the purposes and principles of the Charter, had always been in favour of bringing the Charter into line with the realities of a constantly changing world. Being desirous of contributing to any effort to strengthen the role, authority and effectiveness of the United Nations, his delegation had decided to become a sponsor of draft resolution A/C.6/L.1002. In doing so, however, his country had no intention of opposing any State or group of States. He objected to the allegation by the Saudi Arabian representative that draft resolution A/C.6/L.1002 was sponsored exclusively by capitalist countries. If that had been the case, his country would certainly not have become a sponsor.

29. The CHAIRMAN announced that Senegal should be added to the list of sponsors of draft resolution A/C.6/L.1002.

30. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said that the remarks made by the representative of the Soviet Union concerning Israel at the preceding meeting had been gratuitous and had nothing to do with the item under discussion. The many irregularities in which the automatic majorities indulged at Israel's expense were living witnesses to the utter ineffectiveness of the United Nations as an organization and of the Charter as a legal instrument to maintain international peace and security or to protect individual peace-loving States from aggression and other abuses. Israel's bitter experiences and above all the large number of unprecedented occurrences at the current session of the General Assembly were justification for a substantive review of the Charter and current practices. The statement by the representative of the Soviet Union led his delegation to think that he was really afraid of such a review, for reasons at which one could only guess. It was a well-known fact that since 1948 Israel had been the victim of continuing aggression. When that aggression commenced in 1948, the representatives of the Soviet Union had been among those who had recognized the existence of aggression and had suggested Security Council action designed to terminate it. It was not Israel's fault that peace had not been restored in the Middle East.

[1] See A/8746/Add.1.

31. Mr. AN Chih-yuan (China) said that during the current debate the representatives of some third world countries had convincingly explained the need for a review of the Charter and the establishment of an *ad hoc* committee on the Charter and had forcefully refuted the fallacious argument advanced by the delegation of the Soviet Union against the review of the Charter. An increasing number of small and medium-sized countries demanded that the United Nations and its Charter should adapt to the needs of the times.

32. Standing in opposition to the third world countries, the Soviet Union had desperately opposed a review of the Charter. In order to obstruct such a review, the Soviet representatives had not hesitated to resort to intimidation. They had falsely accused the countries which favoured a review of undermining the Charter and destroying the very basis of the existence of the United Nations. They openly vilified those countries as "reactionary forces". Their intention seemed to be to turn the United Nations into a one-State forum, subjecting other Member States to the orders of the Soviet Union. In the current era, when the numerous third world countries had become increasingly awakened and united, the Soviet Union was still trying to wield the stick in the United Nations. That would only enable the small and medium-sized countries to see more clearly the ugly features of Soviet hegemonism, evoke their indignation and strengthen their conviction of the need for a review of the Charter.

33. The representatives of the Soviet Union gave no tenable reasons for their opposition to a review of the Charter. The true intention of the delegation of the Soviet Union in opposing such a review was to defend the privileged status of Soviet social-imperialism in the United Nations in order to continue its big-Power hegemony. Not daring to reply to that point, the representative of the Soviet Union had resorted to vilification, which was a manifestation of political impotence.

34. The representative of the Soviet Union had accused the Chinese delegation of "anti-Sovietism". It should be pointed out that China was indeed against the revisionism and big-Power hegemony pursued by the ruling clique of the Soviet Union. As was known to all, that clique had long betrayed Leninism, socialism and the world revolutionary people. It had degenerated from a socialist country into social-imperialism, betraying the Soviet people who had fought against fascism during the Second World War. The ruling clique of the Soviet Union had turned it into a super-Power carrying out aggression, subversion, interference, control and bullying against the numerous small and medium-sized countries. China had been opposed to and would continue to oppose such a super-Power.

35. The representative of the Soviet Union had also unabashedly styled himself a protector of small countries, asserting that the existence of the Soviet Union had guaranteed the interests of small countries and that consequently there was no need to review the Charter. That was sheer deception. The Soviet Union was clearly bullying the weak in the United Nations. At the sixth special session of the General Assembly and the Third United Nations Conference on the Law of the Sea held at Caracas the Soviet Union had obdurately defended the vested interests of the super-Powers. On the Middle East question, it falsely supported but in reality betrayed the Arab countries subjected to aggression. On the Cyprus question, it had been contending with the other super-Power for hegemony. Those hegemonic acts on the part of the Soviet Union were still fresh in people's minds and could not be covered up. The numerous third world countries resolutely opposed big-Power hegemony. That was also an important reason why an increasing number of small and medium-sized countries favoured the review of the Charter. If the Soviet representative continued to impose his will on Member States by obstructing the review of the Charter, he would surely meet with their opposition.

36. The Soviet representative had also bragged about the fraud of sham disarmament. It was clear to all that the Soviet ruling clique had constantly pursued a policy of frantic arms expansion and of nuclear blackmail. The leading group of the Soviet Union was one of the biggest merchants of death in the world and had reaped fabulous profits by taking advantage of the temporary difficulties of some small and medium-sized countries.

37. Since the restoration of its lawful seat in the United Nations, China had maintained that the affairs of countries should be managed by the people of the countries concerned, that world affairs should be managed by all the countries in the world, and that the affairs of the United Nations should be managed by all States Members of the Organization. China was firmly opposed to one or two super-Powers controlling and manipulating the United Nations. The Chinese delegation supported all just demands of the small and medium-sized countries and firmly opposed all hegemonic acts of the super-Powers. In conformity with the principle of equality of all countries the Chinese delegation was in favour of reviewing the Charter. It was clear to all that the reason why the delegation of the Soviet Union was so afraid of the review of the Charter was that it was attempting to continue its practice of big-Power chauvinism and hegemony in the United Nations.

38. Mr. BAJA (Philippines), speaking in exercise of the right of reply, said that he wished to correct an erroneous interpretation made by the representative of the Soviet Union at the preceding meeting to the effect that the Philippines delegation wanted to kill the Charter. The United Nations was, as it should be, an organization for all countries of the world, not a preserve of some nations. His delegation's aim was to breathe more life into the Organization and its Charter, not to take its life. It was in that spirit that the Philippines, together with other developing countries, commended draft resolution A/C.6/L.1002 to the attention of the Sixth Committee.

39. Mr. ESCOBAR (Colombia), speaking in exercise of the right of reply, expressed regret that the delegation of a country with which his own Government had the most friendly relations had referred to the position adopted by the Colombian delegation in a disparaging way. In the 29 years of the Charter's existence, Colombia had never been accused of acts which violated the purposes and principles agreed upon in San Francisco. Colombia was a peace-loving country which did not put pressure on other States or resort to arguments that were not based on reason. His delegation did not believe that the Charter was sacrosanct and incapable of further improvement.

40. Mr. KOLESNIK (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said that it was well known that the current political course of Peking ran counter to the trend towards a relaxation of international tensions. It was in that context that the activities of the Chinese delegation to the United Nations should be viewed, in particular its position on the question of the review of the Charter. China fiercely opposed all proposals for disarmament, for the promotion of friendly relations among States and for the strengthening of international security. The facts were well known and had been stated by the head of the delegation of the Soviet Union at the preceding meeting. In connexion with the item under discussion, the Chinese aim was clearly to undermine the foundations of the United Nations and to create chaos.

41. The Chinese delegation tried to make its position more acceptable by posing as a defender of the countries of the third world and by claiming to speak on behalf of the third world. But who empowered the Chinese delegation to speak for the developing countries? A country's position should be judged by its deeds, not by its words. What had the Maoists done for the countries of the third world? They had little to boast about in that regard, whether in connexion with the elimination of the vestiges of colonialism or assistance to the victims of imperialist aggression and racism.

42. As to the statements made by other speakers in exercise of the right of reply, he did not deem it necessary to comment in detail. Some of those statements showed that the speakers had not had time to study carefully the statement by the head of the delegation of the Soviet Union. Other statements showed that the delegations in question were unwilling to heed the unanimous view expressed by the overwhelming majority of Member States.

43. Mr. AN Chih-yuan (China), speaking in exercise of the right of reply, said that the representative of the Soviet Union could do nothing but resort to vilification and slander of the Chinese delegation. He had not replied to the question asked by the Chinese delegation, thus revealing his fear of the truth. He had only confirmed that the Soviet ruling clique had betrayed Leninism, socialism and the world revolutionary people and that his country was pursuing a policy of social-imperialism.

AGENDA ITEMS 92 AND 12

Respect for human rights in armed conflicts: report of the Secretary-General (A/9669 and Add.1, A/C.6/L.1006, L.1007)

Report of the Economic and Social Council [chapter V (section D, paragraph 493)]

44. The CHAIRMAN announced that Canada, Finland, Mali and New Zealand should be added to the list of sponsors of draft resolution A/C.6/L.1006.

The meeting rose at 5.45 p.m.

1516th meeting

Thursday, 5 December 1974, at 11 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1516

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002, L.1008, L.1010)

1. The CHAIRMAN announced that Madagascar, Uganda and the Upper Volta had joined the sponsors of draft resolution A/C.6/L.1002.

2. Mr. GARCIA ORTIZ (Ecuador) said that Ecuador had always understood the need to support the purposes and principles of the Charter. Nevertheless, the Charter was not perfect, and could be studied with a view to revision. However, the purposes and principles should not be touched, although some changes with regard to structure and procedures were needed. In addition, the failure of certain States to apply the resolutions adopted by United Nations bodies required consideration. It would not be out of place to study possible revisions to eliminate such defects. The intention would not be to abolish the present purposes and principles, but to retain all the useful provisions and find solutions for the difficulties that had arisen in practice.

3. Although his delegation was not among the sponsors of draft resolution A/C.6/L.1002, it would vote for that text because it was more viable than those submitted by the Byelorussian SSR and others (A/C.6/L.1001) and Saudi Arabia (A/C.6/L.1008).

4. Mr. JEANNEL (France) said that since the adoption of General Assembly resolution 2968 (XXVII), under which Member States were invited to communicate their views and suggestions regarding the desirability of a review of the Charter, only seven States had submitted their views (see A/9739). Like the observation received in 1972,[1] those

[1] See A/8746 and Add.1-3.

views ruled out any idea of review, were couched in very general terms, or proposed measures reflecting very divergent viewpoints. No broad agreement seemed to be emerging which would make a review of the fundamental rules of the United Nations imperative. Of course, States Members were rightly hesitant about interfering with a delicately balanced edifice which had proved its worth over the years.

5. If the functioning of the United Nations was susceptible of improvement—as it should be—improvement should not be sought through a review of the Charter but through a stricter application of the existing rules. The Charter could not be continually changed in response to all the changing circumstances. Furthermore, the Charter was a guide for Member States in improving their relations. As it stood, it had already been successful in achieving co-operation and understanding between nations. It did not need to be reviewed, but it could be complemented, as it had already been by such instruments as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the definition of aggression (General Assembly resolutions 2625 (XXV), annex, and 3314 (XXIX), annex) and the studies undertaken in connexion with item 20, concerning the strengthening of the role of the United Nations.

6. The envisaged changes could only reduce the effectiveness of the Organization. Some of the specific proposals that had been put forward were really aimed at giving more power to the General Assembly and less to the Security Council. That trend had already produced practical results, which were reflected not only in General Assembly resolution 377 (V) but also in the fact that the Assembly virtually ignored Article 12, paragraph 1, of the Charter, under which it was not empowered to make recommendations with regard to any question that was being considered by the Security Council. Such infringements of the prerogatives of the Security Council had thus far been limited and their legality had been challenged, but a revision of the Charter might go much further, providing an incontestable legal basis for an enlargement of the powers of the Assembly at the expense of the Security Council. Amendments of that kind would be most untimely, for they would have the effect of imposing a theoretical system that was not in line with reality. If the General Assembly tried to push through decisions by a majority vote, they would produce no results, and its prestige would suffer. There were reasons that had prompted the drafters of the Charter to provide for a balance of power between the Assembly and the Security Council, ensuring that any decision regarding international peace and security was taken by the Council and by a unanimous vote. Those reasons were still as valid as they had ever been. Furthermore, at the current juncture in world affairs, the aim should be to make the will of the majority prevail over that of the minority, but not by compulsive action.

7. A trend of that kind had already emerged in different United Nations bodies, where the practice of adopting decisions by consensus had already been accepted. That had always been so, for instance in the Economic Commission for Europe, and it was so in other world bodies. The majority seemed to have realized that it was pointless to adopt decisions by majority vote if the minority was not going to apply them.

8. Thus, although it was in order for decisions to be taken by majority vote, they should never be taken without the concurrence of the object of that decision, except in exceptional cases. His delegation would like that lesson to be brought home to all the Main Committees of the General Assembly. It applied to other fields also. It meant that in matters of international peace and security, the rules governing the decisions of the Security Council were still as valid as they had been 29 years before. So far, the fundamental objective of the Charter—the maintenance of international peace and security—had been achieved. It would be unwise for the United Nations to tamper with the balance of power built into the Charter where peace and security were concerned. There was no reason for revision elsewhere either, in the economic and social fields for instance.

9. His delegation did not favour the establishment of an *ad hoc* committee and it did not think that the current international situation was favourable to a thorough revision of the Charter. It could not support any initiative which would substantially alter the current balance of power between the different organs of the United Nations. It was not the time for a critical examination of the Charter either. Such criticism would weaken the Charter, even if that instrument was not amended, leading to a falling-off in the Organization's authority and prestige. Any tampering with the Charter, which had been universally accepted and had proved its effectiveness, might well destroy the whole system, and there was no guarantee that other provisions could be agreed upon.

10. Turning to draft resolution A/C.6/L.1002, he said that if there was to be no fundamental revision of the Charter, he could see no reason for establishing a new body to exchange views on that subject. It would absorb the energies of a number of delegations and would take time and money which could better be spent on more useful tasks. The intention seemed to be to start a process which would lead to a review of the Charter, with all the dangers that would involve. For that reason his delegation felt bound to oppose draft resolution A/C.6/L.1002. It would support draft resolution A/C.6/L.1001, but could support the Saudi Arabian proposal (A/C.6/L.1008) if it commanded very broad support.

11. He emphasized that the delegations that favoured review seemed to have forgotten that the Charter had been drafted with one essential purpose in view: the maintenance of international peace. The nations which had met in San Francisco in 1944 had only just emerged from an appalling holocaust; their principle aim had been to prevent the repetition of such a disaster; and that objective had been reached. Where armed conflicts had occurred, it had been possible to prevent them from spreading despite the fact that the divergencies of view were no less acute and the interests at stake no less important than between the two wars. Thanks to the United Nations and to the application of the Charter, there were grounds for hope that it would continue to be possible to avoid a world conflict. The United Nations had proved its effectiveness both in that field and in that of progressive and peaceful development.

He appealed to all delegations to reflect on that aspect of the question before they destroyed the edifice which was intended to save succeeding generations from the scourge of war.

12. Mr. MARTYNENKO (Ukrainian Soviet Socialist Republic) said that his delegation's position on the question under discussion was based on its unfailing adherence to the purposes and principles of the Charter and on its firm convictions regarding the special role of the Charter and its special place in contemporary international relations. His delegation considered the Charter to be a most important and fundamental instrument of international law, whose significance went far beyond its role as the constituent instrument of the United Nations. It was firmly rooted in the system of contemporary international relations and was one of the basic elements of those relations, since it was an international agreement to which almost all States were parties and in which the basic principles of international relations and international law were enshrined. Over the past 30 years those principles had gained universal recognition in relations between States, and that had to a considerable extent been due to the influence of the Charter. Those principles constituted a firm basis for the development of peaceful coexistence and broad co-operation between States with different social systems and for the extensive system of bilateral and multilateral agreements which regulated relations between States in the most varied spheres. The strict and consistent observance of the Charter was one of the most important conditions for the preservation of peace and security; furthermore, the basic principles of the Charter had become generally recognized as the main criterion for the legality of the international actions of States and for the effectiveness of international agreements.

13. Because of the indisputably vast political and legal significance of the Charter, any discussion of a possible review required a particularly careful and responsible approach. However, such an approach had frequently not been adopted in discussions of the matter at the current and the previous sessions of the General Assembly and in the observations of some Governments communicated to the Secretary-General. The pros and cons of the proposed alterations to the Charter and the possible consequences of those alterations had not been considered with sufficient care, and the general aims of strengthening international security on the basis of the strict observance of the Charter had been replaced by narrow and selfish considerations.

14. His delegation, which represented one of the founding States of the United Nations, considered that the argument that the Charter allegedly did not correspond to the contemporary conditions of international relations was erroneous. During the Charter's existence there had indeed been far-reaching and unprecedented changes, but the Charter was still a vital and effective instrument, which quite clearly fully corresponded to the nature of contemporary international relations and created the necessary conditions for the United Nations to keep abreast with the times and to carry out the tasks before it. The basic aim proclaimed by the Charter—that of saving succeeding generations from the scourge of war—was unchanged, and still reflected the hopes of all the peoples of the world. The principles of the Charter had gained increasing recognition and had been continuously developed. Over the past few years the purposes and principles of the Charter had been confirmed anew in a number of declarations unanimously adopted by the General Assembly, including the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations (resolution 2627 (XXV)), in which Member States had reaffirmed their dedication to the Charter and their will to carry out the obligations contained therein.

15. Throughout its history the United Nations, merely by applying the Charter, had been able to react correctly to the very important changes which had taken place. In the course of such processes as the disintegration of the colonial system, the emergence of dozens of new States, the increasing role played by the socialist States and the developing countries in the contemporary world, and the scientific and technological revolution, the flexibility and relevance of the Charter had been proved. It had provided a firm political and legal basis for the peoples' struggle for national independence against colonial domination. Moreover, it had created favourable conditions for the entry of the young developing States into the international arena and had furthered their active participation in the solution of important international problems. Although those States had not participated in the elaboration of the Charter, each of them, on entering the United Nations, had accepted the Charter and assumed the corresponding obligations. The great increase in the number of Member States was not a reason for reviewing the Charter but was proof of the widespread recognition of its authority.

16. The Charter had stood the test of time; and the argument that it should be reviewed because the political conditions in which it had been adopted had changed enormously was absolutely unjustified. In 1944 there had been a great upsurge of the democratic movement and a firm resolve to prevent another world war. The world had understood the need to avoid a repetition of the failure of the League of Nations and to continue the co-operation born of the common struggle in creating an effective international organization. The Charter had thus laid down firm principles for the United Nations in order to fulfil those hopes.

17. The argument that the Charter was out of date because it had been elaborated in the pre-nuclear age was unfounded, primarily because the development of new types of weapons did not justify a review of the principles governing relations between States, including the nuclear Powers, and of the principle that States should co-operate in order to maintain peace and consequently to strengthen the Organization established to serve that end. The Charter had contributed to the solution of the problems linked with developments in nuclear physics and had constituted a firm legal basis for placing modern discoveries at the service of peace and the future of mankind. Furthermore, although the work of the United Nations in that sphere had not yet achieved the desired results it had incontrovertibly shown that what was needed for the solution of those problems was the goodwill of States and not a review of the Charter. The need for strict observance of the main principles of the Charter was more pressing than ever before because of the great dangers of a thermo-nuclear war.

18. The argument that the Charter was out of date had been advanced ever since the first years of the existence of the United Nations, and such arguments had been refuted by the head of his delegation at the first session of the General Assembly (45th plenary meeting). Arguments for the review of the Charter would only undermine the role of the United Nations. Everyone agreed that the effectiveness of the Organization needed to be considerably increased, and that indicated the need for consistent and strict observance of the Charter and for combined efforts by Member States to attain its goals. However, the effectiveness of the United Nations could only be increased in conjunction with the strengthening of international security on the basis of strict observance of the Charter. The practical activities of the United Nations showed quite clearly that its ineffectiveness had always resulted from violation of the Charter and the unwillingness of some Member States to promote actively the realization of the Organization's aims.

19. The Secretary-General had commented on the importance of the Charter for the future effectiveness of the United Nations in his introduction to the report on the work of the Organization (A/9601/Add.1). As the United Nations approached its thirtieth anniversary, the world was expecting it to make new efforts to attain the aims set out in the Charter, and any attempt to review that instrument would undoubtedly impede such efforts and do irreparable harm to the cause of peace and security. His delegation therefore resolutely opposed the proposal to establish an *ad hoc* committee on the Charter of the United Nations, and whole-heartedly endorsed the view that the only recommendation the Committee could make would be to limit the discussion of the question at the current session of the General Assembly, to take note of the opinions of Governments on the matter and to remove the item from the agenda of the General Assembly.

20. Mr. JAIPAL (India) recalled that his delegation had commented at the tenth (543rd plenary meeting) and twenty-eighth (2136th plenary meeting) sessions of the General Assembly on the question of the review of the Charter. Although the drafters of the Charter had provided a procedure for its review, a general review was undesirable as it might lead to quite unforeseen consequences and possibly even to a weakening of the United Nations. The question before the Committee was not the adequacy of the Charter but whether its inadequacies should be rectified by a comprehensive review or by other less drastic but more practical means. It was not as if the Charter had remained unchanged; the two principal organs of the United Nations had increased in size—the General Assembly had more than doubled—and the expectations embodied in Chapters XI and XII had been more than fulfilled. The composition and character of the United Nations had undergone a significant and substantial change and the privileged position of a handful of Members was no longer a source of frustration for the majority. The current United Nations was a reflection of the contemporary world and the full potential of the Charter had not yet been realized. However, the current framework provided an adequate basis not only for the maintenance of world peace but also for harmonizing the actions of Member States in the struggle for human rights, the promotion of social and economic progress and the establishment of conditions for peaceful coexistence. Revision of the Charter was not the only road to the fulfilment of those aims and moreover was alien to the whole concept of the development of law in relation to institutions. The purposes of the Charter could be achieved through the elaboration of principles, the adoption of declarations and covenants, the establishment of international machinery for specific purposes and so forth. The International Law Commission and the United Nations Commission on International Trade Law were playing a major role in re-orienting international law to reflect the changing situation in the world; several historic declarations had been adopted, and in the field of economic co-operation the basis for a new international economic order had been elaborated. Those actions and others had all contributed to the achievement of some of the purposes of the Charter without introducing any basic changes in the Charter itself.

21. Amendment of provisions of the Charter regarding which there was general agreement or which were anomalous or in the process of becoming obsolete could clearly be considered. However, there were certain areas of controversy in the Charter which needed very careful handling; those controversies had been discussed even during the drafting of the Charter and could not be resolved either then or at the present time. With regard to the veto system, it was questionable whether that system was any more discriminatory than the system of voting which did not bear relation to the size and population of Member States or to other factors. The Charter was based on certain principles and rights which, if applied with good sense and judgement, could strengthen the United Nations, but if applied indiscriminately and without regard to consequences could only lead to a situation in which the United Nations would be as strong as its weakest link. His delegation considered that what was needed was not a general review of the Charter but scrupulous adherence to its provisions by all Member States. The time was not yet ripe and the international climate was not yet right for a revision of the Charter. The agreement of the peramanent members of the Security Council was a prerequisite for any revision of the Charter and they would evidently not assume greater responsibilities and obligations through any revision of the Charter that did not have their consent; equally, their responsibilities and obligations should not be reduced through revision of the Charter even if such revision did have their consent. That was a question of profound and far-reaching importance to international peace and security and it deserved most careful consideration.

22. His delegation was prepared to consider specific and essential amendments to the Charter, and also to consider a review, among other things, of the rules of procedure, of practices in the application of principles and of financial norms and regulations, with a view to strengthening the United Nations. It could not agree to leave the question of the review of the Charter to a small committee of the General Assembly, for every Member State should be given an equal opportunity to make its contribution to the subject.

23. Mr. STEEL (United Kingdom) said that, after having listened carefully and sympathetically to the arguments put forward by various speakers on the item under considera-

tion, his delegation was still far from persuaded of the correctness of their point of view. It had always had misgivings about the wisdom and utility of embarking upon a systematic and wholesale review of suggestions for improving or changing the Charter, and nothing it had heard in the current debate had lessened those misgivings. In the first place, his delegation doubted whether there really existed among the membership of the United Nations at large the widespread call for amendment of the Charter that some speakers had claimed to be able to detect. It also doubted whether the proposed procedure was really the best way of finding cures for any defects which might exist in the Charter as it currently functioned. Above all, it doubted whether there was any real urgency in the matter other than the somewhat artificial urgency which arose from the fact that the delegations which had supported the item at previous sessions of the General Assembly had an understandable desire to bring it to a conclusion at the current session, irrespective of whether the possible consequences and implications had been adequately explored.

24. Over a period of four years, and despite two General Assembly resolutions (resolutions 2697 (XXV) and 2968 (XXVII)), only 38 States had thought it appropriate to give their considered views on the subject. Moreover, less than half, probably nearer one third, of the replies had been in favour of embarking on a review of the Charter. That did not seem to indicate the existence of the overwhelming sentiment in favour of Charter review that some speakers had spoken of in the current debate. There were of course a number of countries which supported the proposal for a Charter review. However, even leaving aside those speakers who positively criticized or questioned the proposal, the vast majority of Member States had not spoken up or written to the Secretary-General in support of the proposal, and there was no reason to think that that silent majority was imbued with enthusiasm for Charter review. On the contrary, all indications were that the silent majority was the doubting majority, and that the demand contained in draft resolution A/C.6/L.1002 did not represent the true views of the membership of the United Nations as a whole. Furthermore, his delegation considered that the case had not really been made out for saying that the establishment of a special committee or an *ad hoc* committee was the right way to proceed. In that connexion, it was not at all clear what the difference was between a special committee and an *ad hoc* committee, and he would welcome an explanation as to why any of the objections to the establishment of a special committee would be overcome by calling the body an *ad hoc* committee. Both seemed to have the same disadvantages and to involve the same dangers. The establishment of either would be a disservice to the United Nations, and his delegation was therefore opposed to it.

25. The Charter, of course, like any comparable instrument, was not perfect, and any delegation could produce a number of amendments which, in an ideal world and as an abstract proposition, it would like to see made to the Charter. However, the Committee was not engaged in an academic seminar, but in a practical assessment of advantage balanced against cost and disadvantage. In the case of most of the alleged defects in the Charter, it was very much open to question whether the advantages of curing them would be worth the time and effort required under the procedure laid down in Article 108 of the Charter. Moreover, the United Nations was faced with so many other pressing problems of peace or war, prosperity or hunger, freedom or tyranny, for the millions of peoples whom it collectively represented, that it did not need to go looking for tasks to perform which did not bring an immediate and appreciable result in terms of those issues.

26. Nevertheless, accepting for the sake of argument that there were significant defects to be cured or changes to be made in the Charter, his Government reaffirmed its willingness to look sympathetically at proposals for a specific limited amendment to deal with a specific limited need where the proposals seemed capable of attracting general support and would not upset the essential balance and structure of any of the important provisions of the Charter. However, that was a very different matter from embarking on a general hunt for possible amendments of the kind entailed by draft resolution A/C.6/L.1002. Even in the case of specific limited amendments, his delegation doubted the wisdom of ignoring the fact that certain proposals were bound to run into such substantial opposition from some States that it was inconceivable that they could attract the necessary support.

27. The proposed process of general Charter review would present dangers to the United Nations as an institution, and provide an unparalleled opportunity for dissipating energies and resources in futile and unproductive recrimination. The *ad hoc* committee would introduce a divisiveness into the affairs of the Organization which did not currently exist, and would cause it to move away from the recognition of the necessity for co-operation which enabled the United Nations, with all its faults, to do a substantial body of good work. Even if there were indeed serious defects in the current working of the Charter—and his delegation did not believe that to be the case—a general review procedure would do more harm than good.

28. For all those reasons, his delegation would vote against draft resolution A/C.6/L.1002, which was no doubt well-intentioned, but which would have the effect of setting the Assembly on a course which would be dangerous, unnecessary and doomed to frustration. Nor did it see why that draft resolution should have priority over draft resolution A/C.6/L.1001, or why the Committee should depart from the order of priority laid down in rule 131 of the rules of procedure. Moreover, his delegation would vote in favour of draft resolution A/C.6/L.1001 for the same reasons it had given for voting against draft resolution A/C.6/L.1002, although it could not pretend to be entirely happy with some of the wording of the former draft resolution.

29. While the substantive position of his delegation was better reflected in draft resolution A/C.6/L.1001, it preferred the style of draft resolution A/C.6/L.1008, submitted by the representative of Saudi Arabia, and if the latter draft resolution seemed likely to commend itself to a majority of the Committee, his delegation would be willing to vote for it.

30. Mr. LEE (Canada) observed that since the adoption of the Charter the membership of the United Nations had more than doubled. The interpretation of the Charter had, fortunately, evolved with the growth of the Organization,

and had proved flexible enough both to provide newer Members with a vehicle for promoting their objectives and to accommodate the changed interests of the original Member States. His Government considered that the effectiveness of the United Nations was directly dependent on the political will of its Members, especially the great Powers, and had stated its readiness to give careful and serious consideration to all specific proposals for revision or more effective utilization of the Charter which might command broad support among the Members of the Organization. It recognized that certain textual modifications might be examined in a constructive spirit on a functional or case-by-case basis. However, the Charter had been a positive vehicle for action in the world community, and had proved to be a remarkably flexible and responsive document, as exemplified, among other things, by the work of the Special Committee of 31 established in 1970 (General Assembly resolution 2632 (XXV)) in response to the urgent need to improve the procedures and organization of the General Assembly, and by the drafting of the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Moreover, his Government did not believe that proposals which had been made to alter the method of voting in the Security Council were feasible or, in some cases, desirable. It considered that the veto reflected a political realism by which the Security Council must be guided in order to avoid the risk of grave damage to the Organization resulting from the direct confrontation of irreconcilable political forces among its members.

31. With reference to the role of the proposed *ad hoc* committee in sifting proposals for revision of the Charter or more effective functioning of the Organization, his delegation considered that the General Assembly was to some extent already performing that function. Each session of the General Assembly provided an opportunity for a natural process of sifting proposals regarding matters of concern to the Organization. His delegation would therefore like to study more observations of Member States communicated to the Secretary-General pursuant to resolutions 2697 (XXV) and 2968 (XXVII), and to hear the reasoned views of the members of the Committee over a much longer period than that allotted to the item at the current session. Accordingly, it wished to see the item placed on the provisional agenda of the thirtieth session of the General Assembly for further detailed consideration.

32. With reference to draft resolution A/C.6/L.1008, he announced that a revised version[2] of that draft resolution had been agreed on in informal consultations between his delegation and that of Saudi Arabia, and would be circulated at the following meeting. The representative of Saudi Arabia had indicated his willingness to submit to a separate vote operative paragraph 2 of the draft resolution, which remained the same in both the original and the revised texts, and would request that priority consideration should be given to the new text, since it represented a compromise between the proposal to remove the item from the agenda altogether, on the one hand, and that of establishing an *ad hoc* committee on Charter review, on the other.

33. Mr. STARČEVIĆ (Yugoslavia) said that his Government's position was set out in document A/8746/Add.2 and his delegation had also expressed its views in the Sixth Committee at the twenty-fifth session (1242nd meeting) and twenty-seventh session (1381st meeting). At the twenty-fifth session, his delegation had stated that in its opinion there was no need to seek any urgent solutions or to accord priority to the revision of the Charter.

34. The question of revising the Charter or adding to it was highly complex. It was primarily a political question entailing far-reaching consequences, and could not be reduced to a legal issue. The United Nations had withstood the test of time, although its performance had been disappointing on some occasions. Its Charter continued to reflect the basic principles and ideals of the world community and served as an irreplaceable foundation for the development of that community on the basis of democratic principles.

35. With the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, a significant step forward had been made towards harmonizing the legal concepts of Member States with respect to the substance of those fundamental principles. The Declaration should serve as a source for the interpretation of the principles embodied in the Charter and was thus a means of adapting the Charter to contemporary conditions. Whatever short-comings there might be in the structure of the Charter and the procedures of the Organization, his delegation did not believe that the activity and effectiveness of the United Nations could be considered separately from the attitude of Member States towards it and towards the implementation of the decisions and recommendations of its organs. Member States bore the primary responsibility for the successes as well as for the failures of the Organization. That view had been endorsed by the Third Conference of Heads of State or Government of Non-Aligned Countries, held at Lusaka in 1970, which had adopted a statement on the United Nations declaring, *inter alia*, that the Conference was convinced that if the United Nations had not been very successful in some of its endeavours, that was not only because of any inherent defect in the Charter but also because of the unwillingness of some Member States to observe the principles of the Charter.

36. In any event, without the broadest possible consensus, no revision of the Charter could be undertaken. It was undeniable that some provisions of the Charter could be criticized as being obsolete, but in the absence of the required political concurrence, it would not be opportune to initiate a procedure to eliminate such provisions, since that might lead to misunderstandings and conflicts between Member States, to the detriment of the normal functioning of the Organization. The work and effectiveness of the United Nations could certainly be enhanced if the Charter was applied in a way that was more in line with the requirements of the international community and the aspirations of the majority of States, many of which had joined the United Nations since the adoption of the Charter. Many new areas of international relations had emerged or older areas had become more important and urgent since that time; such situations could not have been

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2 Subsequently circulated as document A/C.6/L.1011.

foreseen at the time when the Charter had been adopted. Moreover, many new questions had arisen which had not been thought of at that time. Furthermore, the field of peace-keeping operations still remained basically unregulated. Additions to the Charter to cover those numerous points would occupy Governments for a considerable period.

37. In the view of his delegation, most Member States felt that existing conditions did not yet warrant a general review of the Charter but there was a willingness in principle to examine specific proposals on their merit. There had already been amendments to the Charter, such as the increase in the membership of the Security Council and of the Economic and Social Council to make those organs more representative of the enlarged membership of the United Nations. Such examples showed that the Charter could be amended without an over-all review, although the broadest consensus possible should be attained on every specific proposal.

38. His delegation was ready to consider any suggestion likely to promote the effectiveness of the Organization and improve its functioning. It had, therefore, been in favour of retaining the present item on the agenda of the General Assembly at the current session. In the light of the discussions so far, however, his delegation felt that the conditions required for review were still lacking in the Sixth Committee, which could not therefore take a decisive step in that direction. A cautious and gradual approach seemed indicated. Only a few Governments had submitted their views so far. A greater number of replies would provide a better basis for the Sixth Committee to decide on future action. The debate at the current session had been useful and should be an incentive to Member States that had not yet done so to submit their views. There was hope, therefore, that the Sixth Committee might be in a better position in the future to take a decision on the present item.

The meeting rose at 1 p.m.

1517th meeting

Thursday, 5 December 1974, at 3.30 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia)

A/C.6/SR.1517 and Corr.1

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002, L.1008, L.1010, L.1011)

1. Mr. COLES (Australia) said that his delegation did not consider unreasonable the proposal to establish an *ad hoc* committee on the Charter of the United Nations which would obtain and consider the views of Governments and enumerate proposals which aroused particular interest. If there were relevant and important problems concerning the Charter, they should be squarely confronted. It was true that the right of veto applied to amendments to the Charter, but there was no right of veto over the consideration of problems. There seemed to be widespread support for the establishment of an *ad hoc* committee, and it would not be reasonable to thwart the desire of the plurality of Member States for free discussion of the problems. The United Nations was an organization of sovereign and equal States; every State has the right to raise any relevant question and to have an opportunity to express its views. In advocating the establishment of the *ad hoc* committee, his delegation did not wish to give the impression that it had reservations of any kind in regard to the purposes and principles of the Charter, which were of lasting worth and fundamental relevance. The Charter, however, was not sacred scripture but merely the product of negotiations some 30 years ago. The amendments that had been made to the Charter since then had not impaired it. On the contrary, they had helped to make it more relevant to contemporary circumstances. No one was advocating wholesale review of the Charter. It was universally agreed that most of the provisions of the Charter should remain unchanged. The improvements that had been suggested related primarily to a more effective implementation of the purposes and principles of the Charter and the elimination of certain historical anomalies. Those suggestions had been advanced in a serious and reasonable manner and deserved to be considered carefully and constructively. His delegation would therefore vote in favour of draft resolution A/C.6/L.1002.

2. Mr. PEDAUYE (Spain) said that his delegation had decided to become a sponsor of draft resolution A/C.6/L.1002 because it believed it was necessary to consider bringing up to date a number of aspects of the Charter which had become outmoded as a result of events that had occurred since its entry into force. With the accession to independence of many States as a result of decolonization since the Second World War, profound changes had come about in international relations. Draft resolution A/C.6/L.1002 proposed a means of laying the groundwork for the adoption of informed political decisions at the appropriate time. The establishment of an *ad hoc* committee with the terms of reference set out in operative paragraph 1 of the draft resolution could not be regarded as compromising the positions on the substance of the matter which might be taken by various delegations. That point had been made clearly by the Secretary of Foreign Affairs of the Philippines (1512th meeting) and other representatives who had spoken in the debate. The apprehensions that were felt by some were groundless. The

ad hoc committee would, in his delegation's view, be an appropriate forum for the consideration of the proposals, suggestions and views which Governments might wish to put forward on the matter. The final positions of States would ultimately depend on political decisions which could not be influenced by the work of a committee of the type proposed. The Member States which had not had an opportunity to express their views at the time of the establishment of the United Nations would be able to use the *ad hoc* committee as a means of studying and analysing any formal proposals for revision of the Charter which might be acceptable to all.

3. Mr. JUMEAN (Qatar) said that, in his delegation's view, the Charter was a sound document, the purposes and principles of which could be applied universally and for the benefit of all. The Charter had stood the test of time and ought not to be tampered with or revised merely for the sake of revision. It was generally recognized that the Charter had certain imperfections, but they reflected the realities of an inescapable power structure. Despite the changes that had occurred in the past two decades, his delegation did not believe that an extensive over-all revision of the Charter was called for. The purposes and principles of the Charter were timeless and needed no modification. It was not the fault of the Charter that States sometimes failed to observe its purposes and principles. Those who were ignoring the Charter should be urged to comply with it. While changing circumstances might on occasion require amendments to the Charter, such amendments should be introduced gradually, on the basis of the widest possible consensus and with the utmost caution. Rash and ill-advised changes in the Charter might endanger the very viability of the United Nations. For all those reasons, his delegation could not support the proposal to establish an *ad hoc* committee on the Charter, particularly since it appeared that a committee of the type envisaged might be inclined to undertake drastic revisions of the Charter. In his delegation's view, there was no need for radical changes.

4. As to the draft resolution on the item, his delegation was inclined to support the Saudi Arabian draft (A/C.6/L.1011) as a compromise proposal between the diametrically opposite courses of action envisaged in draft resolutions A/C.6/L.1001 and A/C.6/L.1002. A particular merit of the Saudi Arabian text was that it would give delegations an opportunity for informal consultations on the item before it was taken up again at the thirtieth session. He commended the spirit of conciliation displayed by the Saudi Arabian representative and urged that priority consideration should be given to draft resolution A/C.6/L.1011.

5. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that his delegation had decided to support draft resolution A/C.6/L.1002 despite the radical opposition of some States to any study of possible changes in the Charter, because it believed that the proposal to establish an *ad hoc* committee was not designed to betray any of the purposes and principles of the Charter but, on the contrary, to stimulate co-operation in revitalizing and strengthening the Charter. The sponsors of that draft resolution were not asking for anything unreasonable. Moreover, all those who had originally signed the Charter had done so on the understanding that within a short time an evaluation of the results of the application of the Charter would be undertaken. It was not fair to regard an initiative which was a product of a serious position of many years' standing as a wild idea designed to undermine the foundations of the Charter and of the United Nations itself. To refute the insinuations made concerning those who supported a review of the Charter, he wished to make it very clear that his delegation's decision to support the draft resolution had been taken in complete independence and without prompting. The review of the Charter should be seen as an opportunity to remedy its defects for the benefit of all and without prejudice to any party. The proposed study should not in any way affect the purposes and principles of the United Nations and might indeed lead to stricter observance of them by States.

6. Mr. FRAZÃO (Brazil) said that, despite its universal character and its primacy over all other instruments of international law, the Charter was nevertheless a treaty, and the provisions of treaties were to be fulfilled by the respective parties, in accordance with the *pacta sunt servanda* principle. A State which had expressed its consent to be bound by a treaty and thereby became a party to it could not choose which provisions it would abide by and which it would reject, unless it had made specific reservations when expressing its consent. The integrity of treaties was a doctrine recognized by every State and embodied in the Vienna Convention on the Law of Treaties.

7. His delegation failed to understand the uproar in the United Nations every time some delegations, conscious of their duty to see that the provisions of the Charter were scrupulously fulfilled, tried to take the necessary steps to set up preliminary machinery to examine the problems raised by Chapter XVIII of the Charter.

8. The Charter had never been intended to be untouchable and immutable. The founding fathers had been very much aware of the need for periodic revision and had provided the amendment mechanism in Article 108 for that purpose. Moreover, Article 109 established very precise machinery to ensure the implementation of Article 108, providing in paragraph 3 for automatic inclusion in the agenda of the tenth session of the General Assembly of the proposal to call a General Conference of the Members for the purpose of reviewing the Charter. The authors of the Charter might well have had a premonition about the difficulties the enforcement of Chapter XVIII would encounter in the course of time. Almost 20 years had elapsed since the tenth session of the General Assembly, and yet any delegation that dared to mention the problem of the need for implementation of Chapter XVIII still incurred ire in some quarters of the Organization which, paradoxically enough, had become champions of conservatism and enemies of progressive development. The resistance of any attempt to study the problems suggested by Chapter XVIII was, furthermore, surprising in view of the fact that the interests of the permanent members of the Security Council were safeguarded by Article 108. For all those reasons, his delegation had not hesitated to become a sponsor of draft resolution A/C.6/L.1002, which dealt with one of the most important items on the agenda of the Sixth Committee at the current session.

9. The United Nations had been born in a moment of euphoria between the darkness of the Second World War

and the icy grip of the cold war, as a result of which the revision machinery provided for in the Charter had never been used. If the current talk about détente was sincere, the logical conclusion to be drawn was that there could be no better time for a consideration of the problems of the Charter.

10. Revolutionary transformations had taken place between the pre-nuclear days of San Francisco and the contemporary reality. He failed to see the logic of the argument that an instrument clearly intended to be flexible enough to cope with the needs of international life should be irrevocably fossilized in all its provisions. In addition to the obsolete and anachronistic provisions of Article 107 and Article 53, paragraph 2, the Charter was full of formulations that should be updated to conform with the new circumstances prevailing in the world.

11. The number of States that had sent observations to the Secretary-General on problems of the Charter was really substantial when compared with the usual limited number of observations received to similar documents. Not less than 38 States had thus far presented their observations and had put forward some very interesting suggestions for future work. The Brazilian Government's reply[1] had indicated that priority should be assigned to certain matters in connexion with a review, making specific reference to the concept of collective economic security for development, peace-keeping operations and the enhancement of the effectiveness of the Security Council. The consideration in depth of those and other specific suggestions regarding amendments was a task for the future. However, the excellent response to the Secretary-General was sufficient evidence of the prevalent feelings concerning the need for revision of the Charter.

12. No one denied that the purposes and principles of the Charter were of lasting value and had stood the test of time. That position had been firmly and consistently maintained during the consideration of the item at various sessions of the General Assembly. The implementation of Article 108 could in no way be considered a challenge to the common will to revitalize the Organization. It was rather a necessary corollary to the fulfilment of the purposes and principles of the Charter.

13. Draft resolution A/C.6/L.1002, which had been ably introduced by the Secretary of Foreign Affairs of the Philippines, represented a considerable improvement over the text of a similar document presented at the twenty-seventh session of the General Assembly (A/C.6/L.870).[2] An important feature of the draft before the Committee was the addition of the last preambular paragraph reaffirming general support for the purposes and principles of the Charter. The operative part of the draft contained no provisions that could have provoked the exaggerated reaction of the "immobilists", those fierce guardians of the letter of the Charter who, oddly enough, had been ready to accept the few piecemeal amendments enacted in the past which had happened to satisfy the interests of package deals. It was proposed to establish an *ad hoc* committee with very limited and clear-cut terms of reference, not going beyond discussion of the observations received from Governments and consideration of suggestions for the more effective functioning of the Organization and increasing the ability of the United Nations to achieve its purposes. The Committee would thus consider suggestions not entailing any amendments of the Charter and would simply draw up a list of the proposals which might arouse particular interest. The modest contents of the draft resolution should not arouse the suspicions of any delegation. No specific amendment was proposed; no immediate step concerning the implementation of Article 108 was advanced; no premature action was called for. A more cautious and realistic approach could hardly be conceived. But if even that timid preliminary airing of the problem met with the stubborn resistance of the adversaries of revision, one might as well accept the fact that there were some forbidden subjects in the General Assembly, the very mention of which was anathema to some. If that was true, the United Nations was condemned to a process of progressive and lethal paralysis, for ever tied to dead formulae conceived for a world which no longer existed. He doubted whether that corresponded to the wishes of the majority, who were sincerely convinced of the need to strengthen the United Nations. His delegation therefore trusted that draft resolution A/C.6/L.1002 would receive the support of all those who believed that the Organization should march resolutely towards the possibilities of the future.

14. For all the foregoing reasons, his delegation was not able to support the compromise solution proposed by the Saudi Arabian representative (A/C.6/L.1011).

15. Mr. NJENGA (Kenya) said it was regrettable that the high standard of debate set by the representative of the Philippines, who had introduced draft resolution A/C.6/L.1002, had not been followed by some delegations which had indulged in malicious slander of the sponsors of the draft resolution, questioning their motives for urging the review of the Charter. The official position of his Government was set forth in document A/9739, and it was moreover only natural that his country, together with the 87 other Member States which had not participated in the San Francisco Conference, should consider that they had a right to express their views on the short-comings of the Charter and to make proposals as to how that instrument could be improved so as to enable it to meet more effectively the needs of the contemporary international situation. His delegation totally rejected the attempt to portray the expression of such views as an attempt to destroy the Charter and thereby endanger international peace and security.

16. The Charter was the creation of 51 States; it had been the answer to a war-torn world seeking a better future for humanity, but it could not be held sacrosanct for all time. Of course, when each State became a Member of the United Nations it undertook to abide by the provisions of the Charter. But the United Nations was not a secret society where provisions had to be followed blindly by new Members, irrespective of whether or not they met the just and rational aspirations of the international community. It was therefore malicious, particularly for a representative of

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1 See A/8746.

2 See *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 89, document A/8798, para. 4.

a permanent State member of the Security Council, to accuse those new Members advocating a review of the Charter of falsely seeking admittance into the Organization so as to undermine it from within. "Review" was not synonymous with "destruction". None of the sponsors of document A/C.6/L.1002 had called in question the purposes and principles of the Charter, but many Member States paid lip service to those purposes and principles while manipulating the provisions of the Charter to suit their own ends. Many such provisions had remained a dead letter due to the obstinate obstructionism of some Members particularly some of the super-Powers. One example was the fact that Articles 43 and 47 of the Charter had remained unimplemented for nearly 30 years, which need not mean that they were unworkable. His delegation believed, on the contrary, that the action they provided for remained central to the maintenance of international peace and security, as opposed to the *ad hoc* peace-keeping methods currently employed. In any case, such provisions should be reviewed either to find out how they should be implemented, or if that was found to be impossible, in order to substitute other appropriate and realistic peace-keeping methods. Moreover, anachronistic and obsolete provisions, such as those of Article 107 referring to enemy States, ought to be eliminated.

17. The real reason for opposing any review of the Charter was the fear of some of the permanent members of the Security Council that they might lose the special privileges they currently enjoyed with respect to the veto. It was strange that one of the permanent members, which had constantly harped on the principle of sovereign equality of States, was currently insisting on continuing to enjoy a privileged status enabling it to frustrate the will of the majority of the international community.

18. Under the framework agreed on in San Francisco the permanent members of the Security Council had the primary responsibility for the maintenance of international peace and security. To that extent they were entitled to enjoy greater powers than other members. But that power should not be a licence for the irresponsible use of the veto to frustrate the will of the international community for selfish or sectarian motives. It should not be a licence for the permanent members to protect their economic and other vested interests in the misery inflicted on others contrary to the very purposes and principles of the Charter, as had been recently witnessed in the triple veto exercised at the 1808th meeting of the Security Council on behalf of the Republic of South Africa by three permanent members. It was debatable whether the permanent members should be allowed to use the veto to block the admission of new members not to the liking of one or more of them or to have the final word on the fate of amendments to the Charter in accordance with Article 108. It was possible to maintain the spirit which motivated the granting of that special status to the permanent members without necessarily sanctioning irresponsible abuses.

19. During the current session of the General Assembly, responsible statesmen such as the President of the Somali Democratic Republic (2262nd plenary meeting) and the President of the General Assembly (2233rd plenary meeting) had come out in favour of the review of the Charter. It was therefore inexplicable to allege that the sponsors of draft resolution A/C.6/L.1002 were motivated by anti-socialist sentiments. It was also irresponsible to say that those who supported the draft resolution were the same States which consistently voted against socialist countries. As a non-aligned country, Kenya voted on the merits of each issue and not on the basis of the origin of any resolution.

20. It was quite possible that some who supported the review of the Charter might be motivated by selfish national interests. His country, however, supported the establishment of an *ad hoc* committee on the Charter without having any national ambitions. Kenya's sole interest was to ensure that the Charter would continue to be a living and meaningful instrument.

21. While his delegation encouraged any move among the super-Powers to reduce international tensions, it had a right to be heard in determining the fate of the international community. Third world interests should not be compromised, overlooked or undermined in the process of détente.

22. A revitalized organization could only be achieved through a calm and rational review of the Charter, as advocated in draft resolution A/C.6/L.1002. As that text was a positive proposal, while draft resolution A/C.6/L.1001 was a negative nihilistic initiative, his delegation fully endorsed the request made by the Secretary of Foreign Affairs of the Philippines that draft resolution A/C.6/L.1002 should be given priority in the voting. Nothing would be gained by further delay in order to hold intensive informal consultations, as was proposed in draft resolution A/C.6/L.1008, to which his delegation was firmly opposed—although it appreciated the good motives of the Saudi Arabian representative. The proposal advanced by the Canadian representative at the preceding meeting was likewise unacceptable to his delegation.

23. Mr. BOATEN (Ghana) said that despite what the United Nations had been able to achieve since its establishment in 1945 in the political, economic, social and humanitarian fields, there was some need for self-criticism and re-examination of the role which the Organization should continue to play in the decades ahead. Whatever machinery the United Nations devised for the efficient discharge of that role must be simple and effective. Some short-comings had come to light, and could be traced directly or indirectly to the machinery with which the Organization currently worked. It was obviously in appreciation of the need for reappraisal of the functioning of the Organization in the light of experience that the founding countries had agreed on the inclusion in the Charter of Article 109, particularly paragraph 3 thereof. No such conference as that envisaged in that paragraph had been held and draft resolution A/C.6/L.1002 did not call for such a conference. It merely proposed that an *ad hoc* committee should be established to examine in detail the comments received from Member States regarding the review of certain parts of the Charter, and invited Governments which had not yet submitted their comments pursuant to General Assembly resolution 2697 (XXV) to do so. The purpose of draft resolution A/C.6/L.1002 was to achieve the aim of all Member States, namely that the

Organization should survive to cater for world needs at all times. Member States would be doing the Organization a great deal of harm if they did not take advantage of the mechanism for review provided for in Chapter XVIII of the Charter.

24. It had been argued forcefully that there was currently no agreement with regard to the review of the Charter as a whole. As far as his delegation was aware, no individual or Member State had ever maintained that there was an agreement to review the Charter as a whole nor had it been said that there was any need for such a review. Those delegations which were in favour of review had referred only to specific parts of Articles of the Charter which they considered needed re-examination. In that connexion, he drew attention to Articles 53 and 109, to certain parts of Chapter XII dealing with the international trusteeship system which were no longer applicable and Chapter XVII on transitional security arrangements. Furthermore, his delegation agreed that it would be useful to examine and lay down some specific legal norms regarding future United Nations peace-keeping operations as well as the specific settlement of disputes as outlined in Chapter VI of the Charter.

25. A number of delegations had restated their belief in the ideals underlying the Charter, which no one was seeking to change. However, to accept the validity of those ideals was not to say that every Article of the Charter was as valid as it had been in 1945. His delegation appreciated the diligence and the spirit of compromise that had gone into the drafting of the Charter and was therefore anxious that any suggested review of any part of the Charter should receive careful examination. It was for that reason that his delegation supported the proposal in draft resolution A/C.6/L.1002 to establish an *ad hoc* committee to discuss in detail the observations received from Governments on the item.

26. Article 108 of the Charter provided for its amendment. The purpose of that Article was to ensure that any amendments to the Charter were considered necessary by the Organization as a whole, including the permanent members of the Security Council. Since no amendment could be adopted and ratified except by two thirds of the Members, including all the permanent members of the Security Council, and not by a simple majority, the Organization should be able to look at any proposed amendments with an open mind. If it was not considered that Article 108 provided sufficient safeguard against unnecessary changes, then another means of revising the Charter must be sought, which would still enable certain anachronisms to be removed.

27. It was clear from an examination of policy statements of Member States made in the General Assembly since the inception of the Organization that no one wished to wreck the United Nations. On the contrary, those who supported a review of parts of the Charter argued that such an action was aimed at strengthening the role, the authority and the effectiveness of the Organization. It would be only fair to ask the proposed *ad hoc* committee to examine the comments on the Charter to prove them wrong. Difficulties in discussing the item sometimes stemmed from the difficulty of conveying exactly what was meant, particularly in translation, but that problem should not deter Member States. The wording of the item might seem to suggest that the Charter must be examined or revised article by article and paragraph by paragraph. However, it was clear from draft resolution A/C.6/L.1002 that that was not the intention.

28. His delegation welcomed the fact that its views on the proposed review of the Charter, namely to examine or revise only certain specific articles or parts thereof, were shared by some permanent members of the Security Council. Everyone should agree to approach the question of review with the same realism, understanding and co-operation which had made possible the revision of Articles 23 and 61 of the Charter in order to up-date them. The time was ripe for further revision, without which the Organization would founder. His delegation wished to become a sponsor of draft resolution A/C.6/L.1002.

29. Mr. BARARWEREKANA (Rwanda) said that his delegation had had many opportunities to stress the importance it attached to the United Nations and, in that connexion, referred to the statement made at the 2252nd plenary meeting of the General Assembly by his country's Minister for Foreign Affairs and Co-operation, who had stated, *inter alia*, that every State had a specific responsibility to work for the maintenance of international peace and security. That task must not be the privilege of a few States, but rather, that of the international community as a whole, because all States and, in particular, the victims of power struggles, were equally concerned. His delegation was therefore in favour of any proposals designed to make the United Nations more effective and was aware of its duty to take part in efforts to increase respect for the purposes and principles of the Charter by any possible means, provided that they were in the interests of the entire international community.

30. His country, which had not been present at San Francisco, had defended and would continue to defend the purposes and principles of the Charter, but was of the opinion that the countries which had been present at San Francisco should not forget that, since that time, many changes had taken place and the Charter which they considered immutable must also adapt to those changes. The countries which had been signatories to the Charter had endeavoured to establish an organization whose purposes would be the peaceful settlement of disputes and the maintenance of international peace and security, but, unfortunately, most of the third world countries which were currently Members of the United Nations had not been present at the historical meeting which had laid the foundations for the establishment of the Organization. Those countries, which had gained their independence shortly before and during the 1960s, had nevertheless ratified the Charter with a firm determination to contribute to the building of a better world after a long period of colonization and bondage. The awareness that those countries had gained since their entry into the United Nations had prompted them to want to play a more active role in all the decisions taken by the principal organs of the Organization.

31. His delegation was of the opinion that the alliances created during the Second World War should no longer be

the only reference point in the Charter because, since that time, other much more peaceful alliances had been formed, in accordance with the purposes and principles of that document. It was therefore contrary to those purposes and principles that the interests of some countries should be better served than those of others. Decisions of major importance should be taken so that the interests of all Member States might be met, without any discrimination whatever. Thus, it was not possible to consult only those countries which had been present at San Francisco and to neglect entire regions because they had been absent. The General Assembly could not continue to take decisions which would remain dead letters because they did not meet the interests of a few delegations. The need to review the Charter so that it might meet the interests of all countries was therefore a question of primary importance for all those who wished the United Nations to be more effective. In accordance with that position, his delegation had joined the sponsors of draft resolution A/C.6/L.1002 and would not be able to support any other proposal designed to preserve the *status quo*.

32. Mr. KASHAMA (Zaire) said that the reports of the Secretary-General of 1972[3] and 1973 (A/9739) and the comments made by delegations at previous sessions and at the current session showed that consideration of the question of the need to review the Charter gave rise to two very different reactions, namely the fearful reaction of those who were opposed to any review of the Charter and the positive reaction of those in favour of a review of at least some of its provisions. Those opposed to the review considered that the Charter was a masterpiece and that any amendment would lead to disaster for mankind. They wished to avoid any discussion of that subject, even in defiance of the official consultations already undertaken by the Secretary-General in accordance with General Assembly resolutions 2697 (XXV) and 2968 (XXVII).

33. His country, which had become a Member of the United Nations in 1960, had always demonstrated its faith in the United Nations, particularly because the contribution of the United Nations had enabled it to preserve its national unity when it had been threatened by secessions. Despite those considerations, however, his delegation considered that the Charter was a human creation and that it could therefore be perfected by means of a critical analysis of the structures and machinery of the United Nations. Although his country had not provided written comments on the question under consideration, its position was well known because it had been clearly indicated by President Mobutu Sese Seko in his statement to the General Assembly at the 2140th plenary meeting and reaffirmed by the State Commissioner for Foreign Affairs and International Co-operation of Zaire in his statement to the Assembly at the 2259th plenary meeting.

34. Thus, the President of his country had stated that, while States had adapted to the many changes which had taken place in the past 29 years, the only change which had taken place in the United Nations during that time had been an increase in its membership and, despite the peaceful coexistence and détente which characterized contemporary international relations, the permanent members of the Security Council, the great Powers of 1945, were the only ones which had the right of veto. The method by which the Security Council took decisions, which recognized the primacy of some States over others, not only contradicted the principle of the equality of States under international law, but also seemed to give a few privileged States a monopoly on the maintenance of peace. Experience had shown that the privileged States in the Security Council had always used their right of veto whenever their particular and selfish interests had been challenged. After the most recent example of the case of racist South Africa, it was easy to understand why those States were opposed to any review of the Charter. The practice of the right of veto should either be eliminated from the Charter or be equitably distributed among all continents. That position had been defended by General Mohamed Siad Barre, the Acting President of the Organization of African Unity, in his statement to the General Assembly (2262nd plenary meeting).

35. Some delegations had expressed the view that the need to review the Charter was a delusion of grandeur, but his delegation could not accept such reasoning. By including Article 109, the authors of the Charter had not only foreseen the corrosive effect of time, but had also been aware that they were only men and had to struggle to achieve perfection. The characterization of the need to review the Charter as a delusion of grandeur not only defied human nature, but was also a demonstration of disdain for people who were judged to be incapable of making a positive contribution to the building of peace. Although it was not satisfied with the various draft resolutions submitted, his delegation would nevertheless vote in favour of the one which best reflected the point of view it had expressed.

36. Mr. ROSENSTOCK (United States of America) said that, like any fundamental governing document, the United Nations Charter must have the capacity to allow those who adhered to it to deal effectively with the problems they faced. Because of the broad spectrum of interests, the political diversity and the various kinds of contributions which could be made by the various contributions which which could be made by the various Members of the United Nations, the Charter must be a truly extraordinary document in order to provide ground rules on the basis of which all countries could agree to attempt to solve their common problems. In the past 29 years, the Charter had generally proven to be such an extraordinary document, but no sensible person had ever believed that the Charter was perfect and immutable. He was not suggesting that the organizational problems of the United Nations had been overcome or that it had always dealt effectively with the challenges it had faced, but did consider that those problems could be solved by the full and proper use of existing machinery, rather than by the establishment of new machinery. In that connexion, his delegation associated itself with the views expressed by the Indian representative at the tenth session of the General Assembly (543rd plenary meeting), which had been referred to at the preceding meeting.

37. His delegation was surprised by the comments of some delegations that the Charter had remained unchanged since 1945. In addition to the various amendments which had

3 A/8746 and Corr.1 and Add.1-3.

been made, the Charter had, through the normal process of interpretation and evolution, undergone very significant modifications as times and circumstances had changed, as new Members with new views had joined the United Nations and as better understanding of the needs of the Organization had been gained. The fact that the Charter had allowed such flexibility was clear evidence of its fundamental value and wisdom. As general political needs had changed, so, in many cases, had collective interpretations of the provisions of the Charter. Such changes had taken place gradually, but effectively, with the participation of all Member States. Thus, the Charter was a living, current document and an avenue of change which was vastly preferable to sudden, radical shifts, which, because of the diversity of Member States, would almost inevitably lead to a loss of the fundamental consensus which was the foundation of the Charter. The loss or weakening of that consensus could only diminish the effectiveness of the United Nations.

38. Changes had taken place in some of the most important provisions of the Charter. For example, if in 1945 or 1950 it had been asserted that the Charter granted peoples the right to self-determination, most Members would have disagreed. If the same assertion had been made in 1960, many would have pointed out that all that existed as a matter of law was a principle, not a right. Currently, if anyone questioned the interpretation that the right to self-determination was embodied in the Charter, his views would be considered preposterous or at least anachronistic and wrong. In 1964, some States had asserted that the Charter contained no prohibition of intervention by States in the domestic affairs of other States. If anyone asserted that view today, he would be considered mad. In 1950, certain delegations had attacked General Assembly resolution 377 (V) as illegal and contrary to the Charter, but in 1967 the State which had led that attack had relied upon that resolution when it had proposed the convening of an emergency session of the General Assembly. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), with its interpretations of key concepts of the Charter, was another of the more obvious examples of the process of change. That Declaration had been negotiated and adopted by consensus, essentially by the current membership of the United Nations.

39. If a review of the Charter was undertaken without the requisite broad agreement, States would be encouraged to harden their positions, differences among Members would increase and the Organization's ability to achieve compromise would be reduced. A review exercise might well prove to be the greatest impediment to, rather than a catalyst for, change. During the discussion of the need for a review of the Charter, several delegations had called for a variety of amendments to the Charter and had stated that reluctance to consider or make such modifications through the proposed *ad hoc* committee would amount to obstruction of the will of the majority of States and demonstrate opposition to the basic ideal of change in the Charter. Because of their importance and sensitivity, he wished to express his Government's position on those issues. It had participated and, in some cases, had led in the many evolutionary changes which had taken place since 1945. At no time had it sought to oppose the concept of the Charter as a living document which must be made to respond flexibly to the contemporary needs of the United Nations. It had also been in the forefront of those who had supported the amendments to the Charter already adopted. Thus, for example, the expansion of the Security Council had given new life to the principle of general consensus which was the basis for the functioning of that body. In the late 1950s and early 1960s the membership of the United Nations had undergone a fundamental change and at present a majority of the membership of the Security Council represented third world countries. Not only could decisions not be taken without the active support of those members, but most of the decisions taken in the Security Council were now taken at their request. Moreover, in addition to supporting evolutionary change and specific amendments to the Charter, the United States had sought to keep an open mind on the question of the review of the Charter. In its reply to the Secretary-General's request for the views of States on that issue, it had expressed willingness to participate in a conference on the review of the Charter, if it was the general view of Member States that the outcome of such a conference would be constructive.[4] He thought it was fair to say that most countries did not feel that an over-all review would solve problems and there was certainly currently no broad agreement on what specific changes might be desirable. There did, however, seem to be widespread recognition that very great damage could be done to confidence in the basic fabric of the United Nations if care was not taken to ensure very broad support before any type of review of the Charter was undertaken. His delegation was of the opinion that such broad support could most realistically be achieved if a review of the Charter was approached on a case-by-case basis.

40. International co-operation was based essentially on the ability of States to find standards of behaviour and rules for co-operation to which all were willing to adhere. Great care must obviously be taken to develop such consensus, particularly if changes as significant as changes in the Charter were to be made and it was to be maintained as a realistic instrument by which all Member States could be guided. That might be a cautious approach, but it was certainly not negative. The Charter had been amended in the past and could and, presumably would, be amended again in future. His delegation had recognized and continued to recognize the usefulness of giving serious consideration to any specific proposals when they appeared to be designed to improve the ability of the United Nations to deal with the problems it faced and when they preserved the delicate balance which had been developed to allow so many nations with such different views to work together. If there was broad and serious support for a particular proposal for change, there was no reason not to consider it. There must, however, be basic agreement among Member States on specific amendments and, particularly, on the need to undertake a general review of the Charter. Without such agreement, there was too great a risk of destroying the co-operative atmosphere essential to the work of the United Nations. His delegation was aware of the guarantees

4 See A/8746/Add.1.

provided in Article 108 of the Charter, but considered that the establishment of the proposed *ad hoc* committee would almost inevitably lead to a general, wide-ranging review of the Charter. Among the few replies received from States and among the fewer still which urged change, there had been a broad range of suggestions for the amendment of the Charter, many of them mutually exclusive. For those reasons, his delegation would oppose draft resolution A/C.6/L.1002 and was prepared to vote in favour of draft resolution A/C.6/L.1001 or any other text which commanded sufficiently broad support and did not endanger the foundations of the United Nations.

41. Although his delegation did not believe that there was currently sufficient agreement to make it useful to undertake a process of review and revision, there might well be a time when a basis for agreement did exist. The Secretary of Foreign Affairs of the Philippines had continued his very great service to the international community by reminding it that from time to time it was necessary to decide whether or not the requisite widespread agreement existed. In order to ensure that the Charter was kept responsive to a changing world and that the necessary agreement for changes in the ground rules of the United Nations existed, his country believed that it would be appropriate for the Committee to request the Secretary-General to undertake a detailed assessment of which of the suggestions for amendments to the Charter had so far received broad support among Member States. Those Members which had not yet done so should be invited to submit their views on that subject, which was not an ordinary matter, but, rather, involved the most basic and fundamental rules of international co-operation. It had been suggested that a reason for the review of the Charter was that only 51 of the 138 current Members of the United Nations had been present at San Francisco, but it was surely of even greater significance that only 38 of the 138 current Member States had so far submitted their views on suggestions regarding the review of the Charter. Member States owed it to themselves not to settle for such a small number of responses before undertaking a review.

42. Although the United States was fully prepared to keep an open mind regarding modifications to the Charter which were broadly supported, it was of the opinion that dissatisfaction with policies of States must not be confused with inadequacy of the Charter. Care must therefore be taken to determine that support for amendments to the Charter existed and a concentrated effort to obtain the comments of the vast majority of Member States should precede any specific deliberations, especially the establishment of an *ad hoc* committee. In that connexion, he expressed his delegation's support for draft resolution A/C.6/L.1008, not because it perfectly expressed its views, but because it was a compromise which might receive the support of the majority of Member States.

43. Mr. FUENTES IBAÑEZ (Bolivia) said that his delegation had not thought that a proposal as restrained and prudent as that in draft resolution A/C.6/L.1002 would encounter such strong opposition from some of the most powerful States. His delegation had felt that it would be possible to adopt that draft resolution by consensus because the item under consideration was of concern to all Member States and there were no constitutional obstacles to a proposal of that kind. The debates had, however, shown that matters were quite different and that opposition to the draft resolution stemmed from the interests which determined spheres of influence.

44. His delegation was concerned about the strong opposition to that draft resolution because, in a parliamentary organization such as the United Nations, it was logical and natural to use dialogue as a means of finding a common denominator for viable agreements. If that was not possible, a democratic solution was sought through a vote. What was not reasonable was the narrow-minded refusal of some delegations even to consider the question of the need for a review of the Charter, as proposed in draft resolution A/C.6/L.1002. Moreover, that question was not new and unassailable arguments in favour of it had been given by the Secretary of Foreign Affairs of the Philippines and by the representatives of Colombia, Brazil and many others at the current session.

45. The Charter had been drawn up at a specific time in the history of countries and institutions. No Government or ideological or regional sector of opinion could claim the infallibility of the Charter and stand in the way of evolutionary change. With regard to the draft resolution submitted by Saudi Arabia, which had the merit of providing a moderating influence, his delegation was of the opinion that it would only postpone indefinitely the review which any living and perfectible organization such as the United Nations should undertake and, for that reason, his delegation could not consider the Saudi Arabian draft resolution as a substitute for draft resolution A/C.6/L.1002.

46. In 1945, the drafters of the Charter had just emerged from the tragedy of the Second World War and perhaps could therefore not free themselves from the subjective desire for security. Theirs had been a world of smaller proportions than the contemporary world, with the result that the Charter now lacked the necessary structural and procedural scope. The sponsors of draft resolution A/C.6/L.1002 were fully aware that any amendment of the Charter would be a complex and difficult task and had therefore proposed the establishment of an *ad hoc* committee for that purpose. Since the committee would be established with due regard for the principle of broad geographical distribution and would carry out its task in co-operation with the Secretary-General, his delegation considered that the proposal for its establishment represented no risk at all. The flexibility of the Charter would be underestimated if no action were taken on that proposal. His delegation was also of the opinion that there was no real support among States for attempts to oppose the principle of unanimity which governed decisions taken by the Security Council and that most States did not wish to destroy the privileges of the permanent members of the Security Council. However unfair those privileges might be, they had undoubtedly contributed to peace and would continue to do so, at least until a new formula for the balance of power had been invented. His delegation therefore had no reservations about voting in favour of draft resolution A/C.6/L.1002 or any other proposal which might be made for a review of the Charter.

47. Mr. ANWAR SANI (Indonesia) said that the consideration of the need to review the Charter was both timely and

necessary. That need had been widely felt since the twenty-fifth session of the General Assembly and had been discussed again at the twenty-seventh session, at which Indonesia had sponsored draft resolution A/C.6/L.870 and Rev.1[5] proposing the establishment of a committee to discuss the views and observations of Governments on that important matter. It was highly regrettable that such a constructive proposal, which had commanded wide support, had been strongly opposed by delegations which claimed that the Charter should remain untouched, even though the founders of the United Nations, as indicated in Articles 108 and 109 of the Charter, had envisaged the need to keep the Charter open for adjustment to new situations and requirements.

48. His delegation's position had not changed since the twenty-seventh session. In fact, the developments which had taken place in the international sphere in the past two years and the inability of the United Nations to cope efficiently with the problems and challenges posed by those developments had strengthened his delegation's conviction concerning the need for a review of the Charter. In that connexion, it appreciated the comprehensive statement made by the Secretary of Foreign Affairs of the Philippines, who had once again put the problem in its proper perspective. There could not be the slightest doubt about Indonesia's loyalty to and respect for the purposes and principles of the Charter nor about its recognition of the achievements of the United Nations. At the same time, it could not be denied that, on many occasions, the United Nations had failed to fulfil its declared purposes and principles and to respond constructively and decisively to current needs and changes. Some of the failures had resulted from a lack of political will on the part of Member States, but others had been caused by the structural inadequacy of the Charter to cope with the current needs of the international community and with the problems and challenges posed by the ever-increasing economic interdependence of that community. The United Nations was the only organization which could deal with those global problems and it was obvious that a review of the Charter should be undertaken to ensure that it was able to deal with such problems, which had not been envisaged by its authors.

49. His delegation firmly believed that the urgent needs and expectations of the international community were too vital to be compromised by the self-interest of a few Members of the United Nations and that the interests of the international community as a whole must prevail. It was therefore necessary for the General Assembly to take the necessary measures at the current session for a review of the Charter, not by convening a general review conference in accordance with Article 109 of the Charter, but by establishing an *ad hoc* committee to discuss in detail the observations received from Governments and submit a report to the General Assembly. After considering that report, the General Assembly might even conclude that no revision of the Charter should be undertaken. In advocating such an undertaking, his delegation and like-minded delegations were aware of the delicate and sensitive problems involved and recognized that the proposed *ad hoc* committee should proceed with caution, but could not see how such an undertaking could shake the foundations of the Charter. Any fear that such an endeavour would lead to results detrimental to the interests of certain Member States was clearly unjustified since, as the Secretary of Foreign Affairs of the Philippines had stated, the path to the future was hedged with multiple safeguards, one of the most important of which was embodied in Article 108 of the Charter. In that connexion, he had been particularly surprised by the view expressed by the representative of the Soviet Union at the 1514th meeting that the efforts to revise the Charter were being initiated by reactionary imperialists trying to resist the prevailing spirit of détente. As a non-aligned country by conviction and not by solidarity alone, Indonesia reserved the right to consider issues on their merits. He pointed out that, on many occasions, his delegation had voted with the socialist bloc when the merits of the issue had warranted it.

50. He wished to commend to the Committee draft resolution A/C.6/L.1002, of which his delegation was one of the sponsors. It would oppose draft resolution A/C.6/L.1001, which was intended to suppress any action designed to improve the Charter. He also supported the request made by the Secretary of Foreign Affairs of the Philippines, who had introduced draft resolution A/C.6/L.1002, that that draft resolution should be given priority in the voting. Moreover, his delegation would oppose draft resolution A/C.6/L.1011.

AGENDA ITEMS 92 AND 12

Respect for human rights in armed conflicts: report of the Secretary-General *(continued) (A/9669 and Add.1, A/C.6/L.1006, L.1007)**

Report of the Economic and Social Council [chapter V (section D, paragraph 493)] *(continued) (A/9603, A/C.6/L.1009)**

51. The CHAIRMAN said that, if there was no objection, he would invite the observer for Switzerland to take part in the debate on the items under consideration on the same conditions as at the preceding session.

It was so decided.

52. Mr. PICTET (Observer for Switzerland) thanked the Committee for allowing his delegation to participate in the debate.

53. The CHAIRMAN, drawing attention to the draft resolution recommended by the Economic and Social Council (A/C.6/L.1009) noted that the text provided by the Council was suitable for adoption by the General Assembly, with the addition of a purely formal first preambular paragraph to the effect that the General Assembly had considered the recommendation of the Economic and Social Council and resolution 1861 (LVI) adopted by the Economic and Social Council at its 1897th plenary meeting, on 16 May 1974.

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5 See *Official Records of the General Assembly, Twenty-seventh Session, Annexes,* agenda item 89, document A/8798, paras. 4 and 6.

* Resumed from the 1515th meeting.

54. Mr. NJENGA (Kenya) introduced draft resolution A/C.6/L.1006, which was non-controversial. No one questioned the need for better application of humanitarian rules in armed conflicts and for better rules to reduce the suffering brought by armed conflict, particularly upon civilians, including women and children, a subject on which resolutions had been adopted in the past, including Economic and Social Council resolution 1861 (LVI). Speaking on behalf of the sponsors, he commended draft resolution A/C.6/L.1006 to the Committee, and said that the sponsors could accept the Chairman's suggestion concerning the addition of a preambular paragraph.

55. Despite the first session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in February-March 1974, and the Conference of Government Experts on the use of certain conventional weapons convoked by the International Committee of the Red Cross (ICRC) in September-October 1974, it was clear from the report of the Secretary-General (A/9669 and Add.1) that such efforts had not yet culminated in the desired result. It was the failure of such efforts that had given rise to the draft resolution, which was self-explanatory. In the preamble, the sponsors had, among other things, welcomed the decision by the Diplomatic Conference to invite national liberation movements recognized by the regional intergovernmental organizations to participate in its work, because they were directly involved in armed conflict though against their will. With reference to operative paragraph 1, he hoped that the representative of the Swiss Federal Council and the representative of ICRC, who was soon to arrive, would convey the thanks of the Committee to the Government of Switzerland and to ICRC. Since in paragraph 5 an appeal was made for adequate time to consider the item at the thirtieth session, there was no need for a lengthy debate on the subject at the current session, particularly because such debate should not interfere with the proceedings of the Diplomatic Conference, which were not yet completed. On behalf of the sponsors, he urged the Committee to adopt the essentially procedural draft resolution at the current meeting.

56. Mr. MAI'GA (Mali) proposed that in view of the fruitful discussions in the Committee, the Committee should adopt the draft resolution by consensus.

57. Mr. FEDOROV (Union of Soviet Socialist Republics) said that he understood from the statements made by the representatives of Kenya and Mali that the Committee had been asked to adopt draft resolutions A/C.6/L.1009 and A/C.6/L.1006 by consensus. If that was the case, he supported the proposals. Draft resolution A/C.6/L.1009 should be taken first, because it had been submitted to the Committee by the Economic and Social Council earlier.

58. Mr. FIFOOT (United Kingdom) said that his delegation would be happy to agree to the proposal to adopt draft resolution A/C.6/L.1006 by consensus but it requested a vote on draft resolution A/C.6/L.1009. Moreover, since the latter draft resolution had been circulated that same day, his delegation would like the voting to take place at a later meeting.

59. Mr. FEDOROV (Union of Soviet Socialist Republics) said that although draft resolution A/C.6/L.1009 had been circulated that day, it was included in the report of the Economic and Social Council (A/9603), which had been circulated at the beginning of the session. The argument of the representative of the United Kingdom was therefore unfounded. However, if it was proposed that voting on that draft resolution should be postponed, any decision on draft resolution A/C.6/L.1006 should similarly be postponed.

60. Mr. HASSOUNA (Egypt) said that the draft resolutions were related and should have been adopted by consensus since, when the question of the protection of women and children in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence had been discussed in the Economic and Social Council, the resulting resolution had been adopted without objection. However, since a vote had been requested on one draft resolution and since a consensus did not seem likely, he reserved the right to speak on both items at a later stage and requested that neither draft resolution should be put to the vote at the current meeting.

61. Mr. ROSENSTOCK (United States of America) associated himself with those speakers who had requested that no vote should be taken at the current meeting. If the Committee was merely to repeat the consensus reached in the Economic and Social Council, there would be no need for it to consider document A/C.6/L.1009.

62. Mr. ROSENNE (Israel), speaking on a point of order, said that he presumed that there would be a full opportunity for representatives to explain their votes before or after the vote according to the usual practice.

63. The CHAIRMAN confirmed that that was so.

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country *(continued) (A/9626, A/C.6/429, A/C.6/432, A/C.6/L.1012)**

64. The CHAIRMAN invited the Chairman of the Committee on Relations with the Host Country to introduce draft resolution A/C.6/L.1012.

65. Mr. ROSSIDES (Cyprus) read out the text of draft resolution A/C.6/L.1012 and said that, because it was an agreed text, he hoped that the Sixth Committee could adopt it by consensus.

66. The CHAIRMAN said that a decision on draft resolution A/C.6/L.1012 would be taken at the following meeting.

The meeting rose at 6.20 p.m.

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* Resumed from the 1514th meeting.

1518th meeting

Friday, 6 December 1974, at 10.55 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1518

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002, L.1008, L.1010, L.1011)

1. Mr. MASUD (Pakistan) said that the Charter could be viewed either as an agreed basis on which Member States had decided to conduct their relations or as a reflection of the world community's view of itself at a particular stage in history. But in a world which was constantly changing, the international community must retain what was still valuable in its previous agreements and amend the other provisions.

2. The principles embodied in the Charter, whether they concerned the sovereign equality and territorial integrity of States, the self-determination of peoples or the promotion of economic and social welfare, were essential for the maintenance of international peace and security. However, the United Nations had not always been able to live up to its responsibilities in that field. Some Member States had lacked the political will to comply with the fundamental principles of the Charter, and other States which were permanent members of the Security Council had not always fulfilled their obligations. His delegation therefore welcomed any initiative to reinforce the role of the United Nations.

3. While endorsing the appeal made to States by the sponsors of draft resolution A/C.6/L.1001 to comply with the provisions of the Charter and the decisions of the Organization, his delegation felt that the changes which had occurred in international relations since 1945, particularly the process of decolonization and technological developments, had had a significant effect on the evolution of the United Nations. The preoccupations of the majority of Member States were now different from what they had been 30 years previously. For example, the Charter was perhaps not sufficiently elaborate on the issues of development and the need for a more equitable economic order. In the field of international peace and security, it had become essential to find ways to implement United Nations decisions more effectively. In short, his delegation hoped that one day the Charter would more fully reflect the democratic world political and economic order which was the aspiration of the large majority of the membership of the Organization. Although his delegation was not committed to any specific change in the Charter, it shared the views of those delegations which had advocated a review of the provisions of the Charter. In passing, he drew attention to the procedure provided for in Article 108 of the Charter which had been successfully utilized, for example in enlarging the composition of the Economic and Social Council.

4. His delegation found draft resolution A/C.6/L.1002 satisfactory. Its main objective was to entrust to an *ad hoc* committee the task of examining the ideas and suggestions of Member States. It in no way prejudged the issues of substance or the positions of countries on whether or not the Charter should be amended. His delegation would vote in favour of that draft resolution.

5. Mr. MARIANO (Somalia) quoted the words spoken at the 2262nd meeting of the General Assembly by the President of the Supreme Revolutionary Council of the Somali Democratic Republic who had said, on the subject of the role and the functioning of the United Nations, that it was important to emphasize the need to review the basic structures and institutions set out in the Charter. The United Nations could not continue as a static organization. It was imperative that an assessment be made of its current structural weaknesses and that remedial measures be suggested. That was why his delegation found draft resolution A/C.6/L.1002 acceptable. The question of the need to consider suggestions regarding the review of the Charter of the United Nations was not new. Indeed it had been on the agenda since 1965 and was not therefore a problem which had been lightly raised.

6. Some 30 years ago, the great Powers could have been considered to have represented the interests of the majority of the countries of the world. But the accession to independence of a large number of countries had completely altered that situation. As the Charter proclaimed, all Members were equal and, although certain powers had been granted to the permanent members of the Security Council, the provisions of the Charter concerned all Member States and they had the right and the privilege to express their views on the Charter. Some had argued that, far from improving the Charter, any amendment to it would aggravate the situation and undermine the foundations of the Organization. That was not his delegation's view. As other representatives had pointed out, deliberate obstructionism and abuse of the right of veto were the root cause of the difficulties encountered. A desire to remedy those ills was not a proof of irresponsibility.

7. The amendments already made to the Charter had only increased its usefulness and universality. He wondered why the question before the Committee should give rise to such an impassioned debate, when, in the Preamble to the Charter of the United Nations, the peoples of the world were called upon to practise tolerance. Moreover, even if draft resolution A/C.6/L.1002 was adopted—and his delegation would vote in favour of it—it would only mark the beginning of a long process and Members would have time to try to reach an agreement.

8. Mr. GROZEV (Bulgaria) pointed out that the Charter was the most important of all multilateral agreements and

helped to strengthen international peace and security and develop co-operation among States, irrespective of their economic and social systems. During their 30 years of existence, both the Charter and the United Nations had proved themselves over a period that had often been difficult. The Organization had shown its vitality in achieving the principal aim of the Charter, namely saving succeeding generations from the scourge of war. From both the political and the legal point of view, the Charter had proved to be a flexible and well-balanced agreement, and the Organization, for its part, had changed with the times and exercised a dynamic influence on the development of relations between States. Thus, the progress made in several fields which had posed insoluble problems 30 years previously, *inter alia,* the peaceful use of outer space, the use of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, the environment, the application of science and technology to development, was convincing proof of the value of the principles embodied in the Charter.

9. Although the contribution of the United Nations to the solution of political crises had not always been effective, nevertheless, it had played an important role in that area. Could the fact that mankind had sometimes found itself on the brink of world military conflict be attributed to certain deficiencies in the Charter? In reality, such a state of affairs was attributable to the policies of a number of States. At one time it had been sacrilege to speak of peaceful coexistence; now, that principle was currently recognized by almost all States. How could such a change have been possible when international relations had been governed by the same Charter for 30 years? In effect, the balance of power had shifted in favour of the forces of peace and progress, because of the Charter. At the current session, the decisions taken on the question of Palestine, the credentials of the South African delegation and the Cyprus crisis showed that the number of Members who respected the Charter continued to grow.

10. In the light of those considerations, his delegation felt that the question of the need to consider suggestions regarding the review of the Charter of the United Nations should be deleted from the General Assembly's agenda, since it could only give rise to pointless discussion at the expense of strengthening the role of the United Nations. Furthermore, the conditions necessary for review laid down in the Charter itself (Article 109, para. 1) had not been fulfilled. It was apparent that, currently, the overwhelming majority of the Members of the United Nations did not favour a review of the Charter, and that unanimity had not been achieved among the permanent members of the Security Council.

11. Nevertheless, a number of amendments, the results of a consensus on the need to enable more of the countries liberated from colonial enslavement to participate in the work of the Economic and Social Council and the Security Council, had already come into force in 1965, 1968 and 1973. Similarly, a number of declarations adopted by the United Nations, such as the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on the Strengthening of International Security and the Programme of Action on the Establishment of a New International Economic Order, represented a progressive interpretation of the principles of international law and contributed to the positive development of the standards set forth in the Charter. His delegation found the analysis made by the advocates of a review of the Charter to be unconvincing. As far as peace-keeping operations were concerned, the difficulty had never lain in the fact that the Charter made no specific provision for such operations, but in the differing interpretations placed by Member States on the provisions relating to the use of United Nations armed forces. Furthermore, his delegation could not accept any proposal which would affect the structure and powers of the Security Council, since such action could undermine the foundations of the United Nations and jeopardize its very existence. His delegation therefore opposed the establishment of an *ad hoc* committee which would oblige Members to engage in discussions unproductive and prejudicial to the future of the United Nations, instead of considering the economic and social problems which were of vital importance and endeavouring to settle the Middle East crisis, normalize the situation in Cyprus, eliminate the vestiges of colonialism and *apartheid* and promote the withdrawal of all foreign armed forces from South Korea, which, in violation of the Charter, were misusing the name of the United Nations.

12. He also wondered whether the implementation of the Declaration on the Strengthening of International Security, of the Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons, and of General Assembly resolution 3093 (XXVIII) concerning the reduction of the military budgets of States permanent members of the Security Council by 10 per cent and utilization of part of the funds thus saved to provide assistance to developing countries was not hampered by a lack of political will on the part of Member States rather than by the deficiencies of the Charter. The United Nations was not a supranational institution, and could show itself to be effective only if the Member States co-operated among themselves on a basis of equality and implemented the resolutions of the United Nations, as Bulgaria had already stated in its observations sent to the Secretary-General in compliance with General Assembly resolution 2697 (XXV).[1]

13. Mr. HYERA (United Republic of Tanzania) said that his delegation was proud to be associated with draft resolution A/C.6/L.1002, which had been so admirably introduced by the Minister for Foreign Affairs of the Philippines at the 1512th meeting. His delegation did not consider that the desire to improve and update the Charter was tantamount to rejecting it. It did not agree that the Charter should be regarded as a sacrosanct instrument; furthermore, it felt that a review would be in keeping with the very spirit of those who had drafted the Charter 30 years previously and who had contemplated a review within 10 years, as shown in Article 109, paragraph 3. The Charter had been drafted by about 50 States which had scarcely recovered from the shocks of the Second World War, and it bore the marks of the world situation at that time. Since then, empires had fallen, new nations had emerged, 87 States had taken their rightful place in the world community and in the struggle to improve the human lot. In 1945, the world had been divided between communism and

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1 See A/8746/Add.1.

capitalism; in 1970, there was a third world, as the existence of the Group of 77 clearly showed; it also consisted of rich and poor, the dividing lines between whom transcended ideologies.

14. The authors of the Charter had hoped that that instrument, which was to transport the world community towards progress, would be reviewed after 10 years; however, it had not been reviewed for 30 years. There were warnings of the greatest perils if that review were to take place. It was possible that those who defended that position had studied the Charter carefully and had found it satisfactory as far as they were concerned. Nevertheless, other countries were asking for the opportunity to look at the Charter for themselves. There was a difference between having the opportunity to express one's views, even if they were rejected, and seeming to give tacit approval when in fact that was not the case. Draft resolution A/C.6/L.1002 simply asked that Member States be given the opportunity to study the Charter to determine whether or not it needed to be reviewed; it provided for a collective examination of the Charter with a view to its possible improvement, which was in accordance with the wisdom of the authors of the Charter who had been frank enough to admit the frailty and limitations of the human mind and the reality of world revolution. To assert from the outset that there was no need to discuss the Charter, was to attempt to impose views which were not necessarily those of the majority.

15. His delegation was convinced that an examination of the Charter would reveal the presence of many obsolete provisions, such as the distribution of the right of veto. Did some super-Powers whose empires had been diminished considerably as a result of decolonization still qualify? Should the 87 new Members who formed the largest group be allocated the least privileged position in the Security Council? In any event, the question must be discussed. He hoped that the Committee would adopt draft resolution A/C.6/L.1002, which should be voted on as a matter of priority; his delegation would vote against the two other draft resolutions.

16. Mr. YASSEEN (Iraq) said that at the twenty-seventh session he had already had the opportunity to state his position on the matter (1375th meeting) and would limit himself to summarizing it. The Charter was the most important document of the current era but, technically, it was only a treaty and could not be regarded as sacrosanct. The text of the Charter itself indicated the procedure for amending it, which was not the traditional procedure requiring unanimity that was applicable to conventions, but merely called for a two-thirds majority, including in that majority the permanent members of the Security Council. Any legal instrument was subject to amendment, and the Charter was no exception. During the 29 years of the existence of the United Nations, the Charter had evolved as a result of the resolutions of the General Assembly and, on occasion, other United Nations bodies. Those resolutions, which confirmed one or another interpretation of the Charter, had great influence because they emanated from all Members of the United Nations, in other words, the very ones that had the power to alter the Charter. Furthermore, many resolutions or declarations of the General Assembly and many conventions had been adopted on the basis of the Charter. It could be said that the world was in the era of United Nations law. Various rules had been grafted on to the Charter to establish United Nations law. That, however, did not preclude the alteration of the Charter. The question was how and to what extent. The Charter itself provided two procedures: amendment and review. According to the *Dictionnaire de la terminologie du droit international,*[2] review was a procedure which consisted of examining a treaty with a view to making the changes deemed necessary, while an amendment was a modification of one or more provisions of a convention or treaty. Between the two terms, there was a difference in scope, but it could be said that there was also a difference of substance. Thus when it was a matter of preserving the fundamental principles on which an instrument was based and of modifying only certain provisions, one could speak of amendment. On the other hand, there was a review when those principles were affected.

17. During the discussion, no one had questioned the purposes and principles of the United Nations. It was therefore only a question of modification through the procedure of amendment and not a major operation involving review.

18. His delegation was prepared to consider any specific proposal for amending certain provisions on the condition that it did not affect the purposes and principles of the United Nations. Review did not currently seem to be in the interest of the United Nations. Therefore, to establish an *ad hoc* committee, which would be tantamount to institutionalizing the review process, seemed inappropriate. At any rate, it was not an obvious necessity. In conclusion, he said that the Charter, despite its flexibility and capacity for change, could be altered by means of specific amendments, but review should be avoided since it might appear to be a leap into the unknown which could, perhaps adversely, affect the purposes of the Charter and some of the fundamental principles which the international community held dear.

19. Mr. ADJOYI (Togo) said that he wished, first of all, to state his delegation's position on the question of diplomatic asylum (agenda item 105). If his delegation had been present during the vote on draft resolution A/C.6/L.998, it would have voted in favour of that text in order to lend its support to the idea that the question should be considered at the thirtieth session of the General Assembly.

20. With respect to the review of the Charter of the United Nations, his delegation wished to submit some brief comments concerning the principle of review, while reserving the right to speak at the appropriate time on the substance of the problem. Firstly, it believed that a special tribute should be paid to the framers of the Charter who, aware of the fact that human endeavour was evolutive, had included in the Charter a chapter dealing with amendments. Under Article 109, a review could be undertaken by a general conference. However, the various draft resolutions submitted to the Committee reflected the view that that stage had not yet been reached.

21. He then recalled resolution 992 (X) of 21 November 1955 in which it had been decided that a General

2 Published under the patronage of d'Union Académique Internationale by Librairie du Recueil Sirey, Paris, 1959.

Conference to review the Charter should be held at an appropriate time and that a Committee consisting of all Members should, in consultation with the Secretary-General, consider the question of fixing a time and place for the Conference. The timeliness of the review had been the main feature of that resolution. His delegation was convinced that the appropriate time was at hand because, *inter alia*, of the inadequacies of the Charter in the face of the realities of international society and the development of international relations. Some delegations, opposed to the principle of review, held that the Charter itself was not at fault and that the trouble lay with States which violated it. Such violation of the Charter simply constituted irrefutable proof that that instrument no longer responded fully to the social and political realities of the international community, for law in general and international treaties in particular—and the Charter under the circumstances could be compared to an international treaty—formulated rules of law on the basis of a given social reality.

22. Since 1945, the international situation had undergone profound change. The transformation of colonial empires into independent States and the nature of international relations had led to a complete upheaval in the world situation. If one admitted that relations, whether human or international, were motivated by acknowledged or subconscious interests, one would easily agree that those interests existed in the relations between the different States of the Organization and, moreover, had evolved with the times. Those relations, formerly bipolar, had become tripolar or multipolar. Interests had varied and new political and economic forces had come into existence. It was therefore natural that the Charter, conceived and drafted in the socio-political or economic context of 1945, must be reviewed taking into account new political and economic developments, as had been foreseen by the framers of the Charter.

23. The sponsors of draft resolution A/C.6/L.1002 were aware of the complex and delicate nature of the problem of review, which must be examined as fully as possible. It was for that reason that they had proposed the establishment of an *ad hoc* committee to consider the relevant proposals from Governments and other suggestions for the more effective functioning of the United Nations. His delegation wished to be included among the sponsors of the draft resolution, the terms of which reflected its desire to see the Charter effectively reviewed in the light of the situations mentioned above. However, it wished to reaffirm that in its view it was not a question of carrying out a review at any price, but of considering the question of review in a positive way so that a revised Charter would respond to the aspirations for peace and justice of the contemporary world.

24. Mr. WEHRY (Netherlands) observed that a comprehensive review of the Charter would not leave a single field of international concern untouched and that the question should therefore be approached with the greatest caution. Many Member States had said, in supporting the idea of a comprehensive review of the Charter, that in 30 years numerous political and economic upheavals had taken place. Those upheavals, that awakening of new forces undreamt of in the years of war and chaos which had led to the establishment of the United Nations, had not occurred in spite of the Charter but as a result of it.

25. The reports of the Secretary-General of 1972[3] and 1974 (A/9739) showed that 38 countries had replied to the request for information sent to Governments and that, of those 38 countries, only 12 had expressed the desire to entrust an *ad hoc* committee with the task of considering the question. Of those 12 States—less than 10 per cent of the membership of the Organization—only five had made specific suggestions and three others had expressed their general views. The number of States in favour of review therefore seemed insufficient to justify the establishment of a subsidiary body.

26. His Government would be prepared to take part in a review of articles of the Charter when the majority of the international community felt that such a review was necessary, but it was of the opinion that it would be unwise to establish a committee with a mandate as broad as the one provided for in draft resolution A/C.6/L.1002. It was not, however, opposed to all the provisions of that draft resolution or in favour of all the provisions of draft resolution A/C.6/L.1001. It considered that the item should be retained on the provisional agenda of the General Assembly so that more information might be obtained from States. The Sixth Committee might try to reconcile the opinions expressed in those two texts by adopting a draft resolution which would be a true compromise. His delegation therefore welcomed the text proposed by Saudi Arabia (A/C.6/L.1011) which met the wishes of those in favour of a comprehensive discussion of the question and of those Members which wanted to have before them specific proposals before taking a decision for or against the venture into the unknown which the establishment of an *ad hoc* committee would represent. His delegation would abstain in the vote on the question of which of the two draft resolutions, A/C.6/L.1001 or A/C.6/L.1002, should be given priority in the voting. It would vote in favour of priority for draft resolution A/C.6/L.1011 and would then vote in favour of that draft.

27. Mr. TCHERNOUCHTCHENKO (Byelorussian Soviet Socialist Republic) recalled that, ever since the establishment of the United Nations, proposals had been made for a review of the Charter, but only by a small group of States seeking to encourage the Organization in such a dangerous undertaking. As had already been pointed out on many occasions, only 38 States had sent observations to the Secretary-General and, of that small number, only 13 had stated that they were in favour of a review.

28. His delegation had already had an opportunity to explain its position on the matter at the twenty-seventh session (1381st meeting). His country, which had been one of the first Members of the United Nations, had taken part in the formulation of the Charter, which it considered as an essential international document for the strengthening of international peace and security. The United Nations had been born of the victory over Hitlerism, which had made it possible to establish an organization based on new, progressive and democratic principles. The Charter thus reflected the experience in co-operation embarked upon by States which had been allied in the struggle against Hitlerism during the Second World War. Sometimes called the "Charter of peaceful co-existence among States", it was

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3 A/8746 and Corr.1 and Add.1-3.

the result of lengthy negotiations which had made it an instrument acceptable to all because it took into account the existence of two social and economic systems and of the need for peaceful co-operation between them.

29. The 29 years of existence of the United Nations attested to the validity of the principles on which it was based. With every day that passed, détente was becoming more irreversible through the action being taken by peace-loving forces acting on the basis of the provisions of the Charter.

30. It was therefore surprising that, following those achievements, some countries were trying to encourage a review of the purposes and principles of the United Nations set forth in the Charter despite the fact that those purposes and principles met the needs of the contemporary international community. The basic principle, which reflected the equality of the two social and economic systems, was expressed in the rule of the unanimity of the permanent members of the Security Council, which was the cornerstone of the Charter. Nevertheless, certain forces were still trying to shake the foundations of the United Nations. Reactionary imperialist circles had long been trying to undermine that principle of the Charter; others, by chance, found themselves on the side of those advocating revision of the Charter; and a third group, pursuing its expansionistic goals, had demagogically adopted the same position.

31. The Member States of the United Nations had been practising multilateral co-operation based on the principles of the Charter. That had contributed a great deal to the maintenance of peace, the elimination of threatened conflicts and the liberation of colonial countries and peoples. Many declarations of the General Assembly and, in particular, the Declaration made on the occasion of the twenty-fifth anniversary of the United Nations proved, if such proof was necessary, that the functioning of the United Nations on the basis of the Charter met the current requirements. Moreover, the increase in the number of Members of the United Nations corroborated that affirmation. That increase had been the result of the success of the struggle of colonial peoples for national liberation, a struggle which had been supported by the countries of the socialist community and other peace-loving countries, including in particular the USSR, which had endeavoured to use all the possibilities offered by the United Nations to support the peoples' struggle against colonialism. In that connexion, he stressed that an initiative of the USSR had led to the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the implementation of which had ushered in a new, important phase in the work of the United Nations. The increase in the membership of the United Nations had led to the enlargement of the Security Council and the Economic and Social Council.

32. When States were admitted to the United Nations, they solemnly declared that they would respect the Charter. It was difficult to see how some of those States could then say that a review of the Charter was necessary because the provisions of that instrument no longer met their aspirations. Those States maintained that the Charter must be brought up to date and that the machinery of the United Nations must be improved because of the increase in the number of Members. He contested that argument and stressed that it was precisely in the past 10 years that new opportunities had opened up for implementing the provisions laid down in the Charter. It therefore seemed that the best way of providing a positive solution to international problems was to ensure strict observance of the provisions of the Charter.

33. Those in favour of the review were also opposed to the principle of the unanimity of the permanent members of the Security Council. The principle of unanimity was in fact the cornerstone of the edifice built on the Charter because it took due account of the existence of two social and economic systems, namely, socialism and capitalism. That principle prevented the Security Council from becoming an instrument in the hands of certain States or groups of States and prevented the United Nations from being used for a purpose other than international co-operation. It had also made it possible to avoid hasty and dangerous decisions. He cited as examples *a contrario* the decisions taken at one time in disregard of the Charter to dispatch United Nations troops to the Congo and to the Middle East, as well as the decision taken illegally in the absence of two permanent members of the Security Council concerning the so-called United Nations forces in South Korea. The decision on the Korean question had created a problem which the United Nations had been trying in vain to settle for more than 20 years and which jeopardized the harmony of international relations.

34. History showed that the USSR had used its right of veto in the Security Council in favour of small States and national liberation movements. The principle of unanimity was therefore important in order to defend the interests of the developing countries and his delegation was opposed to any attempt to jeopardize it.

35. There had been abuses of that right by Western countries, as recently evidenced in the Security Council in connexion with the question of the membership of South Africa in the United Nations. Nevertheless, the peoples' struggle against colonialism was achieving its aim. Guinea-Bissau's independence and the success of the struggle for national liberation in Angola and Mozambique were proof of that. He was confident that the people of Azania would also win out, despite the opposition of racists and the supporters of *apartheid*.

36. The proposals concerning the International Court of Justice put forward by the advocates of a review of the Charter did not stand up to criticism. Their arguments in favour of the strengthening of the role of the Court were unfounded and resolution 3232 (XXIV) adopted by the General Assembly closed the debate on that question.

37. Some delegations had said it was simply being proposed that the possibility of reviewing the Charter should be considered and that an *ad hoc* committee should be set up for that purpose. However, such a proposal was unacceptable, because the mere expression of doubt about the provisions of the Charter would undermine the authority of the United Nations.

38. There was ample reason to conclude that review of the Charter was supported by the opponents of détente. The

position of the Byelorussian SSR contrasted with that attitude because it strove for objectivity and recognized that the United Nations had known both success and failure. The record of the United Nations showed that its Charter possessed sufficient flexibility and offered great possibilities which should be made use of in the future. Rather than calling for such a review, certain States Members should apply themselves to reviewing their own policy.

39. The States which sought international peace and security should adhere to the Charter, as any attack on that instrument could have pernicious consequences for the United Nations and international relations. As the General Secretary of the Central Committee of the Communist Party of the Soviet Union, L. I. Brezhnev, had said on the occasion of the twenty-fifth anniversary of the United Nations, the Organization had usefully contributed, despite its inadequacies and weaknesses, to the realization of the purposes and principles of the Charter and to the overcoming of several acute international crises.

40. The record revealed a notable success in the foreign policy followed by the USSR, the other socialist countries and the peace-loving forces, while the imperialist forces had been trying to divert the United Nations from its basic task, that of the strengthening of international peace and security. The United Nations reflected the balance of forces which operated in international relations and it was gratifying to note that the influence of the forces for peace was increasing in the international community and that the policy pursued by the USSR was meeting the requirements of all the peoples of the world.

41. In the light of the current situation, the only correct recommendation which the Sixth Committee could make was to request the General Assembly to conclude consideration of the question of review of the Charter and to call on States to confirm their adherence to the purposes and principles of the Charter and to show their willingness to respect them.

42. The CHAIRMAN said that the Ivory Coast and Togo should be added to the list of sponsors of draft resolution A/C.6/L.1002.

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country *(continued)* (A/9626, A/C.6/429, A/C.6/432, A/C.6/L.1012)

43. The CHAIRMAN said that Senegal should be added to the list of sponsors of draft resolution A/C.6/L.1012.

The meeting rose at 1.05 p.m.

1519th meeting

Friday, 6 December 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1519

AGENDA ITEMS 92 AND 12

Respect for human rights in armed conflicts: report of the Secretary-General *(concluded) (A/9669 and Add.1, A/C.6/L.1006, L.1007)**

Report of the Economic and Social Council [chapter V (section D, paragraph 493)] *(concluded) (A/9603, A/C.6/L.1009)**

1. Mr. HASSOUNA (Egypt) said the importance his Government attached to the question of respect for human rights in armed conflicts was reflected in its active participation in international efforts to develop international humanitarian law applicable in such conflicts. It had taken part in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held at Geneva, and in the Conference of Government Experts on the use of certain conventional weapons, held at Lucerne. It hoped agreement would soon be reached on additional rules to alleviate the suffering of non-combatants and civilians in armed conflicts. It was incumbent upon all parties to such conflicts to acknowledge and fully comply with their obligations under the existing humanitarian instruments and rules. He hoped the Committee would adopt unanimously draft resolution A/C.6/L.1006, of which his delegation was a sponsor.

2. Economic and Social Council resolution 1861 (LVI), which contained a draft resolution for adoption by the General Assembly (see A/C.6/L.1009) and which included a Declaration on the Protection of Women and Children in Emergency and Armed Conflict, was of a general nature and merely reflected the just concern of the international community regarding such a vital subject. It was important that the General Assembly should adopt the draft resolution in view of the suffering of women and children in many areas of the world, especially those where many peoples were still subjected to colonialism, racism and foreign domination. He also hoped the Committee would adopt it unanimously.

3. The CHAIRMAN suggested that the Committee should vote on the draft resolution reproduced in document A/C.6/L.1009.

4. Mr. ROSENSTOCK (United States of America) asked whether it was appropriate to vote on the draft resolution reproduced in document A/C.6/L.1009, inasmuch as the

* Resumed from the 1517th meeting.

Committee had not yet discussed it. He agreed that it was quite proper for the resolution to be circulated to members, but felt the Committee should take a decision on whether it wished to vote on it. In his delegation's view, the Committee should not vote on an issue which it had not discussed. The General Committee and the General Assembly had referred the item to the Sixth Committee in order that it might look at the legal aspects of the issue. The Committee had not discharged that duty but merely had in front of it a resolution which had been adopted by the Economic and Social Council. If a vote was taken on whether to vote on the draft resolution, his delegation would cast a negative vote.

5. Mr. KOLESNIK (Union of Soviet Socialist Republics) said he was surprised at the attitude of the United States delegation. The question of human rights in armed conflict was not being considered for the first time and the subject of the Declaration contained in the draft resolution reproduced in document A/C.6/L.1009 had been discussed in very great detail in various United Nations bodies, beginning with the Commission on the Status of Women and the Economic and Social Council. To present matters as though the Declaration was unexpected was a serious exaggeration. The Declaration concerned one of the most important and timely problems in the contemporary world. The Sixth Committee should take a decision on the Declaration. His delegation would vote for the Economic and Social Council resolution. The suggestion that the Committee should decide on whether to vote on it was completely unjustified; the Committee was in duty bound to consider the resolution.

6. His delegation also supported draft resolution A/C.6/L.1006. He wished to reiterate the position of principle that had been taken by his delegation at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The aim of the Conference had been not to review the Geneva Conventions of 1949 for the protection of war victims, which were the basis of the relevant contemporary international law. The aim of the Conference had been to consider and possibly adopt additional international instruments developing existing conventions on international humanitarian law aimed at protecting civilians and prisoners in armed struggles against colonialist and racist régimes.

7. Mr. FIFOOT (United Kingdom) said the Committee was indeed in duty bound to consider the draft resolution reproduced in document A/C.6/L.1009. The point was that the Committee had not yet considered it. The text bore all the marks of an ill-considered draft resolution and the Committee should not vote on it until it had examined it.

8. Mr. COLES (Australia) said his delegation was prepared to go along with the draft resolution reproduced in document A/C.6/L.1009, but felt it would have been useful if the Committee had had some discussion on it. The document might have been more suitable for consideration by the Third Committee, as it was somewhat loosely drafted and appeared to be more like a manifesto than a legal document. A legal document adopted by the Sixth Committee should meet strict standards of lucidity. However, in view of the humanitarian motivation of the draft resolution, his delegation would vote for it. Nevertheless, nothing would be lost if the matter was postponed until the thirtieth session, a course of action which his delegation would prefer.

9. Mr. HASSOUNA (Egypt) said that the item in question had been before the General Assembly since the beginning of the session, when the General Committee had decided to refer it to the Sixth Committee. With regard to the Australian representative's remarks, he pointed out that the question whether the item should be allocated to the Third or the Sixth Committee had been raised in the Economic and Social Council, where the majority view had been that it should be considered by the Sixth Committee, since it was related to the item on human rights in armed conflicts. The Economic and Social Council draft resolution had been circulated during the past 24 hours and members had all had a chance to reflect on it and could state their views if they wished. He was sure the Committee was willing to hear those views, but once they had been stated, the draft resolution should be adopted.

10. Mr. ALFONSO (Cuba) said his delegation had followed the debate on the question in the Economic and Social Council with great interest. It had expected the Sixth Committee to hear views and reach conclusions on the draft resolution reproduced in document A/C.6/L.1009. It had been surprised to hear certain delegations express doubt regarding not only the jurisdiction of the Sixth Committee but also its consideration of the document. His delegation fully agreed with the Egyptian delegation and felt the Committee should adopt the draft resolution.

11. Mr. JUMEAN (Qatar) said the draft resolution reproduced in document A/C.6/L.1009 was of a purely humanitarian nature and in no way contravened the Charter of the United Nations. On the contrary, all its provisions were in harmony with and emanated from the Charter. It had been adopted by the competent organs of the United Nations; to defer action on it would be a disservice to the many peoples of the world who looked to the Organization for moral support. A vote should be taken at the current meeting.

12. Mr. GÖRNER (German Democratic Republic) said his delegation supported the delegations of Egypt, the USSR, and Qatar. The draft resolution reproduced in document A/C.6/L.1009 should be adopted without delay.

13. The CHAIRMAN said it was his understanding that on the previous day the Committee had decided to vote on that draft resolution at the current meeting. He now understood that the United States delegation had certain objections to that course of action and wanted the Committee to take a decision on the matter.

14. Mr. ROSENSTOCK (United States of America) moved that the Committee should take no decision on the draft resolution recommended by the Economic and Social Council in its resolution 1861 (LVI) and reproduced in document A/C.6/L.1009.

The motion was rejected by 77 votes to 7, with 15 abstentions.

15. The CHAIRMAN put to the vote the draft resolution recommended by the Economic and Social Council in its

resolution 1861 (LVI) and reproduced in document A/C.6/L.1009.

The draft resolution was adopted by 89 votes to none, with 15 abstentions.

16. Mr. FIFOOT (United Kingdom) said his delegation believed strongly in the need to provide protection for women and children in armed conflicts. To that end, it was important to have a well-conceived and well-considered text that was soundly based on general principles of law. Unfortunately, the draft resolution just adopted fell short of all those criteria. It was a fundamental principle of humanitarian law applicable in armed conflicts that it should be applied without discrimination. The circumstances of the victims were the relevant criteria, not the motives of the combatants. The assumption that special measures should be taken in the particular cases mentioned in the draft resolution introduced irrelevant concepts. Moreover, the inaccuracies of certain passages of the text and the tendentious nature of others were unfortunate in a document that purported to deal with humanitarian interests. The adoption of the draft resolution was all the more unfortunate because it was premature, not having been discussed by the Committee. The subject-matter was to be considered at the forthcoming session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and it would have been more appropriate to leave the issue to the informed atmosphere of that Conference.

17. Mr. ROSENNE (Israel) said his delegation had voted in favour of the United States motion and had abstained in the vote on the draft resolution. In principle, he agreed that the Diplomatic Conference would have been a better forum for the adoption of such a resolution. It had been clearly understood in the Economic and Social Council that the text of the draft resolution would be discussed in the Sixth Committee before going to the General Assembly. It was most regrettable that that had not been done. He was sure that if the text had been discussed, some of its inadequacies and tendentious language would have been removed.

18. Paragraph 5 of the draft resolution should be understood as also covering terrorist gangs that made a habit of taking women and children as hostages and using them as pawns.

19. Mrs. D'HAUSSY (France) said that her delegation had abstained in the vote. It felt that the Committee was not the appropriate body to deal with the subject-matter of the draft resolution, which was more relevant to the work of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

20. Mr. BRACKLO (Federal Republic of Germany) said that his delegation had voted in favour of the proposal that no decision should be taken on the draft resolution and had abstained in the vote on the draft resolution itself. It shared the view of those who had said that the Committee should refrain from taking a decision since it had not had time to discuss the matter. It also felt that the Diplomatic Conference at Geneva could more appropriately deal with the subject.

21. His delegation agreed that civilian populations, including women and children, required more effective protection in all armed conflicts, including those referred to in the draft resolution just adopted. However, his delegation attached priority to the long-term development of international humanitarian law in general. The fragmentation of that law, which would result in the elaboration of different rules to govern different kinds of conflict, was not in the interest of those needing protection.

22. Mr. COLES (Australia) said that his delegation had voted in favour of the motion to defer consideration of the draft resolution, since it had felt that there was a need to formulate applicable legal principles in a clearer framework. His delegation endorsed the humanitarian spirit of the draft resolution, but considered its adoption to be without prejudice to the question of how to formulate satisfactory legal principles governing the subject with which it dealt. Despite its deficiencies, the main thrust of the draft resolution was humanitarian and, for that reason, his delegation had voted in favour of it.

23. Mr. DE BREUCKER (Belgium) said that his delegation had abstained in the voting. Belgium favoured the effective protection of all civilian populations in armed conflicts. However, such protection should be assured by appropriate legal instruments, the establishment of which fell within the purviews of the Diplomatic Conference in Geneva. The two draft Additional Protocols to the Geneva Conventions of 1949[1] already contained such rules and it was for the Conference alone to adopt them.

24. Mr. MANSFIELD (New Zealand) said that his delegation sympathized with all efforts to protect women and children from the horrors of modern warfare. However, it had abstained in the voting on the draft resolution, because the latter appeared to make such protection dependent on the nature of the conflict concerned.

25. Mr. McRAE (Canada) said that his delegation had abstained in the voting for the same reasons as those given by the representative of New Zealand.

26. Mr. NORDTØMME (Norway) said that his delegation's vote in favour of the Declaration recommended by the Economic and Social Council should be viewed in the light of its firm conviction that victims of war should be protected in all armed conflicts, including the struggle for peace, self-determination, national liberation and independence.

27. Mr. HAGARD (Sweden) recalled that, in the comments it had submitted to the Secretary-General in response to the latter's note of December 1972, his delegation had stressed that it would welcome a United Nations declaration on the subject under consideration.[2] His delegation sympathized with the aims of the Declaration, but found it deficient in several areas. Paragraph 2, for example, stated that the "use of chemical and bacteriological weapons in the course of military operations" constituted "one of the most flagrant violations of . . . the 1949 Geneva Conventions . . .". However, the Conventions of 1949 did not deal

1 See documents of the Diplomatic Conference CDDH/1 and CDDH/3.

2 See E/CN.6/586, para. 62.

with that subject. The Declaration referred to the protection of women and children in the struggle for peace, self-determination, national liberation and independence, whereas in his delegation's view it should apply to armed conflicts in general.

28. Mr. TIEN Chin (China) said that his delegation had consistently stressed the need to protect women and children in armed conflicts. Accordingly, it had voted for the draft resolution reproduced in document A/C.6/L.1009. His delegation had made detailed observations on the draft resolution–which it would not repeat–at the twenty-fifth session of the Commission on the Status of Women.

29. Mr. ROSSIDES (Cyprus) said that his delegation had voted in favour of the draft resolution. He realized the need for a full discussion before the adoption of any draft resolution, but in the present case, the draft resolution had been fully discussed at the fifty-sixth session of the Economic and Social Council, in which the various groups of countries were fully represented. It was true that the Diplomatic Conference at Geneva would deal with the subject-matter of the draft resolution, but the latter's purpose was to enhance the work of the Conference by showing the concern of the General Assembly for the vital problem of the protection of women and children in emergency and armed conflict. He noted that paragraph 5 of the draft resolution was deficient in so far as it did not refer specifically to the crimes of kidnapping and rape. Nevertheless, he considered them to be covered by the provisions of the paragraph.

30. Mr. ROSENSTOCK (United States of America) said that his delegation, too, sympathized with the apparent motives of those who had sponsored the draft resolution reproduced in document A/C.6/L.1009. He regretted that it had not been possible for the Committee to consider the draft resolution from a legal standpoint.

31. Paragraph 2 inaccurately attributed to certain conventions areas of concern which did not fall within their purview and suggested a hierarchy of possible violations of the Geneva Protocol of 1925 which was misleading. Paragraph 3 contained the assertion that States were bound by conventions to which they were not parties without any suggestions as to which if any of the conventions were merely codifications of existing law. Paragraph 4 advocated the protection of only a part of the civilian population, namely women and children, and could be read to imply that violence committed against persons other than women and children was acceptable. In paragraph 5 there was a list of actions which were to be considered criminal, with no hint as to what was meant thereby. Paragraph 6 provided for the protection from inhuman treatment of women and children who found themselves in certain specific circumstances, thus implying that women and children in other situations were not to be afforded the same protection.

32. The draft resolution bore no relation to the law as it stood, being both too broad and too narrow to be acceptable in law. Moreover, it was couched in terms which could ensure that it would not be widely regarded as establishing legal principles. For those reasons, his delegation had been unable to support the draft resolution.

33. Mr. KUSSBACH (Austria) said that his delegation fully subscribed to the protection of women and children in armed conflict, a principle embodied in the Geneva Conventions of 1949 and in the proposals put forward by the International Committee of the Red Cross, which had been the subject of deliberations in the Diplomatic Conference. Austria had abstained in the voting on the draft resolution for reasons of drafting rather than substance. His delegation regretted that it had had no opportunity to give a detailed explanation of its position on the subject and felt that the draft resolution should have been considered carefully in order to ensure a more balanced wording. It was difficult to support the terms of paragraph 3, which stated that all States should abide fully by their obligations under certain international instruments, without emphasizing that the rules contained in those instruments should be observed by all parties to a conflict.

34. Mr. ESSY (Ivory Coast) said that his delegation had voted in favour of the draft resolution, both in the Economic and Social Council and in the Committee, for humanitarian reasons. It felt that the draft resolution should not constitute an isolated text of the General Assembly, but a link in a legal system to be established under the auspices of the United Nations for the protection of women and children in armed conflicts.

35. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that his delegation had supported the declaration contained in the draft resolution as a timely text with humanitarian aims. Various parts of the world continued to be hotbeds of war, racial discrimination and other forms of inhuman treatment. In the circumstances, special protective measures were required on an international scale on behalf of women and children. His delegation was grateful to the International Federation of Women for its initiative in introducing the draft Declaration. It was pleased to note that the Declaration condemned all forms of inhuman treatment of women and children as criminal; that was an important new contribution to international law.

36. Mr. SOGLO (Dahomey) said that, for reasons beyond its control, his delegation had been unable to participate in the voting. Had it been present, it would have voted in favour of the draft resolution reproduced in document A/C.6/L.1009.

37. The CHAIRMAN drew attention to draft resolution A/C.6/L.1006.

38. Mr. MAÏGA (Mali) recalled that, at the 1517th meeting, no objection had been expressed to the suggestion that the draft resolution should be adopted by consensus.

39. Mr. HAMMAD (United Arab Emirates) said his delegation had already explained why it attached great importance to the draft resolution, particularly the fourth preambular paragraph and operative paragraph 4. It would have been willing to waive its desire for a vote on the draft resolution if the draft resolution reproduced in document A/C.6/L.1009 had been adopted by consensus. Since that was not the case, it wished formally to request a vote on the draft resolution.

Draft resolution A/C.6/L.1006 was adopted unanimously.

40. Mr. FIFOOT (United Kingdom), speaking in explanation of vote, said that his delegation welcomed the operative paragraphs of the draft resolution, which recognized that the proper forum for dealing with the subject-matter was the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. However, it had reservations with regard to some of the preambular paragraphs. The second preambular paragraph recalled successive resolutions adopted in preceding years, which appeared to include General Assembly resolution 3103 (XXVIII), on which his delegation had cast a negative vote. However, his delegation considered that the mere recalling to memory of successive resolutions did not affect its position on that particular resolution. With regard to the fourth preambular paragraph, the views of his Government on the appropriateness of inviting national liberation movements to participate in the work of the Diplomatic Conference were well known, and he wished to reiterate his delegation's reservations in that regard.

41. Turning to the fifth preambular paragraph, he said that his delegation welcomed the work that the Diplomatic Conference had been engaged in at its first session as well as the fact that the Conference would resume its work in 1975. It did not, however, understand the paragraph as applying to all the results of the work of the first session.

42. Mr. ROSENNE (Israel) said that his delegation had not participated in the vote on draft resolution A/C.6/L.1006. Since there had been no discussion of it, the only way in which delegations could indicate their views on several important issues was by means of an explanation of vote. That was not an entirely satisfactory way of dealing with the delicate and controversial issues raised by the draft resolution, and his delegation would have preferred its adoption by consensus, as had been suggested by the representatives of Kenya and Mali at the 1517th meeting.

43. His delegation wished to express its reservations with regard to paragraph 76 of the report of the Secretary-General (A/9669 and Add.1), which report was referred to in the third preambular paragraph. Paragraph 76 referred to the non-recognition by the Red Cross authorities of the Red Shield of David Society, the national society in Israel, and the attempt to force upon Israel a symbol which had unacceptable connotations. The curious consequences of such an attempt could be seen in the proposal before the Diplomatic Conference that article 15 of draft Protocol I should extend the protection of the Geneva Conventions to chaplains. The proposal invited the conclusion that, in order to secure protection, orthodox rabbis performing their duties as military chaplains on active service would have to display the religious symbol of another faith. That was a preposterous state of affairs. His delegation hoped that appropriate clarifications would be made to rectify that situation at the Diplomatic Conference.

44. With regard to the fourth preambular paragraph of the draft resolution, his delegation reiterated its objection to the invitation to the so-called Palestine Liberation Organization to participate in the work of the Conference. In that connexion, he referred to the statement he had made at the 2303rd plenary meeting of the General Assembly regarding the adoption by the Assembly of the Sixth Committee's report on agenda item 88. With regard to the fifth preambular paragraph, his delegation was pleased to associate itself with others in noting the work of the first session of the Diplomatic Conference. However, Israel–as paragraph 53 of the report of the Secretary-General showed–had been among the 34 States which had been unable to support the revised text of article 1 of draft Protocol I, as adopted by Committee I at the Diplomatic Conference.

45. Turning to operative paragraph 5 of the draft resolution, he said that his delegation did not object to a decision being taken to include in the provisional agenda of the thirtieth session of the Assembly the item entitled "Respect for human rights in armed conflicts". However, it seemed premature to emphasize at the current stage the need to allocate adequate time during the session for the consideration of that item. His delegation therefore understood paragraph 5 as in no way hampering the discretion of the appropriate organs of the General Assembly to reach a decision in the light of the circumstances existing at the thirtieth session.

46. On all other matters his delegation's relevant statements and votes at the previous session continued to express its position.

47. If any other matters falling within the purview of the Diplomatic Conference were to come before the General Assembly in the future, it would be preferable for them to be concentrated in one single agenda item. In that connexion, he noted that that aspect of the Conference's work which was dealt with in paragraph 129 of the report of the Secretary-General had come before the Assembly as agenda item 52, and as such had been allocated to another committee. Such a division of work had been a source of difficulty for his own delegation and, he understood, for many others.

48. He wished to express his delegation's appreciation to the Swiss Federal Council and the International Committee of the Red Cross for their efforts to ensure the success of the Diplomatic Conference.

49. Mr. ROSSIDES (Cyprus) said he was pleased that the draft resolution had been adopted unanimously. He could not overemphasize the importance of operative paragraph 3 of the draft resolution, which called upon all parties to armed conflicts to comply with their obligations under humanitarian instruments. Too often, countries signed international instruments and later violated them. There was no point in adopting a convention if nothing was done to prevent cases of flagrant violation.

50. Mr. McRAE (Canada) said that his delegation, like many others, had been disappointed at the limited progress made on the substance of the draft Additional Protocols to the Geneva Conventions of 1949 at the first session of the Diplomatic Conference. However, Canada was relatively pleased with the rules of procedure, committee structure and method of work adopted at the first session and fully expected them to be followed at subsequent sessions.

51. Referring to the issue of the internationalization of armed struggles for self-determination, which had occupied

so much of the time of Committee I of the Conference, he said that Canada both understood and supported the aspirations of peoples struggling for their self-determination in the few remaining areas of colonial domination. Those aspirations had rightly been the subject of international discussion and action and the full protective effect of humanitarian law should be applied in cases where they gave rise to armed conflicts. Committee I had decided by a majority vote that that purpose could best be accomplished by rewording article 1 of draft Protocol I. Subject only to concerns of a drafting nature, his delegation was prepared to accept that decision and to join with others in analysing the consequential effects it might have directly on the other substantive articles of the draft Protocol and indirectly on both draft Protocol II and the Geneva Conventions. His delegation hoped that, at its second session, Committee I would immediately recommence its examination of the other articles of the draft Protocol in the light of the revised article 1.

52. His delegation believed that the placing of armed struggles for self-determination within the scope of draft Protocol I did not significantly lessen the urgent need for draft Protocol II, because the vast majority of armed conflicts were non-international and were not struggles for self-determination. His delegation was heartened to note, therefore, that most States participating in the Conference supported draft Protocol II in principle.

53. The Canadian Government was confident that with goodwill and mutual understanding it would be possible to reaffirm and develop international humanitarian law in a way which would transcend frontiers and ideologies, while remaining true to the humanitarian objectives of protecting the weak and mitigating the inhumane effects of armed conflicts. His delegation had been pleased to be a sponsor of draft resolution A/C.6/L.1006, which had just been adopted.

54. Mr. CARAKASSIS (Greece) said that his delegation attached great importance to respect for human rights in armed conflicts, which was a matter of concern to mankind as a whole. There was a collective responsibility to safeguard human rights and to take steps to promote their observance. It was to further that aim that his delegation had voted in favour of draft resolution A/C.6/L.1006 and the draft resolution reproduced in document A/C.6/L.1009. His delegation paid a tribute to the humanitarian efforts of the International Committee of the Red Cross in that connexion and expressed appreciation to the Economic and Social Council for convoking in 1975 the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. On many occasions since the establishment of the United Nations, respect for the most fundamental human rights in armed conflicts had been tragically lacking. The mere enunciation of principles was not sufficient. There was no point to drafting resolutions unless States intended to abide by them. Just as States had a duty towards the international community to live up to the principles they proclaimed, individual human beings had the duty to promote the common welfare of all. Just as individuals must learn to live together in peace and harmony, the States Members of the United Nations must have a common concept of human rights and be determined to respect them. Only thus would the prestige and authority of the United Nations be enhanced so as to become a moral force in the world, effectively supervising the observance of human rights and the maintenance of peace.

55. Mrs. D'HAUSSY (France) said that her delegation's affirmative vote on draft resolution A/C.6/L.1006 did not mean that its position on the substance of the matter had changed. The reservations her delegation had expressed earlier with regard to the fourth preambular paragraph were still valid, and her delegation doubted whether the word "welcoming" in the fifth preambular paragraph correctly reflected the views of a number of delegations. It was to be hoped that the next session of the Diplomatic Conference would be able to accomplish more constructive work than the first session had done.

56. Mr. DE BREUCKER (Belgium) said that, while joining in the consensus on draft resolution A/C.6/L.1006, his delegation understood the fifth preambular paragraph to mean that the Committee wished to encourage the Diplomatic Conference to continue its work but was fully aware of the magnitude of the task which still lay ahead. In particular, the Diplomatic Conference would be faced with the problem of working out a precise definition of the obligations which fell equally upon both parties to an armed conflict. With regard to operative paragraph 2 of the draft resolution, his delegation was of the view that the essential objective of the Diplomatic Conference should continue to be the consideration of the two draft Protocols prepared by the International Committee of the Red Cross. Turning to draft resolution A/C.6/L.1009, he pointed out that the subject dealt with in the text fell within the competence of the Diplomatic Conference. The draft Protocols being studied by the Conference contained rules designed to provide effective and adequate protection for civilian populations in armed conflicts, in particular women and children.

57. Mr. COLES (Australia) referring to operative paragraph 2 of draft resolution A/C.6/L.1006, pointed out that the Conference of Government Experts was the appropriate forum for the consideration of questions relating to weapons.

58. Mr. BRACKLO (Federal Republic of Germany) said that his delegation had voted in favour of the draft resolution although it had reservations regarding the second, fourth and fifth preambular paragraphs. Concerning the second preambular paragraph, he recalled that his delegation had voted against one of the resolutions relating to human rights in armed conflicts submitted at the twenty-eighth session of the General Assembly. With regard to the fourth preambular paragraph, his delegation had reservations, which it had expressed on many occasions, concerning the extension of invitations to national liberation movements to participate in diplomatic conferences. His delegation understood the fifth preambular paragraph as simply welcoming the fact that the Diplomatic Conference and the Conference on Government Experts had taken place, without passing judgement on the results achieved.

59. Mr. ROSENSTOCK (United States of America) said that, in voting for draft resolution A/C.6/L.1006, his

delegation had not changed its views concerning certain resolutions adopted in previous years which his delegation had voted against. The fourth preambular paragraph was somewhat too loosely drafted and unduly exuberant in tone. His delegation understood the fifth preambular paragraph as not expressing either approval or disapproval of what had been done but simply welcoming the commencement of the work of the two Conferences.

AGENDA ITEM 94

Report of the Committee on Relations with the Host Country *(concluded)* (A/9626, A/C.6/429, A/C.6/432, A/C.6/L.1012)

60. Mr. MONGE-SANCHO (Costa Rica) suggested that, for the sake of greater accuracy, the word "some" should be added in operative paragraph 1 of draft resolution A/C.6/L.1012 before the word "missions".

61. The Chairman said that, if there was no objection, he would take it that the amendment suggested by the representative of Costa Rica was acceptable to the Committee.

It was so decided.

The draft resolution, as amended, was adopted by consensus.

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(concluded) (A/C.6/L.1004)**

62. The CHAIRMAN drew attention to the suggestion made in paragraph 10 of document A/C.6/L.1004 to the effect that the Sixth Committee might wish to propose to the General Assembly that it should recommend that States which were depositaries of multilateral treaties should automatically include the United Nations Secretariat in the list of addressees for reporting notifications that such States were called upon to send as depositaries. If there was no objection, he would take it that the Committee wished to follow that course of action and to authorize the Rapporteur to include a note to that effect in the Committee's report concerning agenda item 87.

It was so decided.

AGENDA ITEM 112

Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and measures to increase the number of parties to the Convention (A/9745, A/C.6/433, A/C.6/L.1013)

63. Mr. KOLESNIK (Union of Soviet Socialist Republics) said it was well known that his country had made great efforts to eliminate hotbeds of tension throughout the world, promote complete disarmament and establish guarantees to ensure international peace and security. It was in that context that its initiative concerning the implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 (A/C.6/L.1013) should be considered. Practice showed that multilateral conventions such as the Vienna Convention of 1961 were of vital importance in improving co-operation among States, which increased in accordance with the breadth of participation by States. Participation meant recognizing the norms of the Convention as a binding code of conduct for States. His country had always opposed discrimination with regard to participation in conventions and the efforts of the peace-loving States in recent years had been directed towards incorporating the principle of universality into United Nations practice. On the basis of that principle the General Assembly had adopted at its twenty-eighth session the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (resolution 3068 (XXVIII), annex) and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (resolution 3166 (XXVIII), annex), and had adopted at the current session resolution 3247 (XXIX) on participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations and resolution 3233 (XXIX) on participation in the Convention on Special Missions, its Optional Protocol concerning the Compulsory Settlement of Disputes and the Vienna Convention on the Law of Treaties. Those texts were a major step towards the full implementation of the principle of universality, which should be applied not only to future but also to existing conventions.

64. The current year marked the tenth anniversary of the entry into force of the Vienna Convention on Diplomatic Relations.[3] The significant role of that Convention in international relations lay in the universal recognition of the legal norms it embodied, which in turn created the means of establishing, maintaining and strengthening political, economic and cultural links among States. The Convention also embodied progressive democratic principles concerning relations among States and was the legal guarantee of the unimpeded discharge of diplomatic functions by diplomatic representatives. Strict observance of the Vienna Convention was the *sine qua non* for maintaining normal relations among States. Despite the fact that some 110 States had ratified the Convention, participation was not universal. The population of the 30 or so States which were not parties to the Convention amounted to roughly one third of the world's population. It was therefore urgent to achieve universal participation, and that was the reason underlying operative paragraph 3 of the draft resolution.

65. Violations of the Vienna Convention by States parties to it caused great concern. However, violation by States which were not parties was similarly intolerable because the Convention embodied generally recognized principles of international diplomatic law and no State could consider itself free of such obligations. Gross violations of international diplomatic law included attacks on diplomatic premises and physical violence against foreign diplomats. As a result of such violations, foreign diplomatic representation and peaceful relations between States were threatened. He cited the attack on the Soviet Embassy and trade mission in Santiago, Chile, in December 1973, in which the

* Resumed from the 1509th meeting.

3 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

first floor and property had been destroyed by fire. Under article 45 of the Vienna Convention on Diplomatic Relations, responsibility for protecting the premises of the mission, together with its property and archives, lay with the receiving State. The fire in Santiago had been a gross violation of the receiving State's obligations. Nor had it been an isolated case of violation of the Vienna Convention by the military junta in Chile. In September 1973, the Cuban Embassy building had been besieged and fired on by armed detachments of insurgents. Embassy staff, including the Ambassador himself, had been wounded.

66. There were other causes for concern, for example the arbitrary treatment meted out to diplomatic representatives by airport services. Such treatment was incompatible with the Vienna Convention. For example, it was not unknown for diplomats to be searched. In some countries, such measures were introduced as a simple administrative instruction. Such events could not be disregarded, and he urged the General Assembly to call upon States to observe the provisions of the Vienna Convention and to keep itself constantly informed of the observance of its provisions. That was the reason underlying operative paragraph 4 of draft resolution A/C.6/L.1013.

67. Mr. BRACKLO (Federal Republic of Germany) expressed appreciation of the Soviet representative's explanations concerning the background to draft resolution A/C.6/L.1013 but said that, since the item had been introduced rather late in the session when there was no time for a general debate or even a proper discussion of the draft resolution, he proposed that consideration of the item should be postponed until the thirtieth session of the General Assembly. He hoped that the Committee could take a decision by consensus.

68. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to the proposal by the representative of the Federal Republic of Germany.

It was so decided.

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002, L.1008, L.1010, L.1011, L.1014)

69. Mr. RAKOTOSON (Madagascar) said that his delegation had had an opportunity on earlier occasions to state its views on the item under consideration. In that connexion, he drew attention to the statement of his Government's position in the report submitted by the Secretary-General at the twenty-seventh session.[4] His delegation had become a sponsor of draft resolution A/C.6/L.1002, which corresponded to his Government's views on the matter. The Charter had contained imperfections from the very beginning, and now that three decades had passed the need for review was apparent. During that period revolutionary changes had taken place in international relations as a result of scientific progress, economic upheavals, political transformations, the growing number of socialist States and the accession to independence of colonial peoples. The membership of the United Nations had more than doubled, and the majority of the new Members were former colonial countries. The new Members were mostly non-aligned developing countries which had a perspective on international relations quite different from that of the older countries. The new Members wanted a system of international relations based on justice and advocated the establishment of a new economic and legal order in the world. They did not intend to be overlooked in decisions affecting the international community, and they believed that there could be no lasting peace without justice. Justice could only be achieved with the equal participation of all peoples in all decisions taken at the world level.

70. Draft resolution A/C.6/L.1002 would give Governments an opportunity to express their views as to how the effectiveness of the United Nations could be enhanced. Despite the successes achieved in social matters and decolonization, the United Nations had sometimes shown itself to be ineffective with regard to its primary purpose, the maintenance of international peace and security. In proposing the establishment of a dialogue within the framework of an *ad hoc* committee on the Charter, the draft resolution offered an opportunity to diagnose the ills of the Organization and to seek appropriate remedies. It should be recalled that the Charter on several occasions had been amended in order to meet new requirements of the international community.

71. One representative had referred to draft resolution A/C.6/L.1002 as a capitalist proposal. The falsity of that allegation was shown by the fact that the majority of the sponsors of that draft were non-aligned countries. Moreover, a number of capitalist countries had indicated that they would not support the draft resolution.

72. The Saúdi Arabian proposal (A/C.6/L.1011) was designed to replace the matter at issue with a much more complex problem involving the very nature of man, his weaknesses and selfishness. Draft resolution A/C.6/L.1002 was likewise designed to help man combat his weaknesses by providing him with an instrument that was more effective and better adapted to the new realities of the international community.

73. His delegation had become a sponsor of draft resolution A/C.6/L.1002 because that text proposed a dialogue within the United Nations. Most of the sponsors of the draft were developing countries which would scarcely want to undermine the foundations of the United Nations, as certain delegations had asserted. Their concern was for progress, justice and the maintenance of peace.

74. Mr. KASEMSRI (Thailand) said that his delegation appreciated the foresight of the founders of the United Nations as well as the ingenuity displayed by its Members in devising stop-gap measures to cope with unexpected problems. However, the changes which had come about since the establishment of the Organization required serious commitment and a whole-hearted effort on the part of the world community to consider how best to adjust the course of the Organization to meet the challenges and opportunities facing mankind. His delegation did not automatically subscribe to many of the suggestions in document A/9739,

4 A/8746.

but was prepared to consider them in good faith. It was also noteworthy that, in the English title of the item under discussion, there was no mention of "revision" and thus no prejudging of the issue. If the Charter was considered one of the most important multilateral treaties and the cornerstone of contemporary international law, then its progressive development should be viewed as something natural as well as essential for the sake of humanity. His delegation had detected a note of rancour in the debate on the item which had apparently been generated by certain misgivings. He therefore welcomed the assurances of earlier speakers that the process of "adjustment and improvement" would necessarily be a gradual one, with due consideration given to the views of Governments as well as the members of the organs of the United Nations concerned. The aim was to remove any wrongful justification for inaction in the face of issues of crucial importance to the world.

75. His delegation would vote for draft resolution A/C.6/L.1002 and would favour giving it priority in the voting. He would not be able to support draft resolution A/C.6/L.1001 but did not rule out the possibility that, should draft resolution A/C.6/L.1002 be adopted, the *ad hoc* committee might arrive at a conclusion similar to that of the former draft resolution that "at the present time it would be inadvisable to take any steps directed towards the review of the Charter of the United Nations." However, the machinery proposed in draft resolution A/C.6/L.1002 should be established as soon as possible, without prejudging the outcome of its deliberations. His delegation was grateful to the sponsor of draft resolution A/C.6/L.1011 for his effort to bridge the gap between the two sides on the issue, and would consider its position on the draft resolution at the appropriate time.

76. The CHAIRMAN announced that Guyana had withdrawn the amendments contained in document A/C.6/L.1014.

77. Mr. ALAKI (Saudi Arabia) formally moved that draft resolution A/C.6/L.1011 be given priority over any other draft resolution.

78. Mr. ESCOBAR (Colombia), speaking on a point of order, reminded the Committee that the delegation of the Philippines and his own delegation at the 1512th meeting had requested priority for draft resolution A/C.6/L.1002, long before the delegation of Saudi Arabia had made its request, and he wished the Secretariat to note their right to priority by order of submission of the request.

79. The CHAIRMAN noted the remarks of the speakers and said that they would be taken into consideration during the general debate on the item.

80. Mr. ROSENSTOCK (United States of America), citing rule 119 of the rules of procedure, moved the adjournment of the meeting.

The meeting rose at 6.15 p.m.

1520th meeting

Monday, 9 December 1974, at 11 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1520

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(continued)* (A/9739, A/C.6/L.1001, L.1002, L.1008, L.1010, L.1011)

1. Mr. ROBINSON (Jamaica) said there were two sets of circumstances that made a review of the Charter necessary: first, the fundamental change of circumstances which had taken place since the Charter had been drawn up, and second, the increase in the membership of the United Nations from 51 to 138.

2. With regard to the first factor, the review of the Charter rested on a concern for relevance, for the Charter could be saved from obsolescence only if an effort was made to match its provisions with current political and economic realities. He was not using the term "fundamental change of circumstances" in the technical sense of article 62 of the Vienna Convention on the Law of Treaties,[1] for there was no argument that the change in question was one which could lead to the termination or suspension of a treaty, although there was a school of thought that held that the proper result of a fundamental change of circumstances was a review, rather than the termination or suspension of a treaty. However, when applied to the Charter, the term captured the general notion of the difference between the post-Second World War era and the 1970s. In 1945 the major Powers had been united by the accident of their joint exposure to the threat of nazism. The subsequent rift between East and West had destroyed their unity; the artificial agreement involved in the concept of détente was of little comfort for it had not operated in the interests of the international community, and in particular of the developing countries. In 1945 the rule of unanimity among the permanent members of the Security Council had been posited on the assumption of consensus among them. In view of the loss of that unity and the change in the composition of the five permanent members, the United Nations must ask itself whether the rule was conducive to the achievement of the main purposes of the Charter. It had certainly worked to the detriment of the cause of freedom and justice in Southern Rhodesia and South Africa. It was of course said that the Charter had been the basis for the

[1] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

adoption of many important instruments, but he wished to stress that they had remained largely unimplemented; it was questionable to what extent the achievement of self-determination and independence by oppressed peoples had been due more to the Declaration on the Granting of Independence to Colonial Countries and Peoples than to the struggle waged by the peoples themselves. He did not wish to belittle the achievement of the United Nations in adopting such instruments, but he cautioned against overvaluing them and asserted that their adoption was not an argument against the consideration of suggestions regarding the review of the Charter. For one thing, they did not touch on the economic relations among States; the Charter needed to be reviewed to bring it more into line with current economic realities. He rejected the argument that a greater emphasis on economic affairs would reduce the United Nations to the level of a specialized agency.

3. As to the increased membership of the United Nations, he said that the need to consider a review of the Charter arose out of a concern for the principle of democratic equity. The 86 countries which had become Members of the United Nations since 1945 had become parties to a Charter in the drafting of which they had played no part. True enough, the principles and purposes of the Charter were sufficiently universal for them to be accepted by new Members, but if the new Members, which constituted more than half the current membership, called for the establishment of a committee merely to consider suggestions regarding the review of the Charter, no one should deny their request. The Charter, like any other multilateral agreement, was subject to the harassment of time and should not be viewed as sacrosanct. Of course the Charter had a special status in that, as the International Court of Justice had held in 1949,[2] the States which had established the United Nations had the power to bring into being an entity possessing an objective international personality. The Charter was the most important international agreement to be adopted since the Second World War, just as the United Nations was the most important international organization ever established. But precisely because of that special status Member States must ensure that the provisions of the Charter were at all times workable and operated in their own best interests.

4. The argument that there was nothing wrong with the Charter attributed to the founding fathers a clairvoyance that was belied by human experience. The possession of such a faculty had been denied by at least one founding father, the representative of the Philippines. As a sponsor of draft resolution A/C.6/L.1002 his delegation recommended it to the Committee.

5. Mr. MANSFIELD (New Zealand) said that his country was committed to the purposes and principles of the United Nations and to the enhancement of its effectiveness in the conduct of world affairs. In its view, the principles of the Charter had stood the test of time and there was no case for a comprehensive revision. On the other hand, more than half of the Members of the United Nations had not participated in the writing of the Charter; the regional balance of membership had altered, as had many of the problems with which the United Nations was primarily concerned. It was an important factor in his country's consideration of the proposals before the Committee that a number of Asian countries with which it had close and friendly relations wished to have an exchange of views on possible amendments to the Charter. He did not think the sponsors of draft resolution A/C.6/L.1002 were advocating a fundamental rewriting of the Charter, indeed they had taken care, both in their statements and in the draft resolution itself, to ensure that their moderate aims were not misunderstood. They were correct in arguing that there was a considerable and growing body of opinion in favour of discussion of ways of updating the Charter. His delegation thought it unwise to attempt to thwart that fairly widely shared desire and it could see no advantage in putting the matter off for another year. Any discussion of a review of the Charter in the Committee was more likely to be productive if preceded by a more leisured consideration in an intersessional committee. Accordingly, his delegation would support draft resolution A/C.6/L.1002 and thought that it would be appropriate to give it priority in the voting.

6. Miss VEGA (Peru) said that international law should reflect political and economic developments in the areas to which it applied. Accordingly, the United Nations as an institution should reflect the new international situation. Its founders, recognizing the probable need for improvement, had provided in Article 109, paragraph 3, of the Charter that if a conference for the purpose of reviewing the Charter had not been held before the tenth annual session of the General Assembly, the proposal to call such a conference should be placed on the agenda of that session. In resolution 992 (X) the General Assembly had decided to convene such a conference and had set up a Committee to consider the matter. Since 1955 all the resolutions adopted on that Committee's reports had merely prolonged its mandate and requested it to continue its work.

7. The question of the review of the Charter had perhaps arisen because of certain deficiencies that had existed in the Organization from the outset, deficiencies to be found in all international organizations, in which progress, as far as development was concerned, depended on the development of the idea of a community of interest, an idea which was always slow to obtain acceptance. Was a review of the Charter necessary or had the United Nations, with the existing Charter, fulfilled its main purpose of maintaining international peace and security? If the answer was that the Organization's operational machinery was defective or that the rules were not sufficiently developed for practical application, then Member States should make the necessary changes in the Charter. She recalled that her argument had already been put forward during the general debate by her country's Minister for Foreign Affairs (2238th plenary meeting), and she quoted an extract from his statement to the effect that the emergence of new forces on the international scene had made necessary a revision of the rule of unanimity in the Security Council, and that the countries of the third world should no longer have to suffer without choice the consequences of an arbitrary veto. It was in that spirit that her delegation would support draft resolution A/C.6/L.1002.

8. Mr. JACHEK (Czechoslovakia) said that his Government's position on the question of the review of the

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2 *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p. 174.

Charter was unequivocal. The only way to improve the activities of the United Nations was to pursue the purposes for which the Organization had been established, and consequently for all Members to implement the decisions that were adopted. The Charter was a very important long-term instrument for the maintenance of international peace and security. The first step in the review of the Charter proposed in draft resolution A/C.6/L.1002 would be the establishment of an *ad hoc* committee. It was very difficult to know what the mandate or the possible results of such a committee would be, or how long its work would last, since only a relatively small number of Governments had submitted their written observations, and the advocates of the review of the Charter differed as to what provisions might be reviewed and what solutions should be adopted.

9. The Charter was a foundation-stone of the current peaceful co-operation among peoples and States with different social systems. The argument that the Charter had become obsolete and that its principles had ceased to correspond to the new situation in the world, when the number of new Member States exceeded the original members of the anti-fascist coalition, was countered by the fact that the decisive successes in the anti-imperialist and anti-colonialist struggle had been won on the basis of the Charter. Those successes were surely a proof of the Charter's vitality.

10. Since its inception, the United Nations had overcome a number of serious crises, and had also acquired great authority as an instrument for maintaining and strengthening international peace. That should be taken into account when judging the value of the Charter as a political and legal document on which the whole system of post-war peaceful co-operation had been based. To allow a review of the Charter would be to disrupt the whole structure of that extremely complex and delicate system, which included a considerable number of multilateral agreements, declarations and resolutions adopted by the United Nations, which were all based on the principles of the Charter.

11. Some of the proposals to review the Charter were aimed directly at the basic concept, expressed in Article 24, of entrusting primary responsibility for the maintenance of international peace to the Security Council and, within that framework, to its permanent members. That provision was paramount, since it had been based on the reality of a world divided on the basis of class principles, and provided a guarantee that measures would be adopted which were in the interests of peace and security. The membership of a socialist State, the Union of Soviet Socialist Republics, in the Security Council, and its right of veto, represented a guarantee that the Council would not be used against the interests of peace and of peaceful co-operation among nations on the basis of the principles embodied in the Charter and other United Nations documents. That conclusion could be drawn from the exceptional role played by the Soviet Union in the history of the United Nations, particularly in the struggle for the liberation of peoples from imperialist, colonial and social oppression.

12. Measures adopted in recent years, consisting in establishing new United Nations bodies, increasing the membership of its main organs in the interest of more equitable representation and procedural changes, constituted arguments against the review of the Charter. Moreover, the Charter had never prevented the adoption of important documents of a political and legal nature, such as multilateral agreements or declarations based on the principles of the Charter: at the current session, examples of the latter included the Convention on Registration of Objects Launched into Outer Space, the Charter of Economic Rights and Duties of States and the Definition of Aggression (General Assembly resolutions 3235 (XXIX), 3281 (XXIX), and 3314 (XXIX)).

13. The United Nations could be criticized for errors and short-comings, both past and present. However, the causes of those short-comings lay not in the Charter but in the fact that its provisions had not been respected and implemented. His delegation, as a sponsor of draft resolution A/C.6/L.1001, hoped that Member States would be aware that to begin the process of reviewing the Charter might not only divert the Organization's attention from its main tasks but also lead to dangerous consequences for its future.

14. Mr. NIYUNGEKO (Burundi) said that the arguments in favour of his delegation's position had been put forward clearly by previous speakers. Moreover, the question of whether or not the Charter should be reviewed was a matter of principle. The psychological climate at the moment of its drafting, when 63 per cent of the States now Members of the United Nations were not represented, the inequality of the right of veto, the failure to enforce some of the provisions of the Charter and its own recognition that it could be amended were all arguments in favour of considering the establishment of a committee to study the amendments which should be made to it. A more detailed study of the matter would be the task of the proposed *ad hoc* committee. His delegation was therefore in favour of draft resolution A/C.6/L.1002 and wished to join its sponsors.

15. Mr. BRACKLO (Federal Republic of Germany) said that in its observations sent to the Secretary-General in accordance with resolution 2968 (XXVII) (see A/9739) his Government had reaffirmed its commitment to the purposes and principles of the Charter. On various occasions it had expressed the view that the basic structure of the Organization had proved its worth, despite its inevitable short-comings. But his Government did not consider either the United Nations itself or the Charter to be sacrosanct; indeed, the Charter did not purport to be an unalterable instrument. The United Nations should be able to adjust itself to changing conditions and it was legitimate to consider from time to time whether it fulfilled the needs of the international community. In its observations his Government had emphasized that any effort to adapt the United Nations to circumstances must not call in question either its foundation and structure or the basic rules under which it operated. Such attempts should be directed at ensuring that all the existing possibilities of the Charter for the realization of the purposes of the Organization and the strengthening of its role were fully implemented. There was of course a point beyond which practice could not be allowed to "evolve" any further, but his Government thought that amendments to the Charter should be contemplated only under compelling circumstances and on a case-by-case basis. Any decision as to whether changes in the Charter had become necessary required thorough

preparation, which could only be successful if both the procedure and the general aims could command a broad consensus of all Member States. Failure to agree on the procedure might block the road to necessary changes indefinitely. The debate had shown that there was serious opposition to the institutionalizing of the preparatory work; the creation of the machinery, however limited its mandate, might preclude the success of more quiet and effective ways of preparation. Thus his delegation preferred not to set up an *ad hoc* committee at the current stage and would abstain in the vote on draft resolution A/C.6/L.1002.

16. On the other hand, his delegation could not agree to a shelving of the item. The Committee had had little time to discuss it and it should be kept on the agenda of the General Assembly in order to permit detailed consideration of the various proposals at a later session. Draft resolution A/C.6/L.1011 met to a large extent his delegation's views; it might lead to a suitable compromise and should therefore be discussed first.

17. Mr. LOPEZ BASSOLS (Mexico) said that Mexico's position on the question under consideration had been set out in its communication to the Secretary-General.[3] His delegation had had reservations about certain articles of the Charter ever since the San Francisco Conference. It had pointed out on other occasions that the Charter was not a flexible instrument merely because the possibility of amending it was foreseen in Articles 108 and 109, because as K. C. Wheare had said in his work *Modern Constitutions*,[4] the flexibility of constitutions did not depend on the establishment of a procedure for amending them but on the ease with which they could be amended in practice. In that sense, the Charter was "rigid", as opposed to the Constitution of the United Nations Educational, Scientific and Cultural Organization, which had been amended many times. Before deciding on a process for the review of the Charter, it was, however, necessary to analyse the means by which its dynamism had been preserved so far.

18. The arguments so often put forward by the advocates of its amendment, namely that the many States not present at San Francisco had had no part in its drafting, that it had been conceived before the atomic era and that the countries participating in its drafting had seen fit to include provisions for its amendment, were all reasons for doing so. However, there were other means of maintaining the dynamism necessary to the United Nations. The non-application of certain articles of the Charter doubtless reflected the feeling of Member States with regard to a certain problem—for example Articles 43 and 106 and Article 23, paragraph 1. The first of the two criteria for the election of non-permanent members of the Security Council set forth in Article 23, paragraph 1, had in fact never been applied.

19. Another method of bringing the Charter up to date lay in the interpretation of some its articles. For example, when the Charter had been adopted, the Security Council had been seen as the driving force of the United Nations, whereas the General Assembly was currently better able to eliminate the problems created by the abuse of the veto in the Council. One chapter, a different interpretation of which might be an alternative to amending the Charter was Chapter XV, on the powers of the Secretary-General, especially Article 99. The reactions of the various Secretaries-General with regard to threats to international peace and security had obviously reflected the times when they had held office and had necessitated no amendment of the Charter. Another example of what could be obtained through interpretation was the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Despite the doubts expressed in 1964 about the principle of non-intervention by one State in the domestic affairs of another, no country currently denied that that principle, as set forth in the Declaration, had clearly been incorporated in the Charter. The most dramatic example was the "non-application" or liberal interpretation of Chapters XI and XII of the Charter, in the light of both the Declaration on the Granting of Independence to Colonial Countries and Peoples and the information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter. Yet another was the attitude of the two super-Powers to the machinery for admitting new members.

20. Another means of maintaining the dynamism of the Organization without amending the Charter was the conclusion of agreements which might be considered complementary to it and the declarations made by States under Article 36, paragraph 2, of the Statute of the International Court of Justice.

21. The question was therefore, whether it was possible to continue the practices of failing to implement a certain article, varying the interpretation of another and adding complementary instruments or whether it was preferable to review the whole Charter. His delegation was in favour of the second alternative, and considered that the Charter should be reviewed in accordance with the procedure adopted at Buenos Aires when revising the Charter of the Organization of American States, i.e. that only the articles or chapters which obviously needed amendment should be discussed. It would be extremely dangerous to review the whole instrument, especially since most of it had demonstrated its effectiveness and flexibility over three decades.

22. Member States must therefore submit definite proposals, such as some of those contained in the observations communicated to the Secretary-General, for discussion in the Sixth Committee, in the hope that some would meet with general agreement. On the other hand, at the twenty-seventh session his delegation had proposed at the 1379th meeting that at least three of the representatives of the so-called third world which were elected members of the Council on a principle of rotation should be entitled to the prerogatives currently enjoyed by the permanent members, a proposal which had been supported by various delegations. That would mean that the representatives of two thirds of the population of the world and perhaps the most faithful defenders of the principles of the Charter would be able to play a moderating role in an eminently political organ.

23. Mr. ROSSIDES (Cyprus) said that, although the Charter had stood the test of time and was a viable

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[3] See A/8746 and Corr.1.

[4] London, Oxford University Press.

document, provision had been made therein for the possibility of revising it in the light of developments in the world. Since its adoption, there had been significant world developments, such as the start of the nuclear era, the question of the environment and the extensive technological break-throughs which had created a completely new world and involved problems of such dimensions that the survival of mankind was threatened.

24. The Charter must therefore be reviewed in the light of those developments, but should not be amended unless that was proved essential to improve its functioning. For instance, its failure to fulfil its paramount role–the maintenance of international peace and security in accordance with Article 1, paragraph 1–was purely due to failure to implement its provisions and especially those of Chapter VII. Recent examples showed a constant failure to implement United Nations resolutions. The adoption of resolutions by a majority vote if they were unlikely to be implemented by the minority which had voted against them should be avoided, because failure to see that its resolutions were implemented was harmful to the Organization's image. An even more serious matter was failure of the parties concerned to comply with resolutions unanimously adopted by the Security Council. If the revision of the Charter could ensure such implementation, it would be welcome. Otherwise it would only further destroy the Organization's prestige. The reason for failure to implement such resolutions was said to be a lack of political will on the part of Member States. But the Charter nowhere referred to political will but laid down specific measures to be taken with respect to threats to and breaches of the peace and acts of aggression in Articles 39, 41 and 42.

25. States Members of the United Nations should be seriously concerned at the problem which threatened the very existence of the Organization. If the Security Council resolutions were not implemented, as had happened in the summer of 1974, there could be no international security and individual States would have to rearm, either collectively with their various allies or individually, which would endanger the survival of mankind through both the escalation of the arms race and the use for that purpose of essential resources at a time of famine in many parts of the world.

26. Yet little had been said of that vital aspect of the matter, and most delegations had confined their remarks to secondary considerations. No State relied on the goodwill of its citizens to carry out its laws, but enforced them by sanctions. The Charter provided for sanctions against States which violated it but so far they had never been enforced. Any review of the Charter without a specific mandate which emphasized the primary importance of such enforcement would therefore be useless. United Nations experience had proved that committees set up to study such matters were very slow in producing results and, although the draft resolution submitted by Saudi Arabia (A/C.6/L.1011) had the merit of providing for full consideration of the matter by the Committee and the General Assembly, the small number of observations sent to the Secretary-General in compliance with resolution 2697 (XXV) made it unlikely that Governments would comply with the invitation in operative paragraph 3 of that draft resolution. He therefore suggested that that paragraph should be deleted or reworded along the lines "*Invites* Governments which wish to do so . . .".

27. Mr. ESCOBAR (Colombia), speaking on a point of order, endorsed the request made by the Philippine representative at the 1512th meeting that priority in the voting should be given to draft resolution A/C.6/L.1002. That request had also been made by many other representatives but, as the Saudi Arabian representative had asked that draft resolution A/C.6/L.1011 should be voted on first, the Committee might wish to vote on the matter.

28. Mr. ALAKI (Saudi Arabia) suggested that a separate vote should be taken on paragraph 3 of draft resolution A/C.6/L.1002, in order to satisfy the representative of Cyprus.

29. Mr. SENSOY (Turkey) said that his delegation reserved the right to reply at a later stage to the insinuations of the representative of the Greek Cypriot community.

30. The CHAIRMAN stated that the general debate on the item was now closed, and that the discussion of the text of the draft resolutions would precede the discussion of procedural questions.

31. Mr. SOLTANI (Algeria) observed that when the Charter had been drawn up, 87 of the current 138 Member States had not been present. Three schools of thought had emerged in the course of the discussion of the item. There were those who were totally opposed to a review of the Charter, and had accused the sponsors of draft resolution A/C.6/1002 of trying to undermine the Charter; others considered that an over-all review of the Charter would not be opportune, but that the question should be included in the agenda of the thirtieth session; while still others, including Algeria, believed that it was urgent to begin studying the question immediately.

32. His country's faith in the cause and principles of the Organization remained entire, but the Charter was no longer adapted to the modern world. Circumstances had changed; many unforeseen problems had arisen since 1945, and many resolutions adopted by the United Nations remained unimplemented. The Charter was a man-made document which could be revised by man; and its authors had envisaged that need, as had been recalled in General Assembly resolution 992 (X), in which it had been decided that a General Conference to review the Charter should be held at an appropriate time. His delegation therefore requested that draft resolution A/C.6/L.1002 should be given priority in the voting.

33. Mr. ROSENSTOCK (United States of America) said that his delegation was in favour of compromise. A review of the Charter should be undertaken only when there was a broad consensus on the need to modify a particular Article or provision. An over-all review would not be constructive at the current stage, since it was opposed by representatives of many different countries. There was a risk that the creation of an *ad hoc* committee would lead to a general review of the Charter by only 32 Members of the Organization. A review of the Charter by a divided Assembly would be doomed to failure, and would exacerbate the existing differences of opinion. He therefore

urged all delegations to reconsider their positions. Those delegations in favour of a review should concentrate on developing broad agreement on specific proposals. His delegation could not support the creation of an *ad hoc* committee on the Charter at the current stage, and would therefore vote against draft resolution A/C.6/L.1002, in favour of draft resolution A/C.6/L.1001, and in favour of any proposal to consider the question further.

34. Mr. GANA (Tunisia) said that his country rejected haste and polemics, and was always prepared to co-operate to reach a compromise in order to achieve better solutions. The United Nations had achieved many results in various fields, including decolonization, the maintenance of peace and the promotion of détente, self-determination and international co-operation in economic, social, political and humanitarian questions. The Charter had stood the test of time because of the value of its fundamental principles and through the evolution of United Nations practice, which was the inevitable result of the increase in membership, historical changes and the acquisition of experience.

35. That evolution, however, would not suffice to revitalize the United Nations, since it was limited by a number of anachronistic provisions and by the opposition of certain Members. It was in the maintenance of international peace and security that the Charter had most disappointed the hopes of the international community. The strengthening of the Security Council, the Economic and Social Council and the International Court of Justice, the development of international law and the establishment of a system of collective economic security, constituted serious contemporary problems. Their solution depended on a review of the Charter. It had been suggested that the countries favouring a review of the Charter were attempting to destroy the United Nations. On the contrary, as developing countries they were particularly attached to the principles of the Charter since they felt the need of its protection. They were also aware that a review of the Charter must have unanimous support. The Charter had already been amended on two occasions, and was susceptible of review: his delegation had therefore sponsored draft resolution A/C.6/L.1002. The purpose of that draft resolution was not to set up machinery to review the Charter but to create a preparatory body to collect the views and suggestions of Member States and study them. That process was wholly democratic, since over 100 Member States had not sent their observations to the Secretary-General.

36. The question of the review of the Charter had been under consideration since 1955, and it would be dangerous to continue to postpone the creation of an *ad hoc* committee, which would examine the procedural aspects of the question without prejudging the substance of the issue. His delegation would therefore vote for draft resolution A/C.6/L.1002, and against the other draft resolutions since they would not lead to a positive compromise.

37. The CHAIRMAN announced that Guinea had joined the sponsors of draft resolution A/C.6/L.1002.

The meeting rose at 1 p.m.

1521st meeting

Monday, 9 December 1974, at 3.25 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1521 and Corr.1 and 2

AGENDA ITEM 95

Need to consider suggestions regarding the review of the Charter of the United Nations: report of the Secretary-General *(concluded)* (A/9739, A/C.6/L.1001, L.1002, L.1008, L.1010, L.1011)

1. Mr. CHAVES (Grenada) said that his delegation had decided to become a sponsor of draft resolution A/C.6/L.1002 because it believed that that text represented a reasonable way of meeting a very real need of the international community and that it would facilitate progress in the constitutional development of the United Nations as a world organization. As a member of the British Commonwealth of Nations, his country fully appreciated the importance of constitutional continuity, but even the British constitution, which was one of the oldest in the world, had shown itself to be amenable to change. The Charter, which could be regarded as the constitution of the United Nations, should have the same flexibility.

2. Mr. JEANNEL (France) said that his delegation would support draft resolution A/C.6/L.1011, which seemed to be the only draft capable of bridging the radically divergent views represented by the draft resolution A/C.6/L.1001 and A/C.6/L.1002. A procedure for amending the Charter already existed. It had been used in the past and would no doubt be used again if circumstances warranted. His delegation could not agree to the establishment of the proposed *ad hoc* committee. It would be dangerous to entrust a small committee of limited membership with a review of fundamental questions of concern to all States. It was doubtful that any proposal put forward by such a committee would be supported by the vast majority of States. As the representative of Iraq had pointed out (1518th meeting), the proposed committee would not have as its objective a review of specific provisions of the Charter which might need to be changed; rather, as presently envisaged, it would most likely attempt a systematic revision of the Charter. The Saudi Arabian proposal would have the merit of forestalling any possible polarization in

the Committee and avoiding a hasty decision on the item by carrying it over until the following year. If obliged to choose between draft resolutions A/C.6/L.1001 and A/C.6/L.1002, his delegation would vote in favour of the former, but it would prefer not to be faced with such a choice. Accordingly, the best procedure would be to put draft resolution A/C.6/L.1011 to the vote first. In that connexion, it should be emphasized that the Saudi Arabian request for priority was the only such request which had been put to the Committee as a formal motion. In asking for priority for his draft at the 1512th meeting, the Secretary of Foreign Affairs of the Philippines could only have been referring to priority over draft resolution A/C.6/L.1001.

3. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) appealed to the members of the Sixth Committee to reflect carefully on the draft resolutions on the item under consideration and to approach the question of reviewing the Charter with a high sense of responsibility. Her delegation was of the view that the fairest and most reasonable proposal was draft resolution A/C.6/L.1001, of which it was a sponsor. Despite the efforts of the sponsors of draft resolution A/C.6/L.1002 to convince others that the purpose of that draft was merely to set up a committee with limited terms of reference, it was clear that their real aim was to revise the Charter. The establishment of the committee would thus represent an illegal attempt to circumvent the provisions of the Charter relating to the procedure for amendment. As was clear from the debate and government observations communicated to the Secretary-General in compliance with General Assembly resolutions 2697 (XXV) and 2968 (XXVII), most Member States were not convinced of the need for review of the Charter. The prevailing opinion in the Sixth Committee seemed to be that the United Nations had by no means exhausted all of the possibilities of the Charter itself. In the introduction to the report on the work of the Organization (A/9601/Add.1) the Secretary-General had stressed the need for strict observance of the provisions of the Charter and had made the point that the future effectiveness of the United Nations would depend on making full use of all the possibilities offered by the Charter. The establishment of the proposed *ad hoc* committee would stand in the way of making maximum use of the possibilities the Secretary-General had referred to.

4. Mr. SAM (Ghana) observed that many delegations had stressed the fact that only 38 Member States had sent observations to the Secretary-General on the review of the Charter and that, of that number, only some 12 had definitely been in favour of such a review. At the preceding meeting the representatives of Tunisia, Algeria and Cyprus had responded to that point, referring to the fact that a great many States had expressed their views concerning the need to review the Charter at previous sessions of the General Assembly. The amendment to draft resolution A/C.6/L.1002 submitted by Guyana (A/C.6/L.1014), which had been withdrawn, made it clear that the views expressed during the consideration of the item at various sessions of the General Assembly, including the twenty-seventh and twenty-ninth sessions, should be taken into account.

5. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation continued to believe that the most reasonable solution would be to adopt draft resolution A/C.6/L.1001, which represented the interests of all States regardless of their size or level of economic development. His delegation would vote against draft resolution A/C.6/L.1002 because it could not accept the proposal to set up a committee to study ways and means of amending the Charter. Such a committee could serve no useful purpose and might indeed produce negative results. The serious problems confronting the world at the present time, such as the explosive situation in the Middle East, the arms race and armed conflict in various areas, could not be solved by revision of the Charter. That view was shared by an overwhelming majority of the States Members of the United Nations, including a majority of the developing countries as was clear from the statement adopted by the Third Conference of Heads of State or Government of Non-Aligned Countries to the effect that if the United Nations had not been very successful in some of its endeavours, that was not only because of any inherent defect in the Charter but also because of the unwillingness of some Member States to observe the principles of the Charter.

6. Those who advocated revision of the Charter, among them several States which would like to become permanent members of the Security Council, were prepared to throw out logic and the rules of procedure. It was not logical to entrust a body of limited membership with questions which were of vital concern to all Member States. The legal procedure for amending the Charter was clearly laid down in Chapter XVIII of that instrument. There was no justification in the Charter for the General Assembly to establish an *ad hoc* committee for the purpose of amending the Charter. The revision of the Charter was not a legitimate function of the General Assembly. The course of action proposed by the sponsors of draft resolution A/C.6/L.1002 was dangerous and unlawful. The Soviet Union did not take a conservative position on the question of revising the Charter. It had supported the amendments to increase the membership of the Security Council and the Economic and Social Council so that non-aligned countries could participate more fully in the work of those organs. Any amendments, however, should be made in accordance with the legal requirements of the Charter and not in the roundabout and unlawful manner advocated by the sponsors of draft resolution A/C.6/L.1002. For all those reasons, his delegation would vote against draft resolution A/C.6/L.1002.

7. Mr. SOGLO (Dahomey) said that the Charter was not without defects, as its founders had realized when they had provided machinery for its amendment. The Charter could not be blamed for the failure of States to live up to all of its provisions, but it was not true, as some had alleged, that strict observance of the Charter would solve the world's problems. Not all the provisions of the Charter were satisfactory, and it was legitimate to ask for revision of outmoded procedures. A majority of the present membership of the United Nations had not attended the San Francisco Conference, and it was high time that they should be given an opportunity to express their views. The world was divided not only between capitalism and communism but also between the rich and the poor, and the lines of division were not always parallel. Many countries were advocating a new world economic order and

were not satisfied with the provisions of an instrument which reflected the *status quo* of 30 years ago. Those who opposed review of the Charter or wished to defer it were not taking a progressive attitude. For all those reasons, his delegation would support draft resolution A/C.6/L.1002 in preference to the texts in documents A/C.6/L.1001 or A/C.6/L.1011.

8. Mr. BOOH-BOOH (United Republic of Cameroon) said the world had undergone profound changes since the adoption of the Charter in San Francisco and the General Assembly was in duty bound to identify and carefully analyse the impact of those changes. The problems which affected the functioning of such an important institution as the United Nations could not be solved on a day-to-day basis. The Charter was not sacrosanct and proposals to review it were not heretical. The drafters of the Charter at San Francisco had been wise enough to provide, in Chapter XVIII, for a mechanism for amending and reviewing it. That mechanism had not fallen into disuse. Those who were asking for review of the Charter were not questioning its purposes and principles.

9. Those who opposed the idea of reviewing the Charter claimed that the matter had already been considered and that very few States had expressed interest in it. How could they be sure of that when no formal vote had been taken? To say that only 38 States had sent observations to the Secretary-General was a formalistic view. In actual fact, there was hardly a Member State that had not at one time or another expressed its views on the functioning of the Organization. At the twenty-fifth anniversary session, many Heads of State and Government and Ministers for Foreign Affairs had spoken on the question. It was unfair for some Members to try to prevent the Committee from discussing the question by threatening to resort to the veto. They should remember that, during the current session, many countries had shown that they would not be intimidated by that threat. The abuse of certain prerogatives inherent in the veto in order to sustain racist and colonialistic régimes or for other motives that had nothing to do with the cause of peace would be resisted in one way or another by the forces of peace and justice in the Organization. The United Nations would certainly not be strengthened by such confrontation, but, quite frankly, he could not see any alternative under the circumstances. All Members had the duty to seek appropriate solutions to existing problems.

10. However, although that was its position in principle, his Government was not an enthusiastic advocate of Charter review. It had not sponsored any of the draft resolutions that were before the Committee nor did it plan to do so during the course of the debate on the question. In the view of his delegation, the Charter was not only a legal instrument; it was the expression of a philosophy of how States should live together. Any attempt to review the Charter should be approached with caution and should have a broad base of support among Member States. To be effective, any legal improvements in the Charter should be backed by the political will of Member States to comply with all their obligations as such. That position had been clearly stated by the President of the United Republic of Cameroon during the twenty-fifth session of the General Assembly (1845th plenary meeting).

11. His delegation would discuss the substance of the problem of Charter review at a later stage if the Assembly adopted a resolution to that effect. For the time being, he would say only that the proposals contained in draft resolution A/C.6/L.1002 seemed worthy of consideration because they were aimed at establishing the necessary dialogue without prejudging its outcome. His delegation would therefore support that draft resolution. Its position on that draft resolution should not, however, be understood to prejudge its future position on the substance of the question.

12. Mr. ESCOBAR (Colombia) said that, in order to avoid pointless discussions and clear up any possible misunderstanding, he formally had requested at the 1512th meeting priority in the vote for the draft resolution in document A/C.6/L.1002. Under rule 131 of the rules of procedure, the Committee should decide whether it wished to vote first on that draft resolution.

13. Mr. DE BREUCKER (Belgium) said that the Saudi Arabian draft resolution (A/C.6/L.1011) seemed the most sensible one. It invited Governments to bring up to date their observations on the question and proposed the inclusion of the item in the provisional agenda of the thirtieth session, further recommending that the item should be given sufficient time for full consideration. Thus, it gave delegations time to study the matter and avoid undue haste. In his view, the Saudi Arabian draft resolution should be given priority in the vote.

14. Mr. STEEL (United Kingdom) said that the issue before the Committee was the question of priority, which was very clearly dealt with in rule 131 of the rules of procedure. The Committee had before it three proposals. In the order in which they had been submitted they were draft resolution A/C.6/L.1001, draft resolution A/C.6/L.1002 and the draft resolution which, in its modified form, appeared in document A/C.6/L.1011. That was the *prima facie* order in which they should be put to the vote. But rule 131 contemplated that the Committee might decide to adopt a different order and there had in fact been separate and apparently conflicting requests to that effect. At a time when there had in fact been only two draft resolutions before the Committee, the Secretary of Foreign Affairs of the Philippines, in introducing the second one at the 1512th meeting, had asked that it should be given priority over the resolution contained in document A/C.6/L.1001 and over all other draft resolutions which might be presented on the item. Subsequently the representative of Saudi Arabia, having introduced draft resolution A/C.6/L.1011, had requested priority for it over both of the other draft resolutions. Later on, the representative of Saudi Arabia had made a formal motion to the same effect, expressly citing rule 131. At the current meeting, following the example set by the representative of Saudi Arabia, the representative of Colombia had made a motion in similar terms.

15. While procedural proposals were often made as informal requests or suggestions, and were not usually objected to on that ground, the rules of procedure clearly contemplated that they should be made by motion. And while it was not usually necessary or desirable for the Committee to take decisions in those matters on the basis

of technicalities or questions of form, in a complicated procedural situation the strict application of the rules of procedure might be useful. It might therefore be appropriate to accord priority to the request which had first been made in the proper form: in that case, the motion of the representative of Saudi Arabia. He did not wish to suggest, however, that the Committee should be guided by technicalities only. It should also look at the substance of the problem.

16. It seemed to him that the Philippine request for priority for draft resolution A/C.6/L.1002 over all other draft resolutions which might subsequently be tabled was meaningless. If other draft resolutions were subsequently tabled, then the Philippine one would automatically have priority over them under rule 131, unless the Committee decided otherwise on the basis of a request made by someone else. In any event, it seemed to him that it was impossible to ask for priority at large and in the abstract. After the Philippine request, the Saudi Arabian representative had expressly asked for priority for his draft resolution (A/C.6/L.1011) over both the previous ones. That request had been meaningful and unambiguous. The Philippines had asked for what was, in the event, a limited priority. Saudi Arabia had asked for what was, in the event, an absolute priority.

17. That interpretation also corresponded to the reality of the situation facing the Committee. Judging from the statements that had been made during the debate, it was evident that the majority of those delegations which would prefer draft resolution A/C.6/L.1001 would also be prepared to support, if only as a compromise, draft resolution A/C.6/L.1011. Accordingly, no purpose would be served by deciding first on the priority to be accorded as between draft resolutions A/C.6/L.1001 and A/C.6/L.1002. Whichever of those draft resolutions won the race would still have to pit its strength against draft resolution A/C.6/L.1011. The correct procedure was to put to the vote first the request for priority for draft resolution A/C.6/L.1011. He therefore asked for a ruling that the first vote on priority to be taken should be on the motion that draft resolution A/C.6/L.1011 should be voted on first.

18. He also wished to explain briefly why he considered that the Saudi Arabian draft resolution should in fact be given priority. It was a compromise proposal which was more capable than either of the other two of attracting the support of a large majority of the Committee. As well as being a compromise draft resolution, it was one which enabled Governments to take another look at the problem and to decide, after further reflection and consultation, exactly what they wanted.

19. The case for draft resolution A/C.6/L.1002 was largely misconceived. It was not true that the choice lay between the establishment of the *ad hoc* committee and a situation of complete stagnation. The proposal and adoption of specific amendments, designed to meet a specific, defined need, was one thing. Though if such a proposal could not be adopted on its merits, because the support for it that was necessary under Article 108 of the Charter was not forthcoming, then it was not going to be adopted any more easily merely because it had been first suggested in some *ad hoc* committee. It was quite another thing to embark on a process of deliberate, systematic, wide-ranging revision of the Charter–and that was certain to be both the purpose and the effect of the establishment of the *ad hoc* committee proposed in draft resolution A/C.6/L.1002. The establishment of such a body, for such a purpose, and having such an effect, would be unnecessary, divisive, dangerous and, in the end, futile.

20. It was for those reasons that, leaving aside priority, his delegation would prefer to vote for draft resolution A/C.6/L.1001. But it felt the need to avoid a distressing cleavage in the Committee and to give all Members time to think again and to take their decision in full consciousness of the possible implications. His delegation would therefore abandon its real preference and vote in favour of draft resolution A/C.6/L.1011. And, in order to keep options open before delegations were forced to commit themselves to one or other of the two extremes, he supported the request to give priority to the vote on draft resolution A/C.6/L.1011.

21. In those circumstances, he repeated his request to the Chairman to give a ruling on the matter. The ruling that he submitted the Chairman should give was that the Saudi Arabian request for priority should itself be put to the vote first. If, in the light of the Chairman's ruling, that was how the Committee proceeded, his delegation would vote in favour of priority for the Saudi Arabian draft resolution.

22. Mr. SAM (Ghana) said the United Kingdom representative had explained the procedural situation quite clearly. Under rule 131 of the rules of procedure, priority should be given to draft resolution A/C.6/L.1002, since the Philippine request for priority had been made first.

23. He could not agree with those who wished to postpone a decision on the review of the Charter; the matter would be put off year after year and "next year" would never come. The sponsors of draft resolution A/C.6/L.1002 had taken into account the views of those who, at the previous session, had objected to the use of the term "special committee" by replacing it with the term "*ad hoc* committee". Opponents of the draft resolution also claimed that there was no support for the idea of review because only 38 Governments had submitted their written comments. However, as the representative of Cyprus had already pointed out, there was no need to go back to Governments for their written views when most of them had stated their positions clearly in the Committee.

24. The sponsors of draft resolution A/C.6/L.1002 were not proposing that the *ad hoc* committee should rewrite the Charter. The developing countries had great respect for the Charter, for without it they would have had no say in world affairs. It was not right to say that the *ad hoc* committee would wreck the Charter and the Organization itself. The developing countries wished to strengthen the Charter. The Charter itself had envisaged the convocation of a General Conference for the purpose of reviewing the Charter after it had been in force for 10 years. That review had not taken place. Why should Members evade that responsibility now? The Organization should look ahead; the United Nations, like any body serving human needs, must change with the times. He therefore supported the Philippine proposal that draft resolution A/C.6/L.1002

should have priority in the voting over all other draft resolutions submitted. He agreed with the United Kingdom representative that a ruling from the Chair was needed on that point. His delegation was unable to support draft resolution A/C.6/L.1001 but respected the stand taken by the USSR delegation, which had at least been consistent in its position.

25. Mr. AL-HADDAD (Yemen) said that his delegation could not support any proposal to review or revise the Charter. Firstly, any revision would mean a weakening of the principles that formed the basis of the Charter and would strike at the foundation of that instrument, even threatening the very existence of the United Nations and its role in maintaining international peace and security. Secondly, the call for a systematic revision of the Charter was contrary to his country's solemn commitment to the principles of the Charter. Thirdly, under Article 108 of the Charter, any alteration of the Charter required a two-thirds vote of the Members of the United Nations and the support of all the permanent members of the Security Council. Since the Charter itself provided for amendments of specific provisions, a systematic review was necessary. His delegation would entertain sympathetically any suggestions for concrete amendments. Accordingly, he could not support draft resolution A/C.6/L.1002 or any motion to give it priority in the voting. His delegation would vote in favour of draft resolution A/C.6/L.1011, which proposed the appropriate course to be followed at the current session of the General Assembly.

26. Mr. ESCOBAR (Colombia), speaking on a point of order, moved the closure of the debate on the item under discussion, under rule 117 of the rules of procedure. Time was very short, and the Committee must take a decision.

27. Mr. KOLESNIK (Union of Soviet Socialist Republics), speaking on a point of order, said that although it was true that the Committee should vote on the draft resolutions before it as soon as possible, it had to decide first the order of priority. His delegation shared the view expressed by the United Kingdom representative in his impartial legal analysis of the rules of procedure. However, in order to facilitate the work of the Committee and expedite it as the Colombian representative wished, the sponsors of draft resolution A/C.6/L.1001 had decided not to insist that it be put to the vote. They had also decided to support the motion that priority be given in the voting to draft resolution A/C.6/L.1011. With the withdrawal of draft resolution A/C.6/L.1001, the request that priority be given to draft resolution A/C.6/L.1002 clearly no longer had any purpose. The only procedural question remaining to be decided was whether priority in the voting was to be accorded to draft resolution A/C.6/L.1011. He requested the Chairman to rule on that point and to put that draft resolution to the vote. Draft resolution A/C.6/L.1011 represented a desirable compromise, in contrast to the two opposing viewpoints set forth in draft resolutions A/C.6/L.1001 and A/C.6/L.1002. The purpose of the Saudi Arabian proposal was to continue the dialogue on the question of the need to review the Charter at the next session of the General Assembly, and his delegation had no wish to prevent such a dialogue.

28. Mr. ESCOBAR (Colombia) congratulated the USSR representative on his skill at parliamentary manoeuvres. He was not, however, surprised. The Committee had the prerogative of deciding on the order of priority to be given to draft resolutions. His delegation insisted that draft resolution A/C.6/L.1002 be voted on first. As a point of order, he insisted that the Committee should decide formally upon that point.

29. Mr. ROSENSTOCK (United States of America) said that, although the simplest course would be to vote first on the Saudi Arabian motion to give priority in the voting to draft resolution A/C.6/L.1011, it would be wiser, since contrary views had been expressed, to have a clear ruling from the Chair on that point. Under rule 113 of the rules of procedure, he requested the Chairman to give a ruling on the point.

30. The CHAIRMAN said that, in accordance with rule 131 of the rules of procedure, he inferred that, since draft resolution A/C.6/L.1001 had been withdrawn, draft resolution A/C.6/L.1002 had priority, since it had been submitted before draft resolution A/C.6/L.1011. However, since its priority had been challenged, he invited the Committee to vote on the Saudi Arabian request to give priority in the voting to draft resolution A/C.6/L.1011. If that motion was rejected, draft resolution A/C.6/L.1002 would have priority in the voting.

At he request of the representative of Colombia, the vote was taken by roll-call.

Iraq, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Iraq, Ireland, Israel, Jordan, Kuwait, Lebanon, Lesotho, Libyan Arab Republic, Luxembourg, Mexico, Mongolia, Morocco, Netherlands, Norway, Oman, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sri Lanka, Sweden, Syrian Arab Republic, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, Afghanistan, Austria, Bahrain, Belgium, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Czechoslovakia, Democratic Yemen, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Iceland, India, Iran.

Against: Italy, Ivory Coast, Jamaica, Japan, Kenya, Liberia, Madagascar, Malaysia, Mali, New Zealand, Nicaragua, Niger, Nigeria, Panama, Peru, Philippines, Rwanda, Senegal, Sierra Leone, Singapore, Somalia, Spain, Togo, Trinidad and Tobago, Tunisia, Uganda, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Zaire, Zambia, Albania, Algeria, Argentina, Australia, Bolivia, Brazil, Burma, Burundi, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Dahomey, Dominican Republic, Ecuador, El Salvador, Ethiopia, Fiji, Gambia, Ghana, Grenada, Guinea, Honduras, Indonesia.

Abstaining: Laos, Malawi, Mauritania, Mauritius, Nepal, Pakistan, Paraguay, Sudan, Swaziland, Thailand, Yugoslavia, Bangladesh, Bhutan, Cyprus, Finland, Greece, Guyana.

The Saudi Arabian motion to give priority in the voting to draft resolution A/C.6/L.1011 was rejected by 60 votes to 50, with 17 abstentions.

31. Mr. BAROODY (Saudi Arabia), explaining his vote before the vote, said that the question of priority in the voting on any draft resolution was immaterial. It was the substance which would count. He had, of course, voted in favour of his own motion. However, from his experience of nearly 29 years in the General Assembly, he wished to warn the Committee that on questions of substance, numerical victories were void, even in the case of States wielding world power, because the other side could nevertheless still resist.

32. It would be very revealing to see whether or not draft resolution A/C.6/L.1011 was even put to the vote. If not, it would mean that the house was divided. Tampering with the Charter of the United Nations was no laughing matter. He had attempted to bridge the division in the Committee with a compromise. Once again, he warned the Committee that, if it insisted on taking decisions by groups, the votes might just as well be sent in by mail. Solidarity was not necessarily based on justice; more often, it was based on emotions or even fanaticism. He belonged to the so-called "third world", but he belonged first and foremost to the United Nations. Unless care was taken, solidarity would bring about the fall of the United Nations as it had done in the case of the League of Nations. Member States should take heed that the United Nations would become a shadow of what it should be if solidarity remained the primary slogan, because the third world was not, in fact, a world Power. Two States which did wield world power were not eager to proceed to a review of the Charter and had agreed to postpone the question until the next session of the General Assembly, in order that an intensive exchange of views could take place informally at the United Nations and in the capitals of Member States.

33. Any fault lay not in the Charter but in the way in which it was applied by Member States. Draft resolution A/C.6/L.1002, sponsored by Latin American, African and Asian countries, called for the establishment of an *ad hoc* committee with a membership of 32. However, many States did not wish to participate and would, undoubtedly, fail to attend. The *ad hoc* committee would be able to do little but adopt resolutions to which 35 or even 50 per cent of the membership would be opposed.

34. In addition to the fact that the *ad hoc* committee proposed in draft resolution A/C.6/L.1002 would thus be incomplete, and its work likewise, he objected strongly to operative paragraph 3 of that document, wherein the Secretary-General was invited to submit to the proposed *ad hoc* committee his views on the experience acquired in the application of the provisions of the Charter with regard to the Secretariat. The Secretariat, which was composed of the international servants of Member States, should never be drawn into the deliberations of Member States in the General Assembly. He would warn the Secretary-General not to interfere in matters which came solely within the competence of sovereign States. If the Secretary-General heeded such demands, he would make many enemies for himself and for the Secretariat. The Secretariat should never be involved in quarrels between sovereign States.

35. He appealed to delegations to reflect seriously before rushing into an alley which might lead to an abyss. He suggested that the sponsors of draft resolution A/C.6/L.1002 would be wise not to precipitate a vote which might lead to an empty victory on paper. Not only two major world Powers were opposed to the course proposed in draft resolution A/C.6/L.1002, but also other States that still wielded considerable power, although less than formerly.

36. Solidarity or group voting was a disastrous practice. He himself followed what was right and just. He reminded the countries of Africa and Asia that he had spent seven years participating in the elaboration of a formulation of the principle of self-determination, which was set forth in article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Latin American countries should, moreover, recall that it was to their glory that they had insisted that it be set forth clearly that economic rights formed an essential part of the right to self-determination. Where now was the spirit in which all had rallied together to uphold lofty principles?

37. He suggested that all draft resolutions on the item under consideration should be left pending if not until the following year then at least until the last day of the current session of the General Assembly, in order to give delegations time for thought and to avoid precipitous action which might later be regretted. The house was evenly divided, and a decision to review the Charter should not be taken unless there was a large majority in favour.

38. Mr. SILVEIRA (Venezuela) said that his delegation was in favour of draft resolution A/C.6/L.1002, which proposed a constructive course for the United Nations to follow.

39. Mr. KEBRETH (Ethiopia) said that change was a necessary condition of life and human institutions must be open to a continuing process of readjustment. It therefore followed that there must be a possibility of reviewing the Charter.

40. Although the framers of the Charter had foreseen a Charter review every 10 years, no review had yet been carried out in the 29 years of the United Nations existence. Nevertheless, the Charter had undergone significant changes both in interpretation and in implementation during that period. It had been enriched also by many declarations and resolutions adopted by the General Assembly, and a few formal amendments that had given it a new lease of life. The question now was whether the changes that had been made had gone far enough to meet the requirements of the international community, or whether a formalized review was necessary to achieve such ends. That was a pragmatic question and the answer to it should also be pragmatic. The questions Member States should ask themselves were what type of change should be introduced and to achieve what purposes? If there was agreement on the objectives, it mattered little whether the changes were brought about by formal review or through the acceptance of pragmatic changes. His delegation had no preference *a priori* as to how the desired changes should be brought about, but it shared the views expressed by many previous speakers that there was a felt need to consider suggestions for Charter review;

the Committee should ascertain the extent of that need and the direction such a review should take. Although his delegation felt that the need for a Charter review should be ascertained, it was mindful also of the need for caution so as to preclude the possibility of unrealistic demands. That was why he had stressed the pragmatic approach and the need for specific suggestions regarding the Charter review, rather than vague generalizations. A lack of caution would lead to an erosion of the Organization's stability; if that happened, those who stood to lose the most were those who most needed the United Nations.

41. He welcomed the fact that draft resolution A/C.6/L.1002 reaffirmed the purposes and principles set forth in the Charter, for the consensus on those purposes and principles was the basis for world peace and security. For the reasons he had given, his delegation would vote for draft resolution A/C.6/L.1002.

42. Mr. CHAVES (Grenada) said that he appreciated the comments made by the representative of Saudi Arabia. Nevertheless, the effect of draft resolution A/C.6/L.1002 would not be fatal or even necessarily harmful. The draft resolution called for study and analysis with a view to making the United Nations a more effective Organization. He was surprised that there had been opposition to the proposal merely on the grounds that there would be difficulties. Problems could be solved only by a study of the issues involved and a search for solutions. His delegation would vote in favour of draft resolution A/C.6/L.1002.

43. Mr. MAI'GA (Mali) said that the Charter of the United Nations was of immense historical significance because of the circumstances that had led to its adoption. At that time the hopes of mankind had been directed to building a new world on the ashes of the Second World War. Since then, major changes had taken place in the world; as a result the international community must consider a new approach to ways to give full effect to the United Nations ideals of maintaining peace and international co-operation. The working methods of the past were no longer applicable. The purpose of draft resolution A/C.6/L.1002 was to make the United Nations more effective. His delegation would therefore vote in favour of it, but its vote did not prejudice his Government's position on the substance of the matter.

At the request of the representative of the United Kingdom, a vote was taken by roll-call on draft resolution A/C.6/L.1002.

Madagascar, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Madagascar, Malaysia, Mali, Mauritania, Mauritius, Mexico, Morocco, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Rwanda, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire, Zambia, Albania, Algeria, Argentina, Australia, Bhutan, Bolivia, Brazil, Burma, Burundi, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cyprus, Dahomey, Dominican Republic, Ecuador, El Salvador, Ethiopia, Fiji, Gambia, Ghana, Grenada, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iran, Italy, Ivory Coast, Jamaica, Japan, Kenya, Khmer Republic, Liberia.

Against: Mongolia, Poland, Qatar, Romania, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Bahrain, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic Yemen, France, German Democratic Republic, Hungary.

Abstaining: Malawi, Netherlands, Norway, Oman, Portugal, Sri Lanka, Swaziland, Sweden, Syrian Arab Republic, Turkey, Yemen, Afghanistan, Austria, Bangladesh, Botswana, Canada, Denmark, Egypt, Finland, Germany (Federal Republic of), Greece, Iceland, Iraq, Ireland, Israel, Jordan, Kuwait, Laos, Lebanon, Lesotho, Libyan Arab Republic, Luxembourg.

The draft resolution was adopted by 77 votes to 20, with 32 abstentions.

44. Mr. JUMEAN (Qatar) said that he had voted against the draft resolution, not because he was averse to change or wished to procrastinate, but because he felt that the establishment of an *ad hoc* committee was premature. At the present time, there was an atmosphere of uncertainty among delegations about a review of the Charter, and they felt that the need for radical change was not obvious or clear-cut. It would be wrong to impose such a solution, since the vote showed that nearly half the Committee had voted against the draft resolution or abstained on it. In any event, a decision on such an important question should have been reached by consensus.

45. Mr. LEE (Canada) said that the sponsors had done a good job and the debate had been at a very high level. He wished the new *ad hoc* committee every success and looked forward to the results it would produce. Nevertheless, he had abstained in the voting on the draft resolution because he had felt that the establishment of the committee should be preceded by an intensive discussion of the question of Charter revision in the Sixth Committee, a discussion that would be possible at the next session of the General Assembly, when the Sixth Committee did not have a heavy agenda. In any event, the question of Charter revision was so important that any recommendations the *ad hoc* committee might make would have to be considered by the Sixth Committee before its submission to the General Assembly.

46. Mr. SENSOY (Turkey) said that, since there had been no change in his Government's position on Charter review, he had refrained from speaking in the debate so as not to waste the Committee's time. His Government was however keeping the question under close study. The position of his Government, as stated at the previous session, was to be found in the summary record of the 1379th meeting. His abstention on the draft resolution was to be construed in the light of that statement of the Turkish Government's position.

47. Mr. LEKAUKAU (Botswana) said that, although he did not rule out all possibility of amending the Charter, he

had abstained in the voting on draft resolution A/C.6/L.1002 because he did not think it was necessary to establish an *ad hoc* committee before the views of Governments requested in General Assembly resolutions 2697 (XXV) and 2968 (XXVII) had been received. If the replies showed that there was a majority in favour of Charter revision, the procedure laid down for amendment in Articles 108 and 109 of the Charter could be applied. Furthermore, it would have saved money for the United Nations not to establish an *ad hoc* committee at the present time. He had voted in favour of giving priority in the voting to draft resolution A/C.6/L.1011, and had abstained on draft resolution A/C.6/L.1002, for the reasons he had given. His delegation had a reservation with regard to operative paragraph 2 of draft resolution A/C.6/L.1011. Botswana, as a sovereign State, judged issues in the United Nations and elsewhere according to its own profound convictions and without any external influences; its guiding consideration was the national interest. If that paragraph had been put to a separate vote, he would have voted against it. If draft resolution A/C.6/L.1001 had been put to the vote, he would have voted against it also.

48. Mr. WEHRY (Netherlands) said that he had voted in favour of giving priority to draft resolution A/C.6/L.1011 and had abstained in the voting on draft resolution A/C.6/L.1002 when it had been given priority. His vote indicated that his delegation was in favour of caution and thorough preparation for a discussion of such a question as a possible revision of the Charter, although it was aware that the majority wished the machinery for review to be set up promptly. He did not feel that the opinion of enough Governments had been ascertained or that the ground had been sufficiently prepared, but he was willing to bow to the will of the majority. His delegation had confidence in the common sense, wisdom and far-sightedness of those delegations that had been in favour of setting up the *ad hoc* committee. With regard to operative paragraph 1 of draft resolution A/C.6/L.1002, he trusted that it would not be interpreted so as to exclude the possibility of discussing the principle of rotation in the consultations with the President of the General Assembly.

49. Mrs. HO Li-liang (China) said that her delegation had voted in favour of draft resolution A/C.6/L.1002. The debate on the question of Charter review in the Committee had been heated. Many third world countries had been in favour of such a review, feeling that it would adapt the United Nations to contemporary trends, rid the Organization of the control of the super-Powers and implement the principle that all countries, big and small, were equal. However, the super-Powers had frantically opposed the review of the Charter so as to continue their power politics in the United Nations and preserve their privileged positions. It was obvious that justice was on the side of the small and medium-sized countries.

50. Her delegation had been happy to note that those countries had been able to resist the enormous pressure and the threat of the super-Powers, which, united with each other, had persisted in their struggle and obtained some initial results. The representatives of several countries had forcefully refuted the fallacies and slanders put forward by the representative of one of the super-Powers, who had exposed his country's selfish motive, which was to preserve its hegemony in the world; but justice had been upheld by the smaller countries.

51. No one would expect any of the super-Powers to accept defeat on the question of the review of the Charter. They would continue their obstruction and sabotage, but they were weak because they were in the wrong and their position was unjust. As long as the numerous small and medium-sized countries maintained their unity and continued the struggle, they would gradually achieve their just aspiration, that of adapting the United Nations to the trends of the modern world.

52. Mr. MANIANG (Sudan) said that he had voted for draft resolution A/C.6/L.1002 because it aimed only at ascertaining the views of Governments on the question of reviewing the Charter. In his understanding, the new *ad hoc* committee would have very limited terms of reference: to give thorough examination to any suggestions that were put forward. His positive vote must not be taken to prejudge his delegation's position on the whole question of Charter review.

53. Mr. ESCOBAR (Colombia), speaking as a sponsor of draft resolution A/C.6/L.1002, welcomed the fact that the draft resolution had been adopted. All the sponsors had felt that it was appropriate to reaffirm loyalty to the purposes and principles of the Charter and support for the common goal of maintaining international peace and security. He was glad that the United Kingdom, the United States and Cyprus, among others, had stated in the debate that they believed that specific provisions of the Charter should be reviewed. The draft resolution was based on a desire to help, and it was encouraging that only 20 votes had been cast against it. The *ad hoc* committee would therefore be in a good position to participate in the dialogue that was needed before any review of the Charter could be undertaken. There was no danger of either a majority or a minority imposing its views. There would be consultations with Member States on the nature of the new committee, which would be legal and technical in nature. He himself had sponsored and voted for the draft resolution because the cause was just and because it opened many possibilities for fruitful developments in the future.

AGENDA ITEM 91

Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: report of the *Ad Hoc* Committee on International Terrorism (A/9028)*

54. The CHAIRMAN said that in course of the unofficial consultations that he had been holding with delegations, it had become apparent that there was general agreement on the advisability of postponing the present item to the next session of the General Assembly. He therefore suggested

* *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 28.*

that the item might be placed on the agenda of the thirtieth session of the General Assembly.

55. Mr. ROSENNE (Israel) said that although there might be some measure of agreement about the postponement of the item, his delegation was strongly opposed to it. Such an adjournment would be all the less creditable since the Sixth Committee had recently spent considerable time discussing parking problems in the city of New York, hardly of international significance, and this had been followed by another debate characterized by the virulence of some of the statements towards any delegations which might have held favourable views on the possibility of reviewing the Charter. During the session, acts of international terrorism, most but not all connected with the Middle East, had been frequent occurrences. When arrested terrorists were handed over by State authorities to another terrorist gang for "disciplining" it was now widely hailed as progress. The Sixth Committee had deliberately wasted time on leisurely and academic debates so as to ensure that there would be no time to discuss the really serious question of international action to prevent terrorism. His delegation wished to protest most strongly against the way in which the Sixth Committee was failing to live up to its responsibilities. He deplored the dilatoriness with which the Sixth Committee had dealt with the items on its agenda. which had now resulted in there being no time to discuss one of the most important items. His delegation wished to record its dismay at the repeated verbal assaults on non-problems to which the Sixth Committee had been subjected by certain delegations. It protested at the grotesque waste of time and money that that had entailed. It must insist that his present statement should be fully reflected, not only in the summary record of the meeting but also in the Sixth Committee's report on the item to the General Assembly.

56. Mr. FERNANDEZ BALLESTEROS (Uruguay) strongly supported the Israeli representative and opposed the postponement of the item to the thirtieth session.

57. The CHAIRMAN said that if he heard no further objection, he would take it that his suggestion of postponing the item to the thirtieth session was acceptable to the Committee.

It was so decided.

58. Mr. HAMMAD (United Arab Emirates) said that his delegation had fully supported the Chairman's suggestion to postpone consideration of item 91, and noted that only two delegations had been against that proposal. He stressed that the reason for postponing consideration of the matter was not that the Committee was afraid of discussing the question of international terrorism. His delegation was anxious to discuss the terrorism to which the Arab peoples, especially Palestinian women and children in refugee camps, were being subjected by the Israeli authorities.

59. Mr. FUENTES IBANEZ (Bolivia) said that his delegation was very disappointed that it had been necessary to postpone consideration of item 91, as international terrorism was a very serious matter which claimed many innocent victims and affected human life everywhere. The item had originally been included in the agenda of the twenty-seventh session of the General Assembly on the initiative of the Secretary-General, who had not hesitated to call for broad discussion of the matter. Although the item had been referred to the *Ad Hoc* Committee on International Terrorism, the report produced by that Committee had not shed any new light on the matter. He hoped that the matter would be considered in the following year, as the Sixth Committee's second postponement of discussion of international terrorism would greatly disappoint world public opinion and would adversely affect the prestige of the United Nations.

60. Mr. ROSENSTOCK (United States of America) said that his delegation was very disappointed that circumstances had not permitted a useful discussion of the item, particularly in the light of rule 99 of the rules of procedure and of the fact that the item had been originally put forward for discussion by the Secretary-General. He also did not agree that nothing had happened which made it necessary to discuss the problem of international terrorism.

61. Mr. BRACKLO (Federal Republic of Germany) said that the Committee had had no choice but to postpone consideration of item 91, but it was unfortunate that the Committee had not been able to make some progress on the matter, for there was a compelling need for international measures to prevent international terrorism wherever it occurred. His delegation hoped that at a later session the General Assembly would achieve substantial results; it considered that the United Nations was the appropriate forum to deal with the issue, which concerned all mankind and involved respect for human rights and fundamental freedoms. It was deeply concerned at all acts of terrorism; some of the worst acts of terrorism in recent times had either taken place in his country or involved his countrymen. While efforts to prevent terrorism should not hinder the peoples in attaining self-determination and independence, nobody should have the right to use violence and to endanger innocent lives.

Statements in exercise of the right of reply

62. Mr. ARNELLO (Chile), speaking in exercise of the right of reply, said that his delegation had to respond to the slander uttered at the 1519th meeting by the Soviet representative in his attack on Chile, although all representatives were familiar with Soviet communism and knew that it lied systematically, whenever it needed to. It now had the insolence and brazen cynicism to use the question of respect for the Vienna Convention on Diplomatic Relations[1] as a means of attacking Chile, as it did on every possible occasion. No nation was less qualified to speak of respect for the Vienna Convention than the Soviet Union; no nation had ever violated the norms of the Convention in such a cynical way as a means of furthering its neo-imperialist and neo-colonialist policies.

63. All the Soviet representative's allegations concerning actions by Chile were false. The Chilean armed forces had never attacked the Soviet Embassy and had never inspired or condoned any attack on it. Chile had strictly fulfilled all its legal, national and international obligations, and in the case in question had granted police protection to the

1 United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

Embassy, which was under the control of the Embassy of India. After the suspension of diplomatic relations, the Soviet Ambassador and all the diplomatic personnel, administrative officials and technicians had been able to leave the country unhindered. They had left in such a hurry that the representatives of Aeroflot had forgotten to pay a debt of over $500,000 to Lan-Chile Airlines, and that debt had still not been paid.

64. The assertions about alleged Chilean actions against the Embassy of Cuba were also false and a distortion of reality. Cuban interests in Chile were handled by Sweden, and neither Sweden nor Chile had said anything about the matter. It would serve no useful purpose to recognize Soviet neo-imperialism and he refused to comment on alleged offences which affected other States.

65. Chile had always fulfilled its obligations under the Vienna Convention in an exemplary manner. There had been no damage or victims where any country accredited to Chile was concerned; over 8,000 persons had been able to find asylum in their embassies and to obtain safe conduct and leave the country; and over 4,000 refugees had been afforded ample facilities and co-operation by the Chilean Government, as the United Nations High Commissioner for Refugees himself had recognized on his recent visit.

66. How different the conduct of the Soviet Union was! Perhaps representatives did not remember the fate of Imre Nagy, who, having found asylum in an embassy in Budapest, had been removed from it, imprisoned and finally executed by the Soviet authorities. When had the Soviet Union ever recognized territorial or diplomatic asylum? Everyone knew what kind of pressure the Soviet Union exerted on Governments to hand over those who did not wish to return, and what Soviet persecution against those who had escaped from the paradise of the USSR was like. The effrontery with which the Soviet representatives claimed to be champions of a respect which they did not recognize and did not practise was unbelievable. The Soviet Union did not respect the Vienna Convention either as a sending country or as a receiving country. For example, the Soviet Union abused articles 10 *et seq.* of the Vienna Convention to inundate other countries with all kinds of agents and officials who carried out activities that were contrary to the respect due the receiving State. The number of diplomats and officials from the Soviet Union and from the satellite countries in Chile had increased enormously since 1970. In addition, a large number of Soviet agents representing Soviet transnational enterprises had been spying on Chile's technological and economic activities and a wide range of intelligence agents, political commissars, and more had been introduced into the country.

67. Furthermore, in violation of article 41 of the Vienna Convention, the Soviet Union had been seriously interfering in Chile's internal affairs, not only by means of ideological propaganda, active participation in Chilean politics, and the supplying of funds to its Latin American subsidiaries but also by means of overtly criminal acts which were prejudicial to the internal and external security of Chile and by supplying tons of weapons which were handed over to organized political groups. Those weapons had reached Chile by every possible means, including fishing boats and the diplomatic baggage of satellite countries. The Soviet Union had interfered in Chile's internal affairs both within the country and abroad, as representatives could hardly have failed to observe during the past year. It was well known that the Soviet Union had interfered in the national security of most countries of the world; small wonder that in the years since the United Nations had been established 57 nations had had to expel over 500 Soviet agents from their territories.

68. As a receiving State, the Soviet Union was violating the Vienna Convention in an equally flagrant way. All diplomats who had been accredited to the Soviet Union knew that, contrary to articles 22 and 30 and to other articles of the Convention, diplomatic inviolability was a myth and microphones had been found hidden in their missions and residences in Moscow. In violation of article 26 of the Convention, the Soviet Union severely limited the freedom of movement of diplomats.

69. The conduct of the Soviet Union in proclaiming the need to respect the Vienna Convention while showing no respect for its provisions itself was a typical manifestation of Soviet cynicism. With equal cynicism, it had buried in silence and oblivion the 35 million dead left in the wake of the bloody experiment. The Soviet Union could not be allowed to continue to deceive the peoples of the world and export its system of oppression and hatred, destroying social peace, domestic order and the freedom of men and nations.

70. Mr. ALFONSO (Cuba), speaking in exercise of the right of reply, said that it seemed that the Chilean fascists needed to be continually reminded that they were international delinquents. The international community must be unceasingly aware of the Chilean junta's constant violation of fundamental human rights and freedoms and the most elementary tenets of international law.

71. The representative of the Chilean junta had referred to lies and slander; those words had already been applied to Chile itself, and there could be no greater hypocrisy than Chile's indignation uttered against the background of the continuing crimes of the fascist junta and the increasing number of victims resulting from the brutality of the Chilean soldiers. Delegations at the previous session had been able to see the Cuban Ambassador to the legitimate Government of Chile attending meetings still wearing a bandage over his machine-gun wound. He had been shot at by soldiers while he was in the Cuban Embassy; the Cuban Embassy had been besieged and an attempt had been made to put pressure on the Cuban diplomats. The situation had been so serious that a complaint had been made by his Government to the Security Council, and it was still on the Council's agenda.

72. He asked the Chilean representative, who had refused to reply to the accusations made, whether it was true that in September a political refugee in the Argentinian diplomatic mission in Santiago had been assassinated and in October another; whether it was true that Mr. Calderón, Minister for Foreign Affairs of the legitimate Government of Chile, had been seriously wounded while in the mission of a country accredited to Chile; and whether it was true that a few days previously the corpse of an Italian girl had been thrown over the wall of the Italian mission. The

Chilean Government's violation of diplomatic rights and, indeed, of elementary human rights was of grave concern to the international community as a whole. Representatives of the Chilean junta cynically denied matters which were public knowledge.

73. Mr. ARNELLO (Chile) said that the Committee had seen that in his statement he had attacked not Cuba, but the Soviet Union; however, the blow dealt to the Soviet Union had also affected its puppets. The assertions made by the Cuban representatives, like those of all the representatives in the Communist camp, contained a few grains of truth and much that was totally distorted. It was true that Mr. Calderón had been wounded in the Cuban Embassy, which was in the hands of the Swedish Government, but it was not true that he had been wounded from outside the building. A quarrel among people in the building had led to the incident, in which a shot had been fired at Mr. Calderón, but he had now recovered. The representative of the Italian Government had never said that the body found in the Italian Embassy had been thrown over the Embassy wall, which was more than three metres high. On the contrary, the girl had been killed inside as a result of a struggle between members of the MIR, a political group to which she belonged. The Cuban Ambassador to the Allende administration had put back his bandage specially for his visit to the United Nations. Furthermore, all types of weapons, including machine-guns, had been found in the Cuban Embassy in Santiago after the Cubans had left; the diplomatic representatives of Cuba were even armed at the meetings of the United Nations, and that had been particularly in evidence in the previous year. Perhaps that could account for the wound of the Cuban Ambassador.

74. With regard to the violence in the Cuban Embassy in Santiago in 1973, the Cuban representation had not been a diplomatic entity but a military group, and its political interference had reached such extremes that it had involved not only Cuban agents but even Fidel Castro himself, who had visited Chile amid public demonstrations. Salvador Allende had been supported by the Cuban Government, and arms had been brought into the country by Cuban diplomats. A letter sent by Fidel Castro to Salvador Allende on 29 July 1973 was clear proof of Cuba's interference in Chile's internal affairs. The Cubans had also interfered in trade unions and had organized guerrilla groups. On 11 September 1973, some civilians near the Cuban Embassy at Santiago had come under fire from within the Embassy, an event which had resulted in an exchange of fire between them and the Cubans and the extremist refugees in the Embassy. Order had been restored, and the next day all the Cuban officials had been able to leave Chile. The brazen distortion of facts by the Cuban representatives at the Committee was all that could be expected from them. Although it was true that the Security Council had taken up the complaint of the Cuban delegation, the subject had been shelved in September 1973 because there had been no sound basis for further discussion of the matter, and world peace and security had not been endangered, as the Cubans had claimed.

75. Mr. FEDOROV (Union of Soviet Socialist Republics) said that, much to his regret, he was obliged to speak because of the lies that had been uttered about the Soviet Government and its foreign policy. It was, of course, difficult to reply to a statement couched in foul language with very few rational conclusions.

76. He wondered why the representative of Chile was so offended. The Soviet delegation had simply stated the fact that Chile was guilty of gross violations of the Vienna Convention and had cited the attack on Soviet property. In reply, the Committee had heard the representative of Chile repeat the same anti-Soviet falsehoods that had been uttered in the plenary Assembly and in other committees. Those gross insinuations had been considered in various bodies and the appropriate decisions had been taken. It was despicable of the representative of Chile to come to the Sixth Committee and try to show that black was white. Everybody knew about the tragic results of the military coup in Chile. During its first year in power, the military junta had terrorized, tortured or killed tens of thousands of Chilean patriots, including women, and had left thousands of orphans. He defied the representative of Chile to deny that. The shameful situation in Chile would not be forgiven by the international community. It was hypocritical for Chile to claim that it observed the Vienna Convention. His delegation totally rejected Chile's insinuations and suggested that the representative of Chile should read the United Nations decisions very carefully.

77. Mr. MAI'GA (Mali) appealed to the members of the Committee to restrict discussions to legal matters and to leave political matters to the appropriate bodies.

78. Mr. ALFONSO (Cuba) said that he understood the concern expressed by the representative of Mali. Nevertheless, representatives had their duties; there were some statements that could not go unanswered.

79. It was very difficult to make the Chilean fascist representative understand who was the puppet. That representative appeared to be unaware of the way in which CIA funds had been used to destabilize the situation in Chile. It was clear that Chile and Cuba had very different ideas about the meaning of democracy. As to Cuba's alleged interference in Chile's internal affairs, he said that the action of the Cuban revolutionary Government, its diplomats and technicians was a source of pride for Cuba. The letter from the head of State of Cuba to the head of State of Chile showed the co-operation that existed between the countries. It had been published in the Cuban press. He observed that the representative of Chile had avoided any reference to the murder of a diplomatic representative and had tried to play down the importance of the injury suffered by the head of a diplomatic mission. What was important was that the injury had occurred and that it had occurred at the hands of the military.

80. Mr. BOJILOV (Bulgaria), speaking on a point of order, said that he wished to support the appeal made by the representative of Mali. He wished to make a formal motion for closure of the debate.

81. The CHAIRMAN pointed out that there was no debate in progress. Representatives were speaking in exercise of the right of reply. Nevertheless, he appealed to representatives to bear in mind the General Assembly's suggestion about rights of reply and the fact that the Sixth

Committee had to conclude its work at the current meeting.

82. Mr. ARNELLO (Chile) welcomed the appeal of the representative of Mali. It was not his delegation that had raised political questions in the Committee; it was simply exercising the right of reply to respond to political attacks. He read out article 41 of the Vienna Convention, which prohibited diplomats from interfering in the internal affairs of another State, and said that what he had maintained and other delegations had recognized during the debate was perfectly clear.

83. With reference to the suppositions of the Soviet representative, the Chilean delegation had referred to specific acts on which the USSR had made no response and which could be confirmed by 57 countries; as to reading United Nations decisions, his delegation had read out in plenary meeting of the current General Assembly the resolutions adopted in 1956 concerning the occupation of Hungary, which were indeed very interesting.

84. Mr. GÜNEY (Turkey) said the representative of the Greek Cypriot community had made an inappropriate reference to Cyprus. It appeared that the Greek administration had not been satisfied with the discussion in the General Assembly.

85. Mr. JUMEAN (Qatar) said he rejected Israel's ill-disguised allegations that the discussion on the subject of terrorism had been deferred as the result of an international conspiracy. His delegation wished to get at the reasons for acts of terrorism. Israel, which was afraid to face the truth, tried to dismiss the Palestine Liberation Organization (PLO) as nothing more than a terrorist organization. But the PLO was a reaction to terrorism and to Israel's denial of the rights of the Palestinian people. The expulsion of people at gun-point was in itself terrorism. Israel was a terrorist country and he certainly wished to hear all views on the subject.

86. Mr. ROSSIDES (Cyprus), speaking on a point of order, said that the representative of Turkey was out of order when he referred to the delegation of Cyprus as anything but the delegation of Cyprus.

87. Mr. GÜNEY (Turkey) said he agreed with the representative of the Greek administration of Cyprus that it was important to respect and fully apply the provisions of the Charter. But that representative had failed to mention the importance of existing valid international agreements that were in accordance with the Charter. The Greek administration in Cyprus had been violating those agreements for more than 10 years and should not try to give advice on the way in which the provisions of the Charter and other United Nations resolutions should be applied.

88. Mr. ROSSIDES (Cyprus) said that he had made his statement with reference to the review of the Charter. The United Nations Charter was not being implemented because of the failure to implement Security Council decisions. As an example, he had referred to the failure of the Security Council to prevent aggression. If the Security Council was unable to apply the provisions of Chapter VII of the Charter, there was a need to revise the Charter. His reference to events did not constitute interference with Turkey. Turkey had attacked Cyprus in violation of the provisions of a treaty guaranteeing the territorial integrity of Cyprus. That was an act in violation of the Charter of the United Nations, Article 103 of which stated that in the event of a conflict, obligations under the Charter prevailed. One had to go back to the time of Attila to find a similar situation. He noted in passing that the Turks had named their campaign "operation Attila".

89. Mr. GÜNEY (Turkey) said that the representative of Cyprus had been hypocritical in referring to Turkey without naming it. The Greek community in Cyprus had violated its international obligations and had demolished constitutional order. It had never recognized equal rights for the Turkish community, although those rights were guaranteed under the Constitution. The Greek community had put itself in danger by its own acts. The time had come to look at reality in an effort to find peaceful and realistic solutions. Nobody seriously believed that the Cypriot communities were truly independent.

90. Mr. HASAN (Palestine Liberation Organization), speaking at the invitation of the Chairman, concurred in the view expressed by Israel that it was a pity that there had been no time for a full discussion of the item on terrorism, since that would have provided an opportunity to unmask Israel. Israel was guilty of terrorism against the people and the land of Palestine and was directly responsible for perpetuating the state of turmoil which currently existed. It was not the people of Palestine that had originated terrorism; they had been living and working in the normal way when the Zionist invaders had fallen upon them, occupied their country and driven them from their homeland. The refugees in camps lived in terror because of the Israeli raids, which were carried out with sophisticated United States weapons. Thousands of Palestinians had been evicted from their homes, and over the past six years thousands had been imprisoned. The Palestine people were well acquainted with terrorism, which they had learnt to live with. They had always resisted it by armed struggle and would continue to do so, as long as Israel occupied their homeland, denied their human rights and imposed a policy of racism and chauvinism. They would be victorious in the end. He regretted the deaths of innocent civilians which sometimes occurred when military installations were attacked. That was a very different matter from attacking civilian targets, which Israel constantly did. He regretted that the Israeli representative was not present to hear the statement he had just made.

91. Mr. ROSSIDES (Cyprus) said that the Turkish representative had referred to the sufferings of the Turkish Cypriots under the present Cyprus Government. The Turkish delegation had made the same allegations in the Security Council. The answer was to be found in the reports of the Secretary-General from 1964 to 1974, which contained nothing to support such allegations. Turks in Cyprus had freedom of movement while the Greek community had not. If the Turks were suffering, it was from the dictatorship of their own leaders, who wished to precipitate a partition of the island. The facts could be found in the records of the Security Council meeting held in August 1974. The question had also been discussed in the Special Political Committee. In neither case had the

Turkish delegation been able to answer the accusations against his country. It had now chosen to raise the same question in the Sixth Committee, although it was well aware that it was not in any position to answer the delegation of Cyprus.

92. It was time to be realistic. The Charter had been violated by the assault by armed force on a small and unarmed country. The Turkish representative maintained that the present state of affairs must be accepted as a reality. Nothing could be more cynical.

93. Mr. ESCOBAR (Colombia), speaking on a point of order, said that the exercise of the right of reply must not be allowed to degenerate into a vituperative dialogue. He endorsed the view expressed by the representative of Mali and proposed that the Committee should move forthwith to conclude its work for the session.

94. Mr. GÜNEY (Turkey) welcomed the Colombian proposal. Out of deference to the Committee, he would not reply to the last statement made by the representative of Cyprus. However, he wished to state that it was improper for Cyprus to be represented by someone who spoke only for one small group of its inhabitants.

95. The CHAIRMAN suggested that, as the Colombian representative had proposed, the Committee should proceed to complete its work.

It was so decided.

Completion of the Committee's work

96. After an exchange of courtesies, the CHAIRMAN declared that the Sixth Committee had completed its work for the twenty-ninth session.

The meeting rose at 8.55 p.m.