HUNDRED AND EIGHTY-FIRST MEETING

Held at Lake Success, New York, on Tuesday, 1 November 1949, at 3.15 p.m.

Chairman: Mr. LACHS (Poland).

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

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

Proposals and amendments regarding the disposal of the draft declaration (A/C.6/L.50, A/C.6/L.54, A/C.6/L.55, A/C.6/L.56, A/C.6/L.58, A/C.6/L.60, A/C.6/L.64) (continued)

1. The CHAIRMAN invited the Committee to continue the consideration of the seventh paragraph of the joint draft resolution (A/C.6/L.50) and of the four amendments proposed to that paragraph as follows: by Cuba (A/C.6/L.55) to delete the paragraph; by Chile and Colombia (A/C.6/L.56)[1]; by Australia (A/C.6/L.58)[2] and by Venezuela at the 180th meeting.[3]

2. The paragraph under discussion raised three questions regarding the further procedure to be

[1] See the Summary Record of the 180th meeting, paragraph 1.

[2] *Ibid.*

[3] *Ibid.*, paragraph 3.

adopted after the action taken on the draft declaration (A/925), paragraph 46) at the current session of the General Assembly: first, whether it should be referred, together with the comments and suggestions of Governments, to the International Law Commission for further study and then taken up in the General Assembly, or whether all comments should be examined directly by the latter; secondly, whether it should be transmitted to scientific institutions as well as to Member States, or only to the latter; and thirdly, whether, as proposed in the Australian amendment, any particular questions should be put to Member Governments in transmitting the draft declaration to them for comment.

3. Mr. CHAUDHURI (India) wished to confine his remarks to the Australian amendment (A/C.6/L.58), which he supported. India, together with many other young nations which had known racial and religious discrimination, had hailed the draft declaration on rights and duties of States because it would lay down as duties of States many principles already contained in the Charter of the United Nations. Article 6 of the draft declaration, for instance, established the duty of States to treat all persons under their jurisdiction with respect for human rights.

4. It was not enough, however, to have started the work. Some mark of approval of the draft declaration would have been highly desirable, and his delegation had therefore greatly regretted the fact that the United States representative had accepted the Polish and Israeli amendments[1] to the sixth paragraph of the joint draft resolution, as a result of which the phrase commending the draft declaration as a guide to international law had been deleted.

5. The question therefore remained what future action should be taken on the draft declaration. In view of the above-mentioned deletion of the last phrase of the preceding paragraph, there would be no indication of what the nature of the draft declaration was to be. It was the task of Member States to determine that nature. The Australian amendment appropriately facilitated their task by suggesting various alternatives from which Member Governments could choose.

6. The first of the questions to be sent to Governments, as proposed in the Australian amendment (A/C.6/L.58), was whether any further action should be taken by the General Assembly on the draft declaration; if the answer of Member States was negative, the question would be settled then and there. If, on the other hand, their answer was affirmative, it should indicate also what particular action should be taken by the General Assembly. Such procedure was entirely proper, since the General Assembly, which was the servant of Member States, should know what action they desired it to take. If the Australian amendment was not adopted and no clear answer was received from Governments on the exact nature of the instrument to be aimed at, a lengthy and involved procedure would be required in the General Assembly to settle that question.

7. He therefore supported the Australian amendment, which clearly indicated the points on which the United Nations wished to receive the views of Member States. Once the answers had been received from Member States and bodies dealing with international law, the General Assembly could at some future time decide on the proper action to be taken on the draft declaration.

8. Mr. TATE (United States of America), while sympathizing with the idea of the Australian amendment, considered it, nevertheless, somewhat unrealistic. It was over-optimistic in implying that some agreement might be reached on the nature of the instrument in question, and at the same time too pessimistic in assuming that no other solution outside the alternatives listed in that amendment was possible.

9. International law was going through a period of evolution and development, and attempts should not be made prematurely to crystallize the views of Governments. Hence the development of thought, ideals and law, encouraged in the seventh paragraph of the joint draft resolution (A/C.6/L.50), should not be arrested by premature attempts to give it a particular form. He agreed, in that connection, with the Canadian representative's objections[2] to the Australian amendment.

10. Mr. Tate was not certain what form the draft declaration would ultimately take, but he felt that the question should be left open. The definitive result might be a combination of many different forms advocated by various Governments; and the declaration would probably contain both traditional rules of existing international law and new rules.

11. In view of those considerations, he felt that the Australian amendment should not be adopted.

12. Mr. SPIROPOULOS (Greece), recalling his views against returning the draft declaration to the International Law Commission, in any case at the present stage, stated that he was opposed to the joint amendment (A/C.6/L.56) of Chile and Colombia.

13. He then turned to the question whether the draft declaration should be transmitted to scientific bodies for comment. Such action, he felt, belonged to an earlier stage of the work; he therefore agreed with the representative of France that the draft declaration should be transmitted for comment to Member Goverments only. The Secretary-General's memorandum[3] gave an excellent and full review of the work done in the field by various scientific bodies and of the legal concepts held by them. Moreover, when consulted on the Panamanian draft,[4] not one of those organizations had sent in comments actually on that draft. Consequently, he did not think it advisable to consult scientific institutions.

14. He agreed with the view expressed by the USSR representative that it was useless to determine at that juncture what should ultimately be done with the draft declaration. He pointed out, however, that article 23 of the Statute of the International Law Commission, which Mr. Koretsky had invoked[5] in support of his view, was irrelevant to its work on that subject, which had been a special assignment.

[1] See the Summary Record of the 179th meeting, paragraphs 58 and 98.
[2] See the Summary Record of the 180th meeting, paragraph 43.
[3] See document A/CN.4/2, pages 1 to 4 and 154 to 161.
[4] *Ibid.*, page 35.
[5] See the Summary Record of the 180th meeting, paragraphs 31 and 33.

15. There was no need to consult Governments on the question, as suggested in the Australian amendment. The Members of the General Assembly were representatives of their Governments, and as such were fully qualified to decide on the future action to be taken in respect of the draft declaration. Moreover, he was very pessimistic regarding the results of the procedure proposed by Australia. From the seventeen Governments which had replied to the request for comments on the Panamanian draft, very few had sent real comments; it was quite possible that no replies would be received to the questions listed in the Australian amendment. It could, however, be tried.

16. He therefore thought that the General Assembly should request comments from Governments on the draft declaration of the International Law Commission, and then decide what further action should be taken on it.

17. Mr. MAÚRTUA (Peru) speaking on the Venezuelan amendment proposing the deletion from the seventh paragraph of the words "and institutions engaged in the study of international law", disagreed with the view expressed by the Brazilian representative at the 180th meeting[1] that scientific institutions should not be consulted on the draft declaration. He cited, in that regard, many instances where organizations concerned with international law had made a major contribution to its development and codification, particularly in Latin America. The views of Governments were primarily political and should be supplemented by the scientific views of the organizations concerned. He recalled that the International Law Commission, a scientific body of jurists, had been called upon to consider the comments of Governments on the Panamanian draft, and might again be called upon to consider their comments on its own draft declaration. The Statute of the International Law Commission specifically provided that the latter should consult scientific institutions in its work.

18. The Australian amendment, which referred to the future form of the document and thus the question of future codification of rights and duties of States, was unnecessary in view of the fact that the form which the draft declaration should take would emerge from the comments on the draft declaration and on all the relevant documentation which, under the seventh paragraph of the joint draft resolution, Governments would be asked to transmit. He was therefore opposed to the Australian amendment, which, being too restrictive, would weaken the original joint draft resolution (A/C.6/L.50) and would limit the right of the United Nations ultimately to determine how to deal with the draft declaration.

19. Mr. AMADO (Brazil) agreed with the Peruvian representative that Latin-American institutions engaged in the study of international law had performed valuable work. He pointed out, however, that they had been in a position to do so because of their relative agreement on the principles of international law and because of the progress achieved on the American continent. For the rest of the world, the time of harmony and unanimity had not yet arrived. It would therefore be useless to consult scientific institutions which adhered to divergent legal systems, but it would be quite proper to consult Governments, which at the moment were the final arbiters.

20. Mr. MATTAR (Lebanon) did not wish to comment on the seventh paragraph of the joint draft resolution, but pointed out that if it was adopted, a time-limit should be set for the transmission of comments by Member States and scientific institutions. He thought that about six months should be allowed after receipt of the relevant documents. He therefore proposed that the following words should be added at the end of the paragraph: "at the latest by 1 July 1950".

21. He supported the Australian amendment; it would be desirable to obtain the views of Member States regarding the future action to be taken on the draft declaration. He agreed with the representative of India that the Committee's recent action in deleting the commendation of the draft declaration as a guide to international law had constituted a retrograde step. He was prepared to support any suggestion designed to hasten the ultimate formulation of a declaration on rights and duties of States, and would therefore vote for the Australian amendment.

22. Mr. ORIBE (Uruguay), recalling the statement[2] made by his delegation on the draft declaration on rights and duties of States in which it had stressed the need for precise definition of the concepts and problems which would later serve as a basis for the study of international law, supported the Australian amendment in principle, subject to a few drafting changes.

23. That amendment was designed to clarify the alternative courses of action which might be taken on the draft declaration in the light of the problems which had arisen during the debate in the Sixth Committee, and to enable Governments and scientific institutions to give a clear answer on the matter.

24. The discussion in the Sixth Committee on the draft declaration had shown a divergency of views on whether the draft declaration was a work of codification or of progressive development of international law. The difference between the two, clearly indicated in article 15 of the Statute of the International Law Commission, could not be denied. While his delegation had no definite views in that regard, it felt that steps should be taken to determine whether Member States desired the work to be one of codification or of progressive development. As his delegation had pointed out earlier,[3] failure to draw a clear distinction between codification and progressive development might be dangerous; if rules of positive international law were included in an instrument treated as development of international law, doubt would be cast on their already being positive international law.

25. The second problem was the form of the text; there were many alternative possibilities in that regard. The United States, for instance, had considered (A/C.6/330) that the General Assembly should merely take note of the draft declaration, which would have its own juridical value. Another solution advocated had been that the General Assembly should proclaim it as a

[1] See the Summary Record of the 180th meeting, paragraphs 44 and 45.

[2] See the Summary Record of the 178th meeting, paragraph 38.

[3] *Ibid.*

declaration similar to the Universal Declaration of Human Rights. The most far-reaching suggestion had been that the General Assembly should approve the text as a draft convention to be submitted to Member Governments for ratification.

26. Any one of those possible courses of action should be clearly defined. The delegation of Uruguay therefore supported the Australian amendment, designed to obtain a definite answer from Governments on the course of action they preferred. It was a useful proposal of a purely procedural nature which would not prejudge the substance of the question and, as such, should be adopted by the Sixth Committee.

27. Mr. IMRO (Ethiopia) agreed with the preceding speakers who had felt that it would be premature to adopt a draft declaration at that juncture. It was not yet clear what course of action should be taken on the draft declaration, which had not been discussed in detail; and he therefore supported the Australian amendment designed to obtain a clear answer from Governments on the question. He agreed with the United States representative that international law was going through a period of evolution, but he felt that an attempt should be made to give it some direction.

28. In conclusion, he proposed some drafting amendments to the Australian amendment (A/C.6/L.58).[1] Those amendments were as follows: firstly, that sub-paragraph 2 (*a*), referring to a restatement by experts of existing international law, should be deleted; and secondly, that paragraph 2 should begin: "If so, the exact nature of the instrument to be aimed at *and* whether it should be *mainly* . . ."

29. Mr. LOUTFI (Egypt) recalled that he had already stated his delegation's view[2] on the action to be taken on the draft declaration. While ready to consider the draft as a source of law, as proposed in the original United States draft resolution (A/C.6/330), his delegation had accepted the idea in the joint draft resolution (A/C.6/L.50) of commending it as a guide to international law. Unfortunately that commendation had been deleted.

30. The consensus of opinion in the Sixth Committee seemed to be that the draft declaration was an imperfect document and required further comments by Governments and scientific institutions. His delegation regretted that a number of States had not wished to be bound by certain principles of law contained in the draft declaration nor to accept them as a source of law or a guide to it. In those circumstances, it would be best to transmit the draft to Governments and scientific organizations for comments, in the light of which a decision could then be taken by the General Assembly.

31. The Australian amendment was useful and would provide a clear picture of the views of Governments on the question of the exact nature of the declaration. The General Assembly would be able to take that into account when it determined the future fate of the draft declaration.

32. His delegation would therefore vote for the Australian amendment.

33. Mr. FITZMAURICE (United Kingdom) supported the Venezuelan amendment proposing the deletion of the reference to scientific institutions. Referring to paragraph 45 of the Commission's report (A/925), he considered that there was no need to refer the draft declaration to scientific institutions, since it had already been studied by the International Law Commission, a body of legal experts which had had texts from scientific institutions before it. Any comments which might be received would doubtless already have been taken into consideration by the International Law Commission. On the other hand, the draft declaration, which raised many political issues, as the discussion had shown, should be referred to Governments for comments, since they were directly concerned and had not yet been consulted on it.

34. The General Assembly should guard against an increasing tendency to repeat the same work over and over again. He therefore agreed with the Brazilian representative that the draft declaration should not be referred to scientific institutions, since such procedure would call forth a mass of documents, and delay the completion of the work.

35. He agreed with the representatives of Iran and India on the desirability of obtaining a definitive document. His own delegation would have been prepared to accept the draft declaration at the current session as the work of eminent jurists. If the document was to be referred elsewhere for comment, however, it should be referred to Governments only.

36. The Chilean-Colombian amendment to the seventh paragraph (A/C.6/L.56)[3] was unacceptable because it would distort the joint draft resolution (A/C.6/L.50) by reintroducing an idea from the original Argentine proposal (A/C.6/332), which had been withdrawn in favour of the compromise draft resolution (A/C.6/L.50). His delegation had agreed to the compromise, provided it remained a compromise and was not amended in such a way as to make it revert to the original proposals.

37. The United Kingdom was opposed, on the same grounds, to the Cuban amendment to the seventh paragraph (A/C.6/L.55).[4] Although the United Kingdom delegation had originally favoured the earlier United States text (A/C.6/330), which would be re-established by the Cuban amendment, it had decided to support the compromise joint draft resolution (A/C.6/L.50) and would maintain that position.

38. Turning to the Australian amendment (A/C.6/L.58), a natural and logical proposal in the circumstances, Mr. Fitzmaurice explained that he could not support it because it seemed premature. He had been impressed by the arguments of the representative of Canada, who had pointed out that the proposed Australian amendment covered questions on which a considered view could only be obtained when the problem of the substance of a document on rights and duties of States had become more mature. The question

[1] See the Summary Record of the 180th meeting, paragraph 1.
[2] See the Summary Record of the 179th meeting, paragraph 107.
[3] See the Summary Record of the 180th meeting, paragraph 1.
[4] *Ibid.*

whether the instrument on that topic was to take the form of a convention, of a declaration of standards of international conduct, or whether it should be referred to the International Law Commission for further study could not be decided until the content of the instrument was known. Without some indication of its contents, the United Kingdom would find it extremely difficult to answer the questions raised in the Australian amendment.

39. Moreover, the United Kingdom delegation considered the amendment inappropriate at that time, because it was restrictive. The American States had reached certain conclusions on rights and duties of States which had been formalized in two types of document. Some articles had been produced in a convention and a number of more extensive provisions had been incorporated in a declaration similar to the Universal Declaration of Human Rights. Although it might be possible to have a number of instruments on the topic under consideration, the Australian amendment would impose a rigid position on the Committee by asking it to select only one form of document. The United Kingdom delegation felt, however, that Governments should be able to give their views in the most elastic form possible. Mr. Fitzmaurice thought, therefore, that it might be wiser to defer consideration of the questions expressed in the Australian amendment until the contents of the instrument were known. It would be unwise to commit the General Assembly to a specific form of action at the present stage.

40. Furthermore, the Australian amendment prejudged certain issues which Mr. Fitzmaurice thought the authors of the joint draft resolution had intended to leave open. Like the other amendments, it altered the balance as well as the spirit of the compromise text.

41. In support of his contention, he recalled how the joint draft resolution had been prepared. The original United States proposal (A/C.6/330) had suggested that the General Assembly should "note" the draft declaration and commend it to the continuing attention of Governments and jurists. The Argentine proposal (A/C.6/332) had suggested that the draft declaration should be referred to Governments for comments and suggestions and then returned to the General Assembly or the International Law Commission, where the definitive instrument was to be prepared. In essence, the joint draft resolution combining those texts proposed that the General Assembly should note the draft declaration and commend it to the continuing attention of Governments and jurists and, further, that it should be referred to Governments for their comments and suggestions, after which the Secretary-General was to assemble those observations for the General Assembly to use at its discretion. The important thing was that the joint draft resolution left the General Assembly free to decide how it wanted to utilize the Governments' comments and suggestions on the draft declaration.

42. It thus became apparent that essentially the joint draft resolution provided that comments of Governments would be requested and that the question of the draft declaration would then revert to the General Assembly for decision on what further steps were to be taken. Accordingly, the Australian amendment prejudged the question in that it suggested specific alternatives, whereas the joint draft resolution left that matter entirely open. There was little point in achieving a compromise proposal if it were amended to such an extent that its essential nature was destroyed. He hoped that the Sixth Committee would oppose the Australian amendment at that time, without prejudice to the subsequent adoption of a proposal along those lines.

43. If the Australian amendment were adopted, the United Kingdom delegation would find itself in a very difficult position. It was prepared to vote for the joint draft resolution as a compromise, unless it were so altered by amendments that it no longer remained a compromise. In the latter case, the United Kingdom delegation might be constrained to abstain on the joint draft resolution as a whole.

44. Mr. GLASHEEN (Australia) accepted the Argentine representative's suggestion, made at the 180th meeting[1] that he present his amendment as a separate paragraph so that it could be considered apart from the Venezuelan amendment.

45. The Australian delegation supported the Venezuelan amendment and had rephrased its own amendment (A/C.6/L.58) so as to refer to Member States only. He presented to the Committee that substitute amendment, which called for the insertion in the joint draft resolution (A/C.6/L.50), between its seventh and eighth paragraphs, of a new paragraph reading as follows (A/C.6/L.64)[2]:

"*Requests* Member States to comment in addition on the following questions:

"1. Whether any further action should be taken by the General Assembly on the draft declaration;

"2. If so, the exact nature of the document to be aimed at and the future procedure to be adopted in relation to it."

The representative of Australia urged that a vote should be taken on the principle contained therein. The new text might satisfy some of the objections of the United Kingdom representative.

46. The Australian delegation had been undecided whether to rephrase its amendment in general terms or in specific phrases indicating the type of instrument to be drafted. Mr. Glasheen preferred the more specific text, which would assist Member Governments and the General Assembly to put the issues more clearly. He therefore had originally listed the alternatives before the Committee to enable it to reach some agreement. In drafting that list, the Australian representative had attempted to summarize the issues which had become apparent during the debate.

47. Since that amendment had been submitted, several alternative constructive suggestions had been made concerning various aspects of the Australian amendment. It would apparently be difficult to achieve a generally satisfactory formula.

[1] See the Summary Record of the 180th meeting, paragraph 27.

[2] As issued under the symbol A/C.6/L.64, the Australian amendment incorporates the drafting suggestion, made by the representative of the Netherlands and referred to in paragraphs 55 and 56 of the present Summary Record, to substitute "in addition" for the words "in particular" which had appeared as the sixth and seventh words in the original text of the amendment.

48. He had been impressed by the remarks of the United Kingdom and United States representatives to the effect that the list of points in the original Australian amendment had not been exhaustive. He had therefore decided it might be wise to combine all three points and had accordingly circulated the broader revised amendment (A/C.6/L.64). In the interest of obtaining wider support among members of the Committee, the Australian delegation wished to submit it in place of the original Australian amendment (A/C.6/L.58).

49. Mr. Glasheen pointed out that, in the replies received from Member Governments[1] concerning the Panamanian draft declaration on the rights and duties of States, none had commented on the nature of the instrument to be drafted. For that reason, it was important to request Governments to direct their attention to that point.

50. He had been impressed by the remarks of the representative of Greece, although he saw a certain contradiction in them. Mr. Spiropoulos had, on the one hand, agreed with the USSR representative that no hasty decision on the matter should be taken and, on the other hand, had said that the question could be settled without reference to Governments.[2]

51. The Australian delegation felt it would have been better if a decision had been reached during the current Assembly. It regretted that the original United States draft resolution (A/C.6/330) had not been maintained. The debate had shown, however, that the Sixth Committee was unable to give a final answer on the basic issues at that time; the majority favoured referring the draft declaration and all related documents to Governments. The matter would, however, come up again at a future session of the General Assembly and, unless the preliminary questions had been answered before then, much time would be lost.

52. The representatives of Canada and of the United Kingdom had called the Australian amendment premature; he himself, however, felt that the amendment was somewhat tardy. If the questions contained therein had been raised at the 1946 session of the General Assembly, the Committee would not have found itself in so difficult a position. The International Law Commission would have had a clear directive on the kind of instrument it was to prepare, which would have enabled it to produce a definitive document on which the Sixth Committee could have taken final action.

53. The United Kingdom representative had suggested that it was premature to answer those questions and decide on the form of the instrument until a decision had been taken on its contents. Mr. Glasheen could not follow that argument. It was tantamount to saying that the General Assembly should establish a body and allow it to do as it pleased for some time, and that only later should its terms of reference be defined in the light of the work it had accomplished. He felt that, on the contrary, the terms of reference should be established first. It would then be easy to decide what could be achieved, and how.

54. The draft declaration would probably be referred to Governments for their comments on its substance. If the views of Governments on the form of the instrument were clarified, that would in turn assist States to take a position on its contents. He realized that that statement indicated a retreat from his former position but he felt that a study of either question would be of constructive help in the solution of the other. He thought that, in reality, the United Kingdom argument militated in favour of the revised Australian amendment, which he commended to the favourable consideration of the Sixth Committee.

55. Mr. ROLING (Netherlands) feared that some misunderstanding might arise if the seventh paragraph of the joint draft resolution (A/C.6/L.50) were adopted in conjunction with the proposed Australian amendment for the insertion of a new paragraph following the present seventh paragraph. As the two paragraphs would read,[3] Governments might be inclined to limit their observations to the subject matter of the new paragraph only, whereas in reality the Sixth Committee hoped to receive comments on both the substance and the form of the document. For that reason, he thought it would be advisable to substitute the words "in addition" for the words "in particular" in the proposed Australian amendment. He wondered whether the representative of Australia could accept that suggestion.

56. Mr. GLASHEEN (Australia) was willing to accept that drafting amendment and was grateful to the representative of the Netherlands for his suggested improvement of the text.

57. Mr. PÉREZ PEROZO (Venezuela) wished to make two points concerning the Venezuelan amendment.[4] If the General Assembly resolved to refer the draft declaration back to the International Law Commission, so that that body might prepare a new text, the document should also be sent for consideration to institutions engaged in the study of international law. If, however, the General Assembly resolved to send it only to Governments for comment, so that it could thereupon take a final decision, it would not be advisable to refer the draft declaration to those institutions. The latter position was the more logical, in view of the other provisions of the joint draft resolution (A/C.6/L.50), which made no reference to institutions engaged in the study of international law.

58. The Venezuelan delegation maintained that the draft declaration was no longer in the technical and scientific stage and, therefore, did not need the comments of those institutions. It felt, moreover, that the terms of the joint draft resolution would make it impossible to refer the text back to the International Law Commission.

59. If the General Assembly decided on the first alternative, it would in any case be possible to have the opinion of institutions without a specific mention in the Assembly resolution, because, as the representative of Brazil had pointed out,[5] article 26 of the Statute of the International Law Commission empowered the Commission to "consult with any international or national or-

[1] See document A/CN.4/2, pages 162 to 214.
[2] See paragraphs 14 and 15.
[3] See the footnote to paragraph 45 above.
[4] See the Summary Record of the 180th meeting, paragraph 3.
[5] See the Summary Record of the 177th meeting, paragraph 13.

ganizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions".

60. Much had been said concerning respect for the autonomy of the International Law Commission; the Venezuelan delegation felt that the Commission should be allowed a certain freedom and that the instructions already in its Statute should not be duplicated. Moreover, the International Law Commission might be in a better position than anybody to decide which organizations it should consult.

61. The Venezuelan delegation supported the new Australian amendment (A/C.6/L.64). If it were adopted, the logical course would be to await the replies of Governments so that the General Assembly might know what final action to take on the draft declaration and whether or not it should be referred to organizations. It would be unnecessary to transmit the draft declaration to institutions for comment before the replies from Member Governments had been received and studied.

62. Mr. García Amador (Cuba) had proposed (A/C.6/L.55) the deletion of the seventh paragraph of the joint draft resolution (A/C.6/L.50) on the basis of his delegation's opinion that it was unnecessary to refer the draft declaration to Governments for comment. It shared the opinion, held by twelve members of the International Law Commission,[1] that the draft declaration was a special case, and that, therefore, the articles of the International Law Commission Statute did not apply.

63. The Sixth Committee, however, did not share that view. Contrary to the mandate contained in resolution 178 (II), it had taken no positive action on the draft declaration before it, which was satisfactory in principle.

64. In those circumstances, the attitude of the Cuban delegation was necessarily altered. Mr. García Amador therefore withdrew his amendment to the seventh paragraph (A/C.6/L.55).

65. He repeated that the Sixth Committee had, on the previous day, taken negative action on the draft declaration. He felt that it must seek a new way whereby the General Assembly could reach a positive, constructive decision in the near future on the question of an instrument on rights and duties of States. The Cuban delegation did not favour any particular one of the possible alternatives but it did hope for a rapid solution of the problem.

66. Since the General Assembly was not in session continuously, it might be advisable to utilize the interval between sessions to send the draft declaration to Governments for their comments; those comments could be transmitted directly to the General Assembly, and the draft would still remain a work of the General Assembly and not of the Member Governments. In that connection, he pointed out that the General Assembly, although it had no legislative character, was not merely the sum total of the Members of the United Nations but a separate and independent entity distinct from the Member States. The seventh paragraph of the joint draft resolution was in contradiction to the spirit of collectivity. He was not, however, opposed to the draft declaration being referred to Governments for comments and suggestions; nevertheless, his Government's views would be substantially the same as those he had expressed in the Sixth Committee.

67. He favoured the Venezuelan amendment to the seventh paragraph, although not on exclusively political grounds. He felt it was useless, for practical reasons, to request private institutions for opinions on the document's political aspects, which seemed to be the only questions still to be decided. The International Law Commission had performed all the necessary technical work.

68. The fundamental point of the Chilean-Colombian amendment (A/C.6/L.56)[2] was to refer the draft declaration back to the International Law Commission, which would then prepare a new text. The authors of that amendment had wished to carry out the procedural articles of the Commission's Statute. There were, however, other considerations to be borne in mind. The draft declaration was definitive and, in the opinion of the Cuban delegation, it was useless to instruct the International Law Commission to prepare a new document redrafting a document it had already prepared in final form.

69. The Cuban delegation was not yet in a position to decide on the Australian amendment. Although sympathetic to the idea, it would reserve its decision until the Sixth Committee had adopted the definitive text for the seventh paragraph of the joint draft resolution.

70. It would probably be advisable for Governments to give the General Assembly their comments regarding the nature of the instrument to be adopted, although the General Assembly had already agreed that a declaration should be prepared.

71. In view of the vague terms of the seventh and eighth paragraphs (A/C.6/L.50), which fixed no time-limit for the transmittal of comments, he feared that, if those paragraphs were adopted, a long process of consideration might be begun on a question which could be settled in a relatively short period of time. Moreover, if the matter were left in the hands of the Governments, the question might drag on unduly. He therefore asked that the joint draft declaration should be made more specific on that point.

72. The Cuban delegation would maintain its decision to raise the question of the status of the draft declaration on rights and duties of States in a plenary meeting of the General Assembly, but the delegation would agree that the draft declaration should be forwarded to Governments for comment.

73. The Cuban delegation would vote in favour of the procedural aspects of the proposed joint draft resolution without prejudice to its right to request the General Assembly to consider taking more positive action on the document.

74. The Cuban delegation formally withdrew its amendment (A/C.6/L.55) to delete the seventh paragraph of the joint draft resolution (A/C.6/L.50).

75. Mr. Ziauddin (Pakistan) welcomed the new Australian amendment (A/C.6/L.64); it

[1] See document A/925, paragraph 53.

[2] See the Summary Record of the 180th meeting, paragraph 1.

was even better than the old (A/C.6/L.58) and he would vote for it.

76. He agreed with the previous speakers who had objected to sending the draft declaration for comments to institutions engaged in the study of international law, the more so if no time-limit for the reception of such comments were established; for progress might thus be delayed indefinitely. He would therefore vote in favour of the deletion of the relevant phrase in the seventh paragraph.

77. Mr. KORETSKY (Union of Soviet Socialist Republics) observed that the new Australian amendment simplified matters in that it was concrete and therefore not conducive to long theoretical discusions; but he questioned the need for that amendment, even in its latest form. The amendment asked what, in the opinion of Member States, should be the exact nature of the document to be aimed at. That question had been answered long ago. Ever since its earliest decision on the subject (resolution 38 (I) adopted on 12 December 1946), the General Assembly had spoken of a draft declaration. It had referred the Panamanian draft declaration on the rights and duties of States to the Committee on the Progressive Development of International Law and its Codification. The International Law Commission had been entrusted with the task of preparing a draft declaration. At no time had any representative questioned that decision of the General Assembly. He could see no reason to ask Governments whether a document which from the beginning had been intended as a declaration should suddenly be given some other form. The Governments had answered that question when they had voted for the relevant resolutions of the General Assembly; they should not be asked the same question again.

78. It seemed only logical to wait until a definitive text of a declaration on rights and duties of States had been produced, and then to consider whether it should be implemented by means of a convention on the same subject. That was the procedure which had been followed with respect to the subject of human rights. Only after the draft declaration on human rights had been proclaimed as the Universal Declaration of Human Rights had work been started on a convention.

79. The first question asked in the Australian amendment, which was whether any further action should be taken by the General Assembly on the draft declaration, was equally superfluous, as the matter had already been decided. He therefore hoped that the Australian representative would not press his amendment.

80. He wished to dispel two legends which had been created in the Committee. The first was that article 23, paragraph 2, of the International Law Commission's Statute did not apply to the draft declaration on rights and duties of States because that was a special case.[1] That view had been advanced by the majority of the Commission to justify their sin of dealing lightly with its own Statute. They had argued that the draft declaration represented a special case because it was impossible to determine whether it was a work of codification or of progressive development of international law. Mr. Koretsky pointed out that a clear separation of the two was impossible, and that article 15 of the Commission's Statute plainly pointed out that that distinction, as established in the Statute, was used "for convenience". It was clear that the draft declaration must both lay down established principles of international law and contribute to its progressive development. Moreover, article 23, paragraph 1, laid down a series of possible recommendations by the Commission to the General Assembly so designed as to enable the General Assembly to take such action as it thought desirable. Article 23 was therefore fully applicable to the case in hand.

81. The only possible conclusion was that the General Assembly should make it clear to the Commission that, in future, it should obey its Statute rather than seek to circumvent it.

82. The second legend was that there was no need to ask Governments for comments on the draft declaration, since all members of the Committee represented their Governments and could therefore make any comments necessary. He pointed out that the International Law Commission's report (A/925), which had been published in June 1949, could not have reached the Governments of the more distant countries until much later. Those Governments had been engaged in studying a number of other items for the General Assembly and could certainly not have had time to consider thoroughly the very important question of rights and duties of States and to give their representatives appropriate instructions. The subject required mature thought and, consequently, time. The draft declaration, which was not a definitive document, must therefore be sent to Governments for their comments and then be returned to the International Law Commission for revision.

83. He remarked that the draft declaration should also be sent for comments to institutions engaged in the study of international law. To do otherwise would be to ignore and disdain the views of those very jurists to whose consideration the draft declaration was commended in the preceding paragraph of the joint draft resolution (A/C.6/L.50). To do so would be to disregard public opinion. The General Assembly, which was not a law-making body, could not afford to do that.

84. In conclusion, the representative of the USSR urged the Committee to ask Governments to comment only on the substance of the draft declaration and not to prejudge the action to be taken by the General Assembly at subsequent sessions.

85. The CHAIRMAN announced that the debate was closed, and that the Committee should take action on the seventh paragraph of the joint draft resolution and the various amendments to it.

86. He stated that the joint Chilean and Colombian amendment (A/C.6/L.56), which directly affected the future fate of the draft declaration; the Venezuelan amendment to delete the phrase "and institutions engaged in the study of international law"; the Lebanese amendment to add the words "at the latest by 1 July 1950"; and the Australian amendment (A/C.6/L.64), which represented a new paragraph to be inserted after the seventh paragraph, would be put to the vote in that order.

The joint amendment of Chile and Colombia to the seventh paragraph was rejected by 26 votes to 12, with 8 abstentions.

[1] See document A/925, paragraph 53.

The Venezuelan amendment was adopted by 20 votes to 16, with 14 abstentions.

87. Mr. FITZMAURICE (United Kingdom), speaking on a point of order, asked whether the Lebanese amendment would make it compulsory upon Governments to furnish comments, and whether comments sent in after 1 July 1950 would be accepted.

88. The United Kingdom Government had sent in a full commentary on the Panamanian draft and, since most of the articles of the draft declaration prepared by the Commission had been contained in the Panamanian draft, he did not know whether his Government would wish to send additional comments. If it did so desire, however, he was not at all sure that it would be able to do so within the time-limit laid down in the Lebanese amendment.

89. Mr. MATTAR (Lebanon) replied that no request contained in a resolution of the General Assembly was obligatory upon Member States. In practice, however, it was desirable to set a time-limit; that had, in fact, been done in resolution 38 (I), when the Panamanian draft had been submitted to Member States for comments and observations.

90. The comments and suggestions sent in by Governments before 1 July 1950 might well be discussed by the General Assembly at its following session. He hoped that the majority of Governments would transmit their comments before that date.

91. Mr. SPIROPOULOS (Greece) agreed that, while it was hoped that Governments would comply with the request, there could be no legal obligation upon them to do so. He pointed out that, if the time-limit suggested by the Lebanese representative were adopted, the General Assembly might be able to deal with the matter at its following session, whereas if there were no time-limit there might be indefinite postponement on the ground that more comments might be forthcoming.

92. Mr. GARCÍA AMADOR (Cuba) also agreed that Governments would not be obliged to send comments if they did not wish to do so. His delegation would vote in favour of the Lebanese amendment, in order to avoid lengthy delays on the ground that comments had been received from only a few Governments. Once a time-limit was established, the General Assembly could take constructive and positive action at its following session on the subject of rights and duties of States, even if very few comments had been received. He therefore urged the Committee to adopt the Lebanese amendment.

The Lebanese amendment was adopted by 34 votes to 5, with 10 abstentions.

93. Mr. BARTOS (Yugoslavia) said that he had voted in favour of the Lebanese amendment to reaffirm his conviction that a declaration on rights and duties of States was needed and should be completed in the near future, and also because numerous precedents existed in other resolutions for setting a time-limit for comments by Governments.

94. Mr. ROLING (Netherlands) explained that he had voted against the Lebanese amendment because he too considered the draft declaration important. He feared, however, that Governments would be unable to send comments within the time-limit adopted and that the Committee's objective would therefore be defeated.

95. The CHAIRMAN put to the vote the seventh paragraph of the joint draft resolution (A/C.6/L.50), as amended.

The seventh paragraph, as amended, was adopted by 38 votes to 1, with 11 abstentions.

96. Mr. ORIBE (Uruguay) said that he had voted for the seventh paragraph as amended, on the understanding that the time-limit indicated the Committee's desire that work on the draft declaration on rights and duties of States should proceed as expeditiously as possible, without, however, prejudging the date of its termination.

97. Mr. FITZMAURICE (United Kingdom) had been obliged to abstain from voting for the paragraph as amended, for the reasons given by the Netherlands representative in connexion with the vote on the Lebanese amendment. He recalled that he had received no answer to his question with respect to the fate of comments transmitted after 1 July 1950.

98. Mr. SPIROPOULOS (Greece) replied that the practice of the Secretary-General had been to accept comments sent in late. Furthermore, any delegation could submit amendments and proposals when the draft declaration was considered by the General Assembly.

99. He, too, had abstained from voting on the seventh paragraph as amended, for the reasons given by the representatives of the Netherlands and the United Kingdom.

100. Mr. SHANAHAN (New Zealand) stated that he abstained for the same reasons.

101. Mr. GARCÍA AMADOR (Cuba) had been able to vote without any reservations for the seventh paragraph as amended, on the understanding that, once the time-limit had expired, the General Assembly would be free to include the question of rights and duties of States in its agenda.

102. Mr. CHAUMONT (France) had abstained because the seventh paragraph, as amended, was in contradiction with the sixth paragraph, which recommended the draft declaration to the "continuing" consideration of Member States. That consideration was, it appeared, to end on 1 July 1950.

103. The CHAIRMAN put to the vote the Australian amendment (A/C.6/L.64) which if adopted would constitute a new eighth paragraph of the joint draft resolution (A/C.6/L.50).

The Australian amendment was adopted by 34 votes to 11, with 5 abstentions.

104. Mr. SOTO (Chile) had voted against the Australian amendment because the General Assembly had already determined the nature of the document; he did not think Governments could advance another view unless they knew that document's exact contents.

105. Mr. AMADO (Brazil) had abstained from voting on the Lebanese amendment for the reasons given by other representatives. He had abstained from voting on the Australian amendment chiefly because he failed to see how the General Assembly could ask Governments what future procedure should be adopted in relation to the draft declaration, whatever its substance might be.

The meeting rose at 6.10 p.m.