HUNDRED AND NINETY-NINTH MEETING

Held at Lake Success, New York, on Monday, 21 November 1949, at 3 p.m.

Chairman: Mr. LACHS (Poland).

Draft rules for the calling of international conferences: report of the Secretary-General (A/943) (*concluded*)

DRAFT RULE 2 (*concluded*)[1]

1. The CHAIRMAN reopened the discussion on rule 2 of the draft rules (A/943). He recalled that discussion of that rule had been postponed until the relevant amendments had been distributed in writing.

2. Mr. MAÚRTUA (Peru) recalled that during an earlier statement on draft rule 2, he had pointed out that the Spanish text of the rule contained the word *"atribución"* and that it should be replaced by *"mandato"* or *"encargo"*. That opinion was supported by the fact that the representative of Argentina had interpreted the word as meaning the specific task assigned to the conference.[2] Unfortunately, that amendment did not appear in document A/C.6/L.80, which contained another amendment proposed by Peru. The latter called for adding to draft rule 2 a sentence couched in the following terms (A/C.6/L.80): "Any representative may propose the inclusion of supplementary items in that agenda."

3. He also recalled that, by the terms of draft rule 3 as approved, when the Economic and Social Council called a conference, the Secretary-General was to send out the agenda of the conference at the same time as the invitations. It had still not been decided whether the agenda was to be provisional or definitive. He thought it should be a provisional agenda and that was why he had submitted the above amendment to that effect.

4. Mr. STABELL (Norway) recalled that, during the discussion on draft rule 11, he had asked that some of the rules of procedure should be so drafted as to bind any conferences called under them. The Norwegian delegation therefore proposed that the word "approve" in draft rule 2 should be replaced by "prescribe". The Council prescribed the conference's terms of reference and its decision should be binding upon the States invited to participate. That was the purpose of the Norwegian amendment.

5. He agreed with the Peruvian representative that the agenda established by the Council should be provisional. He thought that the words "unless it decides otherwise" should be deleted; it was considered natural that the Economic and Social Council should send the agenda of the conference at the same time as the invitations.

6. Mr. LOUTFI (Egypt) recalled that he had proposed[3] the insertion of the word "provisional" before "agenda". That amendment had already been accepted in respect of draft rule 6; and he therefore thought that it would be better to adopt it for draft rule 2 also rather than to approve the additional sentence suggested in the Peruvian amendment (A/C.6/L.80).

7. Mr. MATTAR (Lebanon) reiterated his support of the Egyptian amendment.

8. Mr. MAÚRTUA (Peru) explained that the adoption of his amendment (A/C.6/L.74) would involve the deletion from draft rule 2 of the words "unless it decides otherwise". He also recalled that it had not been made clear whether a provisional or a definitive agenda was involved in the text approved for draft rule 3, because it had been understood that the point would be settled later.

9. In answer to a question from the Chilean representative, he said that he was ready to withdraw his amendment, if the Egyptian amendment calling for the insertion of the word "provisional" before "agenda" was adopted.

10. Mr. FITZMAURICE (United Kingdom) said that it was normal procedure to envisage the insertion of new items in the provisional agenda of the General Assembly because the Assembly dealt with such varied questions. On the other hand, he wondered whether the conferences envisaged in the draft rules before the Committee — conferences called by the Economic and Social Council for a specific purpose — could be allowed such latitude. The Council would send out the agenda

[1] See the Summary Record of the 191st meeting, paragraphs 1 to 26.

[2] *Ibid.*, paragraphs 11 and 12.

[3] *Ibid.*, paragraph 5.

at the same time as the invitations to a conference; and there would seem to be no point in permitting any country that wished to do so to propose the insertion of a new item which might be only slightly connected with the main question for which conference had been convened, or which delegations might not be ready to discuss. He did not wish to be difficult, but he thought that, in the case in point, the Economic and Social Council might be allowed to prescribe specifically the conference's terms of reference and agenda.

11. Mr. MAKTOS (United States of America) agreed with the United Kingdom representative. He thought that a conference would save a great deal of time and effort if the agenda established for it by the Council was definitive. He would therefore vote against the adoption of the word "provisional" and against the Peruvian amendment.

12. Mr. FELLER (Secretariat) drew the attention of the members of the Committee to the fact that, generally speaking, the Economic and Social Council had not found it advisable actually to draw up the agenda of the conferences it had called. For the forthcoming Technical Assistance Conference, for example, the Council only drew up very general terms of reference. Should the Lebanese amendment be adopted, the Council would be obliged in every case to prepare the agenda of every conference — or the provisional agenda, if the Committee so decided. He thought that it would be better to allow the Council some latitude in the matter.

13. Mr. KORETSKY (Union of Soviet Socialist Republics) recalled that the Committee had approved a text for draft rule 6, which provided that the Economic and Social Council should prepare the rules of procedure for conferences. The conferences concerned were conferences of States, and not conferences of experts or of organizations. It would be difficult to make an analogous provision that the Council should prepare definitive agendas for conferences because sovereign States could not be obliged to carry out the Economic and Social Council's orders. In preparing the draft rules (A/943), the Secretary-General had had in mind not only conferences of States, but also conferences of experts. As the Committee had decided that the rules of procedure would only apply to conferences of States, it was for the latter to establish the definitive agenda and rules of procedure for the conferences.

14. Mr. FERRER VIEYRA (Argentina) pointed out to Mr. Feller that, even if the Lebanese amendment were rejected, the second paragraph of draft rule 3 as approved still provided that the Council would send copies of the agenda of a conference at the same time as the invitations. It therefore seemed that the Economic and Social Council was already charged with preparing the agenda and that the only question that remained unsettled was whether the agenda should be provisional or definitive.

15. Mr. MATTAR (Lebanon) agreed with the Argentine representative that the Committee had already decided that the agenda should be sent out at the same time as the invitations. The purpose of the Lebanese amendment was therefore to oblige the Council to prepare a provisional agenda, so that the invited Governments might be informed of the nature of the questions to be discussed.

16. Mr. SPIROPOULOS (Greece) considered that the text of the rule had no juridical value. Article 62, paragraph 4, of the Charter provided that the Economic and Social Council "may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence". Thus, an agenda drawn up by the Council would merely contain directives, but would have no juridical value and would not be binding on the States invited to a conference. They might either adopt the agenda proposed by the Council, or modify it. They might even decide to invite other States, or even Non-Self-Governing Territories or corporate bodies. Once the conference had been convened, its members would be quite free to act as they wished; the role of the Economic and Social Council was limited to calling the conference.

17. The CHAIRMAN put to the vote the Norwegian amendment to substitute the word "prescribe" for the word "approve".

The Norwegian amendment was adopted by 26 votes to 4, with 2 abstentions.

18. Mr. FERRER VIEYRA (Argentina), Rapporteur, pointed out that it was unnecessary to put to the vote the Peruvian amendment to replace the word *atribución* by the word *mandato* in the Spanish text of draft rule 2.

19. The CHAIRMAN agreed with the Rapporteur. He put to the vote the Egyptian amendment to insert the word "provisional" before the word "agenda".

The Egyptian amendment was adopted by 32 votes to 4, with 1 abstention.

20. The CHAIRMAN put to the vote the Lebanese amendment (A/C.6/L.74) to delete the words "unless it decides otherwise".

The Lebanese amendment was adopted by 33 votes to none, with 2 abstentions.

21. Mr. MAÚRTUA (Peru) withdrew his amendment (A/C.6/L.80).

22. Mr. DUYNSTEE (Netherlands) suggested that the words "international conference" should be replaced by the words "conference of States".

23. Mr. STABELL (Norway) proposed that the English text of rule 2 should be drafted as follows: ". . . it shall prescribe the terms of reference and prepare the provisional agenda".

24. Mr. SOTO (Chile) considered that it was unnecessary to say "conference of States", since it was specified in draft rule 1 that the rules of procedure as a whole applied to that kind of conference only.

25. Mr. KORETSKY (Union of Soviet Socialist Republics) also considered that it was unnecessary to repeat each time that "conferences of States" were involved. It was essential to retain the expression used in article 62, paragraph 4, of the Charter.

26. The CHAIRMAN put to the vote the following text for rule 2 of the draft rules (A/943): "When the Council has decided to call an international conference, it shall prescribe the terms of reference and prepare the provisional agenda of the conference".

The text of draft rule 2, thus amended, was approved by 39 votes to 1.

PROPOSED PREAMBLE AND ADDITION TO TEXT

27. The CHAIRMAN opened the discussion on the text of a preamble proposed for the draft rules by Israel. The Israeli delegation also proposed a textual addition to follow the draft rules. The Israeli proposal follows (A/C.6/L.73):

Part I. Proposed text for a preamble to the rules for the calling of international conferences

"*Considering* that the supplementary rule of the rules of procedure (A/520) on the calling of international conferences by the Economic and Social Council is to be replaced by definitive rules,

"*Recalling* its resolution 173 (II) of 17 November 1947 inviting the Secretary-General to prepare, in consultation with the Economic and Social Council, draft rules for the calling of international conferences,

"*Having considered* the draft rules for the calling of international conferences, adopted by the Economic and Social Council on 2 March 1949 (resolution 220 (VIII)),

"*A. Approves* the following rules for the calling of international conferences:"

Part II. Addition to follow the text of the rules

"*B. Resolves* to abrogate the "Supplementary rule of procedure on the calling of international conferences by the Economic and Social Council" of the rules of procedure of the General Assembly (A/520)."

28. Mr. ROBINSON (Israel) recalled that resolutions of the organs of the United Nations usually consisted of two parts, a preamble and an operative part. That was a well-established custom and the usual practice. The purpose of inserting a preamble at the beginning of the draft rules (A/943) for the calling of international conferences was to fit those rules into the whole group of measures taken by the United Nations to carry out the task assigned to the General Assembly under Article 62, paragraph 4, of the Charter.

29. With regard to part II of the Israeli proposal, Mr. Robinson considered that it would be premature to delete the supplementary rule mentioned therein. That rule did not apply exclusively to conferences of States, whereas the rules adopted by the Committee related only to such conferences. It was therefore essential to maintain the Council's authority, under that supplementary rule, to call non-governmental conferences as well as conferences of States.

30. In view of those considerations, the representative of Israel withdrew part II of his proposal.

31. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that a preamble was useful when it indicated the guiding principles of a set of rules, but was without value if it merely served to record the existence of certain documents. He thought that the question was very simple: Article 62, paragraph 4, of the Charter stated that it was the Organization, or, in other words, the General Assembly, which prescribed the rules for the calling of international conferences. The General Assembly had not invited the Economic and Social Council to adopt such rules, but had confined itself to inviting the Secretary-General to prepare such rules in consultation with the Council. The Economic and Social Council had therefore acted incorrectly in adopting draft rules, and it would be better not to mention that fact.

32. Finally, he considered that the existence of a preamble to the draft rules under consideration would not strengthen them in any way. It might, on the contrary, give rise to a misunderstanding concerning the relations between the General Assembly and the Economic and Social Council. Mr. Koretsky would not propose another wording, and would merely vote against the text proposed by Israel, which he considered superfluous.

33. Mr. MAÚRTUA (Peru) thought that part II of the Israeli proposal was not redundant. It was desirable, in his opinion, to specify that the supplementary rule of procedure had been abrogated.

34. Mr. MAKTOS (United States of America) supported the Israeli proposal. Nevertheless, he proposed the addition of the words "of States" after the words "international conferences" in the last paragraph of the suggested preamble and also submitted a minor drafting amendment.

35. He did not consider that there were any inaccuracies in the preamble proposed by Israel.

36. Mr. ROBINSON (Israel) accepted the amendments proposed by the United States representative. He would prefer not to press part II of his proposal, since its adoption would prevent the Secretary-General from carrying out the General Assembly's decision to call a Technical Assistance Conference.

37. Mr. RENOUF (Australia) recalled that, in fact, the General Assembly had instructed the Secretary-General, not the Economic and Social Council, to draft the rules of procedure. He therefore proposed that the third paragraph of the Israeli draft preamble should be altered to read as follows:

"*Having considered* the draft rules for the calling of international conferences, prepared by the Secretary-General and adopted by the Economic and Social Council (resolution 220 (VIII))".

38. Mr. BARTOS (Yugoslavia) proposed that it should be specified in part II of the Israeli proposal that the provisions of the supplementary article should only be abrogated with respect to an international conference of States, it being understood that they would remain in force for other conferences.

39. Mr. ROBINSON (Israel) acknowledged that the constitutional argument raised by the representative of the USSR was justified. Nevertheless, he pointed out that it was impossible to ignore the fact that the Council had approved certain draft rules.

40. In reply to the representative of Yugoslavia, he pointed out that the problem was in fact already decided, since the new rules would govern the calling only of conferences of States.

41. Mr. ORIBE (Uruguay) considered that the problem was of secondary importance. He proposed that the Committee should adopt the Israeli draft preamble without further discussion.

42. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that part II of the Israeli proposal was unimportant since the Council's competence to call conferences was already laid down in the rules of procedure of the General Assembly.

43. Mr. FELLER (Secretariat) stated that the Australian representative had been correct in stating that the Economic and Social Council had not been called upon to adopt draft rules of procedure. Nevertheless, the representative of Israel had also been right in pointing out that the Council had adopted such a draft. The Council had probably not paid particular attention to the terms it had used; and Mr. Feller did not think that it would cause any difficulty if the Australian amendment were incorporated in the Israeli draft preamble.

44. Finally, the representative of Israel had been right with respect to the withdrawal of his proposal to abrogate the supplementary rule. If that rule were to be abrogated, the Secretary-General would be in a difficult position, since the General Assembly had just adopted a resolution instructing him to call a Technical Assistance Conference; and, in accordance with the instructions of the Economic and Social Council, that conference had to be convoked under the supplementary rule of the rules of procedure of the General Assembly. He therefore asked the Committee to retain the only method available to the Secretary-General for calling that conference, whatever else it might decide.

45. Mr. BARTOS (Yugoslavia) asked the Israeli representative to make his proposal consistent. It should specify whether or not the abrogation of the supplementary rule only concerned international conferences of States, and should take into consideration the Sixth Committee's wish to leave the Economic and Social Council free to convene conferences of experts and non-governmental organizations.

46. Mr. ROBINSON (Israel) agreed with the Yugoslav representative, and withdrew the first paragraph of his draft preamble. He also accepted the amendment proposed by Australia.

47. The CHAIRMAN put to the vote the text of the draft preamble (A/C.6/L.73) proposed by Israel, amended as follows:

"The General Assembly,

"Recalling its resolution 173 (II) of 17 November 1947 inviting the Secretary-General to prepare, in consultation with the Economic and Social Council, draft rules for the calling of international conferences,

"Having considered the draft rules for the calling of international conferences, prepared by the Secretary-General and adopted by the Economic and Social Council (resolution 220 (VIII)),

"Approves the following rules for the calling of international conferences of States."

The text of the draft preamble was approved by 27 votes to none, with 10 abstentions.

APPROVAL OF DRAFT RULES

48. Mr. FITZMAURICE (United Kingdom) thought that there was a discrepancy between draft rules 1 and 3 as approved. In rule 1 and in the first two paragraphs of rule 3, it seemed that the States concerned might either be Members or non-members of the Organization, whereas paragraph 3 of rule 3 only referred to non-member States.

49. Mr. FERRER VIEYRA (Argentina), Rapporteur, stated that only Member States were referred to in paragraph 1 of draft rule 3. The same applied to paragraph 2. Paragraph 3 provided for the possibility of inviting non-member States. Thus, there would be no difficulty if paragraph 1 were deemed to concern only Member States.

50. The CHAIRMAN said that he and the Rapporteur would collate all the remarks of members of the Committee concerning the drafting of the rules of procedure and would attend to the final wording of the text.

The whole set of draft rules (A/943) for the calling of international conferences, as amended, were approved by 32 votes to none, with 7 abstentions.

51. Mr. WENDELEN (Belgium) said that he had abstained from voting on the rules as a whole because he considered that the Committee had not specifically approved the draft (A/943) prepared by the Council. The Committee had approved the fundamental principles and drawn up the rules on the basis of those principles.

52. He did not consider it permissible to impose those rules of procedure on the Council; the Committee did not know whether the text that it had approved would fully meet the requirements of the Economic and Social Council.

ARGENTINE DRAFT RESOLUTION

53. The CHAIRMAN opened the debate on the draft resolution submitted by the delegation of Argentina (A/C.6/L.77).[1]

54. Mr. FERRER VIEYRA (Argentina) recalled that, in the debate on the scope of the draft rules, the Committee had taken no final decision on the interpretation of Article 62, paragraph 4, of the Charter. It had decided to confine the application of the draft rules under consideration (A/943) to conferences of States. The Argentine delegation considered, however, that in some cases it would be useful both for the Organization and for the Economic and Social Council to call conferences of a different kind. For that reason, the delegation had submitted the draft resolution contained in document A/C.6/L.77.

55. Mr. Ferrer Vieyra pointed out certain inaccuracies in the English translation of his text. He explained that that text had been drafted on the basis of a similar resolution adopted by the General Assembly the preceding year.

56. Mr. SOTO (Chile) stated that his delegation would support the Argentine draft. He would like to have a few explanations, however. The proposed text referred not only to conferences of non-governmental organizations but also to conferences of experts; but it was necessary to specify that the conferences concerned would be international and not within a single country.

57. Mr. FERRER VIEYRA (Argentina) thought that it would be difficult to use the expression "international non-governmental conferences", especially if experts invited not on grounds of nationality, but for their technical qualifications, took part in those conferences. Non-governmental organizations might be international, but it was preferable not to stress the factor of nationality. He therefore preferred to retain the expression "non-governmental conferences".

58. Mr. KORETSKY (Union of Soviet Socialist Republics) considered that the fate of the Argentine proposal depended upon the reply to the following question of principle: What should be

[1] See the Summary Record of the 189th meeting, paragraph 47.

the composition of an international conference? That question had been discussed at length in the Committee. The Sixth Committee had just adopted with difficulty rules of procedure for calling international conferences of States. At that stage, it would be better to allow time for reflection and see what those inter-State conferences would be in practice. Representatives of States or non-governmental organizations or experts met in international conferences, but no conference so far had consisted exclusively of experts or of representatives of non-governmental organizations. The Secretary-General had considered that aspect of the question in preparing his draft. With respect to meetings consisting exclusively of experts, those meetings would constitute, not conferences, but commissions, which were provided for by the rules in force. If, on the other hand, conferences of non-governmental organizations were concerned, the complex problem of the relations between the United Nations and non-governmental organizations would arise. The Organization could certainly sign agreements to co-ordinate the activities of non-governmental organizations; but the Argentine proposal (A/C.6/L.77) would go further by proposing that the Organization should convene conferences of representatives of those non-governmental organizations. That would be somewhat artificial.

59. While admitting that conferences of non-governmental organizations might be useful, Mr. Koretsky felt obliged to point out that sufficient experience had not yet been acquired to consider calling such conferences now.

60. As the question of "conferences of experts" was already solved by the existence of commissions, the solution of the question of conferences of non-governmental organizations was premature. It was in no way urgent, and should first of all be studied from the point of view of principle. He therefore asked the Argentine representative to withdraw his draft resolution.

61. Mr. STABELL (Norway) observed that the proposed text did not indicate with sufficient clarity who should call the conferences. If the Economic and Social Council was to do so, the fact should perhaps be mentioned; otherwise it might be understood that other organs of the General Assembly could do so.

62. Mr. FERRER VIEYRA (Argentina) saw no need to alter his text on that point.

63. Replying to the USSR representative, he said that it was clear from General Assembly resolution 173 (II) and from the draft rules which had just been approved that the Sixth Committee had indirectly given an interpretation of Article 62, paragraph 4, of the Charter. During the relevant discussions, if that Article had been given a restrictive interpretation by some members of the Committee, a very liberal interpretation had been given, on the other hand, by other Committee members. Indeed, it had been the opinion of the latter that the Secretary-General's terms of reference referred to a draft concerning not only conferences of States but also conferences of non-governmental organizations; that, moreover, had been the wish of the General Assembly. Some delegations, which had been particularly anxious to have those conferences called, had agreed for practical reasons not to prolong the debate on the interpretation of Article 62, paragraph 4. The problem, however, had not thereby been solved. The purpose of the Argentine proposal was not to sanction the calling of such conferences immediately, but to give the Economic and Social Council the power to call them, if it thought such conferences would be useful, and thus to discharge its obligations more fully.

64. Mr. WENDELEN (Belgium) could not support the Argentine proposal. In his opinion, the initiative in that field belonged to the Economic and Social Council. The Council was well acquainted with the problem and capable of deciding whether rules should be worked out, and to what extent it could be done. The Council had probably hesitated in view of General Assembly resolution 173 (II), on the one hand, and Article 62, paragraph 4, of the Charter on the other. It was obvious, however, that both those texts related to conferences of States. Whatever the case might be, he felt that the initiative in the matter should be left to the Economic and Social Council itself.

65. The Belgian delegation feared that the Argentine proposal might result in needlessly encumbering the agenda of the next session of the General Assembly with a complex question which would take up many meetings.

66. Mr. PÉREZ PEROZO (Venezuela) supported the Argentine proposal, because he believed that the Council should have rules for the calling of conferences of representatives of non-governmental organizations and experts. The Council would thus obviously have the necessary means of solving many problems with which it was confronted. Furthermore, there was a precedent for such conferences, since the Economic and Social Council had already requested the Secretary-General to call a technical conference of experts to examine the problem of housing conditions in tropical and damp regions. The Fifth Committee had agreed to the expenditure which that conference would entail.

67. Mr. SOTO (Chile) remarked that the Argentine representative had not given a satisfactory reply to his question. He believed that the draft resolution under discussion could only be based on Article 62, paragraph 4, of the Charter, which dealt specifically with "international conferences". The same Article was also mentioned in the supplementary rule of procedure of the General Assembly, which stipulated that the Economic and Social Council might "call international conferences in conformity with the spirit of Article 62". The Council had worked on that basis and had called conferences of experts similar to that just mentioned. It could not be asked to call conferences which were not international because it was not empowered to do so and because conferences of experts or non-governmental organizations of a single country were within the competence of that country's Government.

68. On the other hand, he believed that the USSR representative's view that Article 62, paragraph 4, of the Charter concerned only conferences of States was debatable. If that were the case, the Council would have been contravening the Charter, and the General Assembly itself would have gone counter to the spirit of the Charter by adopting the supplementary rule of its rules of procedure.

69. Mr. Soto therefore concluded that the Argentine proposal could only relate to international conferences.

70. Mr. CHAUMONT (France) said that his delegation would support the Argentine proposal. The situation, however, should be clarified from the juridical point of view. Both the Secretary-General's and the Council's terms of reference under resolution 173 (II) should be interpreted within the meaning of Article 62, paragraph 4, of the Charter, in other words, as relating to conferences of States. The Argentine proposal, however, dealt with a quite different matter, which should be related not to Article 62, but to Article 71 of the Charter. That Article provided that "the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence". Such consultation could be carried out by various means; including the calling of conferences of non-governmental organizations.

71. Moreover, the French delegation shared the fears of the USSR and Belgian representatives that it might be premature to expect the question to be settled at the next session of the General Assembly.

72. He therefore suggested that the Argentine representative should alter the text of his draft resolution as follows: first, by inserting the words "within the framework of the provisions of Article 71 of the Charter" after the words "non-governmental conferences"; and, secondly, by substituting the expression "at one of its forthcoming sessions" for the words "during the fifth session".

73. Mr. KORETSKY (Union of Soviet Socialist Republics) supported the suggestions of the French representative. The latter rightly distinguished between two concepts which were given separate expression in the Charter, one in Article 62 and the other in Article 71.

74. It would be wise not to request the Secretary-General to study immediately the calling of the conferences under discussion; it would be better to instruct the Council to study the question from the point of view of principle first. The time to request the Secretary-General to draft rules was when that study had been completed.

75. With regard to the calling of conferences of non-governmental organizations, the representative of Argentina should be satisfied with raising the question of principle. Experts were already included under the subsidiary bodies which might be established to consider specific questions as the need arose.

76. Mr. FERRER VIEYRA (Argentina) pointed out that the Council itself had not interpreted resolution 173 (II) in the sense indicated by the representative of Belgium. He added that the Secretariat document (E/836) had provided for conferences of non-governmental organizations and of experts. The Council had already considered the usefulness of such conferences and had decided to bracket together conferences of States and conferences of non-governmental organizations.

77. Mr. Ferrer Vieyra explained that his draft resolution had intentionally omitted all reference to any Article. He might have invoked Article 62 which, in his opinion, should apply to all conferences; Article 71 which would apply to non-governmental organizations; or Article 68 which would apply to experts. But, in order to give his draft as broad a legal base as possible, he had drafted his text in general terms without referring to any Article of the Charter.

78. He regretted that he could not accept the suggestions of the representative of France. To mention Article 71 in his draft resolution would, in fact, be equivalent to interpreting the Charter implicitly, giving it an interpretation on which the Committee was not unanimously agreed. He could not accept the USSR proposal either; it would weaken the scope of the draft resolution and would not represent the feelings of the majority.

79. The Argentine delegation maintained its proposal in its original form since it was based on the resolution which the Assembly had adopted in 1948 and in which no distinction was drawn between conferences of States and conferences of non-governmental organizations. Hitherto, the Committee had considered conferences of States alone. It should now consider conferences of non-governmental organizations. Such conferences were already being held. Logic and common sense required that the Secretary-General and the Council should have the rules necessary for calling them.

80. Mr. GARCÍA AMADOR (Cuba) stated that his delegation supported the Argentine representative's proposal and approved the latter's decision not to refer in his draft to any Article of the Charter.

81. Mr. ORIBE (Uruguay) also supported the Argentine proposal although he had taken into account the comments of the representatives of France and the USSR. He considered that the draft resolution was drawn up in general terms since it invited the Secretary-General to draft rules only after consulting the Economic and Social Council. If the Council were consulted first, after it had considered the question, it could give an opinion on the advisability of having rules, the legal basis on which they should be placed and on their content. The responsibility for pronouncing on the urgency of the question should, however, be left to the Council. He therefore suggested to the representative of Argentina that the phrase "during the fifth session" should be deleted from the draft resolution (A/C.6/L.77).

82. Mr. MAKTOS (United States of America) considered that the real question was whether the Council was entitled to call the conferences referred to in the Argentine proposal. He recalled that the text of draft rule 1 had been approved by 25 votes to 22, and that it had restricted the application of the rules of procedure to conferences of States. A certain number of representatives, including the representative of India, had stated, however, that they did not understand that decision to prejudge the scope of the application of Article 62. In view of the close vote, it appeared, therefore, that the majority of the Committee thought that the Council was entitled to call conferences of experts and of non-governmental organizations. Mr. Maktos thought that the representative of Argentina had been right not to refer to any Article of the Charter in his draft. He asked the representative of France not to insist on a reference to Article 71.

83. Mr. WENDELEN (Belgium) thought that the General Assembly should leave the initiative on that question to the Council itself. Since it had been admitted that the draft resolution under discussion was not categorical, he proposed that the

phrase "and if the latter deems it necessary" should be inserted after the words "the Economic and Social Council". It was important that the Committee should not overburden the agenda of the Assembly or the Council.

84. Mr. CHAUMONT (France) asked that the French delegation's legal position, namely that Article 71 of the Charter was the only legal basis for the calling of non-governmental conferences, should be mentioned in the Committee's report.

85. Of the Articles of the Charter which might apply to conferences of experts, Article 68 referred not to experts but to commissions; and Article 62, which was the only possible legal basis, in the French delegation's opinion, did not refer to experts.

86. Mr. Chaumont supported the proposal of the representative of Uruguay to delete the phrase "during the fifth session" from the Argentine draft resolution.

87. Mr. MELENCIO (Philippines) would vote in favour of the Argentine proposal. He thought, as he had stated during the discussion on rule 1 of the draft rules which had just been approved, that the phrase "international conferences" was broad enough to cover all conferences, including those of non-governmental organizations and of experts.

88. Mr. FERRER VIEYRA (Argentina) regretted that he could not accept the Belgian representative's proposal to add the phrase "and if the latter deems it necessary". The Council was already calling conferences of the type referred to in the draft resolution; and since those conferences were taking place, the General Assembly should give the Council a broad outline of the procedure to be followed.

89. In reply to the French representative, he stated that a legal basis for conferences of experts could be found in the Charter by the interpretation of Articles 68 and 66. The latter stated that the Economic and Social Council "shall perform such functions as fall within its competence". It would be in the spirit of a liberal interpretation of the Charter to consider that one of those functions might be precisely that of calling conferences of experts.

90. Mr. Ferrer Vieyra accepted the representative of Uruguay's proposal that the phrase "during the fifth session" be deleted from his draft resolution.

91. Mr. WENDELEN (Belgium) stated that he maintained his amendment.

92. The CHAIRMAN put to the vote the representative of Belgium's proposal to insert the phrase "and if the latter deems it necessary" after the words "the Economic and Social Council" in the Argentine draft resolution (A/C.6/L.77).

That proposal was rejected by 14 votes to 6, with 16 abstentions.

93. The CHAIRMAN put to the vote the draft resolution (A/C.6/L.77)[1] submitted by the Argentine delegation, as amended, which read as follows:

"The General Assembly

"Requests the Secretary-General to prepare, after consulting the Economic and Social Council, draft rules for the calling of non-governmental conferences, with a view to their study by the General Assembly."

[1] See the Summary Record of the 189th meeting, paragraph 47.

The proposal was adopted by 33 votes to 3, with 2 abstentions.

Draft resolution submitted by the delegations of Cuba and Mexico in connexion with paragraph 42 of the report of the International Law Commission (A/925, part I)

94. The CHAIRMAN invited the Committee to proceed to the examination of the draft resolution (A/C.6/L.92) submitted by the representatives of Cuba and Mexico in connexion with paragraph 42 of part I (general) of the report of the International Law Commission (A/925).

95. Mr. GÓMEZ ROBLEDO (Mexico) pointed out that the Committee had not finished the examination of part I of the report of the International Law Commission (A/925). He recalled that at the 168th meeting on 18 October, the delegations of Cuba and Mexico had submitted an amendment to the statute of the International Law Commission, which had been approved and sent to the Fifth Committee, for its consideration and opinion. However, it appeared from a letter (A/C.6/L.79) from the Chairman of the Fifth Committee that that body had taken into account the recommendations of the Sixth Committee only in so far as they concerned the Rapporteurs. Mr. Robledo thought that the Sixth Committee should now take the final decision. In fact, since the Sixth Committee had decided that the emoluments of the members of the International Law Commission should be increased, the Fifth Committee should merely have indicated the practical means of doing so. The Advisory Committee, on the other hand, was only qualified to determine the financial implications of the proposed increase. But neither the Fifth Committee nor the Advisory Committee could oppose the decisions of the other Committees.

96. The CHAIRMAN remarked that, according to the summary record of the 192nd meeting on 15 November 1949, the Sixth Committee had already taken a decision on that subject. He pointed out that the Cuban and Mexican delegations had submitted a proposal, contained in document A/C.6/L.92, but that that proposal could not be examined at the current meeting.

97. Mr. GÓMEZ ROBLEDO (Mexico) feared that the decision in question had been too hasty, and he asked the Committee to reconsider it. He pointed out that it was in any case necessary to vote on the letter from the Fifth Committee, since the last word must belong to the Sixth Committee.

98. The CHAIRMAN again pointed out that, according to the summary record of the 192nd meeting, the Sixth Committee had already taken a decision on the subject.

99. Mr. GARCÍA AMADOR (Cuba) believed that he was not alone in thinking that the Sixth Committee had not clearly indicated its wish on that question, which the Committee had not put to the vote at the meeting of 15 November. The decision had been taken so rapidly that the majority of the members of the Committee had certainly not realized that it did not correspond to the wish that had been previously expressed of having the emoluments of the members of the International Law Commission increased. For that reason, the Cuban representative asked the Chairman to adopt the

simplest procedure whereby the Sixth Committee could express its opinion clearly on that fundamental question.

100. Mr. STABELL (Norway) shared the opinion of the representative of the United States. The debate on that point could only be reopened by applying rule 112 of the rules of procedure. Since the question was not on the agenda of the preceding meeting, the members of the Committee were not in possession of the necessary documentation. In any case, the debate could not take place until a later meeting.

101. Mr. GÓMEZ ROBLEDO (Mexico) would consent to the adjournment of the examination of that question, if he were assured that the General Assembly would take no decision on the subject until the Sixth Committee had itself decided on it.

102. The CHAIRMAN stated that, as the Norwegian representative had pointed out, it was impossible immediately to reopen discussion on a question which was not on the agenda for the meeting. On the other hand, the Chairman could not take a decision on that point without consulting the Vice-Chairman, who had presided over the discussions at the meeting of 15 November 1949, and who was therefore in the best position to indicate the circumstances in which the decision in question had been taken. In the meantime, the Committee could ask the President of the General Assembly not to place the question before the Assembly until the Chairman of the Sixth Committee had given a ruling on that point.

The meeting was suspended at 6.00 p.m. It was resumed at 6.15 p.m.

Consideration, at the request of the Third Committee, of certain articles of the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/C.6/329 and A/C.6/329/Add.1)

103. The CHAIRMAN asked the Australian representative to present the report of Sub-Committee 7 (A/C.6/L.88 and A/C.6/L.88/Add.1) on the questions referred to the Sixth Committee by the Third Committee with respect to the draft convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (A/C.6/L.66).

104. Mr. RENOUF (Australia) stated that the Sub-Committee had examined the four problems referred to it by the Third Committee.

105. It had first examined the articles mentioned by the Third Committee, and it had recommended either new texts or deletions, wherever it had deemed necessary. The most important change was that which had been made in draft article 30, by which the majority of the Sub-Committee had reintroduced a United States amendment to include in the draft the so-called non-self-executing clause.

106. The Sub-Committee had taken no decision on the text of a new article proposed by the delegations of the United States and of France, concerning the application of the convention in federal or non-unitary States. It had felt, in fact, that it was for the Sixth Committee itself to express an opinion on that point, which raised a question of principle.

107. The Sub-Committee had then studied the scope of the wording "subject to the requirements of domestic law" which, in its opinion, was susceptible to different interpretations. In order to avoid ambiguity, it had therefore replaced those words in certain articles, specifically in draft articles 3 and 4, by the expression "to the extent permitted by domestic law" and, in other articles, "in accordance with the conditions laid down by the expression by domestic law".

108. The third problem, that of the legal difficulties involved in draft article 10, which dealt with jurisdiction over aliens for offences committed abroad, had been solved by the deletion of article 10 (A/C.6/L.88/Add.1).

109. Finally, the Committee had studied a certain number of legal problems raised by the draft articles submitted by the Third Committee and, in the last part of the report had proposed various changes in the texts of those articles.

DRAFT ARTICLE 8

110. The CHAIRMAN opened discussion on the three changes which the Sub-Committee had recommended in article 8 of the draft.

111. The first change concerned the first paragraph of that article, in which the expression "shall be included as extraditable" had been replaced in the Sub-Committee's text by "shall be regarded as extraditable offences".

112. The second change, in the second paragraph, stated that parties should recognize as cases for extradition the offences referred to "in Articles 1 and 2" of the draft convention.

113. In the third paragraph, the following words were added: "but nothing in this Convention shall require the extradition of a person until the offence has, in accordance with the obligations of this Convention, been made punishable under the laws of the requesting State and of the State to which the request is made".

114. Mr. MELENCIO (Philippines) wished to know whether his Government, by signing the convention, would be bound to change the legal code of the country, under which the definition of the crime of prostitution differed from that in article 1 of the draft convention, in that the motive of gain was considered in the Philippines to be the essential element of the crime.

115. The CHAIRMAN stated that that problem of definition, which was of a social rather than of a legal nature, was not before the Sixth Committee, and that it could not therefore reply to the question raised by the Philippine representative.

116. Mr. FITZMAURICE (United Kingdom) said that question also concerned the United Kingdom, which was in the same situation as the Philippines. The answer seemed easy. In accordance with a general principle of law, when a State became party to a convention, it thereby undertook to bring its domestic law into conformity with the provisions of the convention. It was on that principle that article 30 of the draft was based. There was, therefore, no doubt that, whatever variant of article 30 was finally adopted, all States parties to the convention must before or after signature modify their own penal legislations so as to bring them into accordance with the convention.

117. Mr. KORETSKY (Union of Soviet Socialist Republics) urged that the procedure indicated by the Chairman should be strictly observed. The Committee should consider in succession the changes which the Sub-Committee had proposed in the articles. Only after that could the additional questions of the kind just raised by the representative of the Philippines be discussed.

118. The CHAIRMAN considered that it was not possible to give the Philippine representative any other reply than that which resulted from the text of the draft convention itself, in regard to which the United Kingdom representative had just expressed a personal opinion. He therefore called upon the Committee to begin its discussion of article 8.

119. Mr. KORETSKY (Union of Soviet Socialist Republics) was of the opinion that, as a general rule, it was useless to change a text without serious reason. The changes in paragraphs 1 and 2 proposed by the Sub-Committee were certainly improvements on the original text.

120. On the other hand, the suggested addition to the third paragraph was scarcely a happy one, for the original text was perfectly clear. Instead of making the convention a stronger weapon against the exploitation of prostitution, that restriction would introduce a new formula which was complex, useless and likely to create misunderstanding and possible conflicts. It was clear in fact that, if a State requested the extradition of the offender, it was because the State considered the act to be punishable. It was also clear that, if extradition was requested, it should be granted; for the State to which the request was made, being itself a party to the convention, must also consider the act to be punishable. It was therefore better to keep to the original paragraph.

121. Mr. LOUTFI (Egypt) shared the point of view of the USSR representative. The addition was useless. It was enough to refer to the general principles of extradition, in accordance with which extradition was only possible if the legislation of the State making the request and that of the State to which the request was addressed recognized the act in question to be punishable.

122. Mr. MATTAR (Lebanon) wished to know the reasons which had induced the Sub-Committee to recommend that addition to the third paragraph.

123. Mr. RENOUF (Australia) stated that the text had been inserted at the request of the United States representative.

124. Mr. COHEN (United States of America) said that the original text of the paragraph had not seemed sufficiently clear to his delegation. It did not specify under what conditions extradition should be granted, nor whether the act which prompted the request for extradition should be considered as punishable by the State making the request at the time it was submitted. Naturally, extradition could not be granted if it was not certain that the act was punishable in the State to which the request was addressed. It was true that in signing the convention, the State to which the request was addressed undertook to bring its legislation into conformity with the provisions of the convention. It might happen, however, that its domestic law as thus modified did not make it possible to consider the act in question as being punishable; in that case, public opinion in the country to which the request was addressed might protest if extradition was granted for an act which domestic law did not clearly qualify as punishable.

125. The purpose of the clause added to draft article 8 was to clarify those various points; that was why that clause should be retained.

126. Mr. FITZMAURICE (United Kingdom) pointed out that the modification of draft article 8 resulted from changes introduced into draft article 30. It followed from the original text of draft article 30 that, when the parties signed the convention, they would already have done what was necessary to give effect to it in their national legislations. In that case, the situation provided for by the additional clause in article 8 was no longer possible; for the act which was the cause of the request for extradition would be punishable both in the State making the request and in the State to which the request was addressed.

127. The new draft article 30, on the contrary, would allow the contracting parties to sign the convention before they had brought their legislation into accordance with its provisions; and consequently there would be an interval, and possibly a fairly long one, between acceptance of the convention and promulgation of the necessary legislative measures. During that interval, the modification suggested in draft article 8 might be applied, the State to which the request was addressed being able to refuse extradition so long as it had not harmonized its legislation with the provisions of the convention so as to make punishable the act which was the cause of the request for extradition.

128. That regrettable situation resulted from the introduction into draft article 30 of the so-called "automatic non-executing clause", which the United Kingdom delegation would oppose. Consequently, it could not accept the proposed change in the third paragraph of draft article 8.

129. With regard to the first paragraph, he would like to know the reasons for the change suggested by the Sub-Committee. In his opinion, it was not sufficient to consider the new offences envisaged by the convention as included in the extradition treaties already concluded. If they were not already mentioned there, they must be included and specifically mentioned in the list of offences which accompanied any treaty of that kind. Such addition might be made by means of a mere exchange of notes; but the courts of the United Kingdom, for example, could grant extradition only after those formalities had been complied with. It was for that reason that the original text seemed preferable, because it clearly stipulated that the acts referred to in draft articles 1 and 2 were included in existing treaties, and it therefore only remained to carry out the necessary diplomatic formalities.

130. Mrs. BASTID (France) agreed that the criticisms of the third paragraph of draft article 8 were not justified.

131. With regard to the first two paragraphs she would prefer them to be summarized as follows: "The offences referred to in articles 1 and 2 of this Convention shall be considered extraditable". Thus, all forms of extradition would be covered.

132. It did not seem necessary, as the United Kingdom representative thought, to envisage a series of agreements between States to secure the inclusion of the new offences in existing extradition treaties. Such negotiations would complicate the implementation of the convention. She thought that the courts of any signatory country should consider themselves bound by the convention and should have no difficulty in bringing the new offences within the framework of extraditable acts already provided for.

133. Mr. TRUJILLO (Ecuador) thought that the Sub-Committee's modification, far from clarifying the meaning of draft article 8, only complicated it. Yet the question was simple enough. Draft articles 1 and 2 defined the offences, and the purpose of draft article 8 was to make them extraditable. Any special agreement to that end was unnecessary, as the representative of France had pointed out. It was natural to lay down the procedure for carrying out extradition, as did the original text of the third paragraph. But the suggested Sub-Committee's modification was superfluous, since it was obvious that extradition could only take place if the offence was punishable both in the requesting State and in the State to which the request was made. Mr. Trujillo would therefore prefer the original text of draft article 8, the two first paragraphs of which might be condensed as the French delegation had proposed.

134. Mr. KORETSKY (Union of Soviet Socialist Republics) pointed out that the United States representative had wanted to introduce into draft article 8 a factor which would be more in place in draft article 30, because he was afraid that, if the original text were kept, a situation might arise in which extradition would be requested for an act that was not punishable under the domestic law of the State to which the request was made. But it was rather the refusal of extradition that might in such a case arouse public indignation in that country, for the purpose of the convention was to ensure the suppression of offences that were indisputably condemned by the conscience of all civilized peoples.

135. If the convention were concluded, it would be in order to be observed; and no reservation such as that in the new article 30, based on constitutional provisions, should be able to make it inoperative. Moreover, according to the Constitution of the United States, every international treaty became the supreme law of the country. It was therefore the domestic law which in that case was subordinated to the convention, and it was for the signatory Government to apply that convention. If that Government considered that the provisions of the convention were incompatible with the domestic law, its only solution was not to sign it.

136. Mr. COHEN (United States of America) said that it was precisely because the convention was to become supreme law in his country that the United States Government, which could not do otherwise than apply the Constitution of the country, had to do everything in its power to make the convention acceptable in form, without, of course, any modification of its principles. In the United States, the criminal aspect of prostitution was governed by the laws of various States. In order to ratify the convention, the Government must therefore foresee all the special situations that might arise, including the possibility that, as a result of differences of opinion with respect to the scope of the convention, the local law of a State would not recognize as punishable an act so considered by the foreign State requesting extradition. In the circumstances, it was inevitable that there should be strong opposition to the extradition of a person, solely because the act of which he was accused was not punishable, quite apart from the question whether he was guilty or not.

137. Mr. KORETSKY (Union of Soviet Socialist Republics) stressed the fact that the precise purpose of the convention was to make all acts of exploitation of the prostitution of others punishable in all States parties to the convention as soon as the convention came into force. The signatory Government must therefore, as soon as it had acceded to the convention, be in a position to give it full effect throughout its entire territory.

138. Mr. FITZMAURICE (United Kingdom) referred to the difficulties involved for federal States in which the criminal law came within the competence of local States and not the federal State. But such difficulties, in his opinion, should be avoided by the so-called federal clause, and not by a modification of draft article 30 that would apply not only to federal States but to all States, whatever they were. It would be regrettable if any State were allowed to sign the convention before it had brought its domestic legislation into conformity with the provisions of the convention, before even being sure that it would be able to do so. It would therefore be advisable to retain the original text of draft article 30, which prevented the possibility of the situation foreseen in the proposed addition to the third paragraph of draft article 8.

139. In regard to the first paragraph, Mr. Fitzmaurice was of the opinion that, even if the new formula providing that the offences should be regarded as extraditable were adopted, it would be difficult to dispense with an exchange of notes to have those offences included in the existing extradition treaties. Nevertheless, if the Committee preferred that text, he would not oppose it. On the other hand, he would vote against the proposed addition to the third paragraph.

140. Mr. DUYNSTEE (Netherlands) thought that two arguments could be adduced in favour of the Sub-Committee's text.

141. First, there was the argument drawn from the new draft article 30 which rendered possible the assumption contained in the addition to the third paragraph of draft article 8. In view of the close connexion between the two articles, the decision on draft article 8 might be postponed until the Committee had taken a decision on draft article 30.

142. The other argument was drawn from draft article 13, which provided that the offences should be defined, prosecuted and punished in conformity with domestic law. It followed that, between the requesting State and the State to which the request was made, certain differences might exist with respect to the definition of the offences. In those conditions, the proposed addition to the third paragraph was quite in harmony with the general principles of criminal law, according to which the law applied should be the law most

favourable to the accused. Extradition could therefore be refused if there was a divergence between the legislation of the requesting State and that of the State to which the request was made.

143. Mr. GARCÍA AMADOR (Cuba) was in favour of the original text, because it merely settled the question of extradition procedure without dealing with the definition of the offence, which was a quite separate problem. It was obvious that, once the domestic legislations had been brought into line with the provisions of the convention, the requesting State would have the right to ask for extradition and the State to which the request was made would not be able to refuse it.

144. Mr. FERRER VIEYRA (Argentina) said he would vote in favour of the text proposed by the Sub-Committee as an addition to the third paragraph of draft article 8 because, by stipulating that the act committed by the person whose extradition was requested should be punishable both by the legislation of the requesting State and that of the State to which the request was made, that text would prevent a State whose legislation did not provide for the suppression of the offence from requesting the extradition of a person, on the sole basis of the extradition system applicable in its relations with the State in whose territory that person had taken refuge.

145. Mr. LOUTFI (Egypt) pointed out that, in accordance with the general principles of law, a State which had not acceded to the convention would grant extradition only if its own legislation and that of the requesting State regarded the offence as punishable. The situation would be the same if that State had ratified the convention for, by having done so, it would have incoroporated the convention in its domestic legislation and would consequently regard the act in question as an offence. The clarification proposed by the Sub-Committee as an addition to the third paragraph of draft article 8 was therefore unecessary in all cases. For that reason, the Egyptian delegation would vote against it.

146. The CHAIRMAN put to the vote the Sub-Committee's proposal (A/C.6/L.88) to replace the words "included as extraditable" by "regarded as extraditable offences", in the first paragraph of draft article 8.

The proposal was adopted by 32 votes to none, with 3 abstentions.

147. The CHAIRMAN asked the Committee to take a decision on the Sub-Committee's proposal to replace the words "the offences referred to in this convention" by "the offences referred to in articles 1 and 2 of this Convention", in the second paragraph of draft article 8.

The proposal was adopted.

148. The CHAIRMAN put to the vote the addition proposed by the Sub-Committee to the third paragraph of draft article 8.

The proposal was rejected by 18 votes to 11, with 6 abstentions.

149. Mr. PETREN (Sweden) said that the first four articles of the draft convention, as adopted by the Third Committee, were unnacceptable to his Government. The Swedish delegation should logically, therefore, abstain from voting on all the other articles of the draft. It considered, however, that it would perhaps be possible for the Sixth Committee to propose modifications to the first articles of the draft convention; and it intended to ask the Committee to do so when it came to consider part IV of the Sub-Committee's report (A/C.6/L.88). In the meantime, his delegation had abstained from voting on the first two paragraphs of draft article 8, for its attitude concerning them would depend on the contents of articles 1 and 2 of the draft convention. But the delegation of Sweden had voted against the Sub-Committee's proposed addition to the third paragraph, in view of the fact that the subject of that addition was in no way related to the provisions of those articles and that the original text of the third paragraph seemed preferable to that suggested by the Sub-Committee.

150. Mr. ORIBE (Uruguay) having pointed out that a few drafting changes should be made in the Spanish text of draft article 8, the CHAIRMAN, at the suggestion of Mr. KORETSKY (Union of Soviet Socialist Republics), said that the final text of the articles adopted by the Committee would eventually be put into shape by a drafting committee.

SUGGESTED DRAFTING CHANGES

151. In answer to Mr. KORETSKY (Union of Soviet Socialist Republics), who said that the Committee should take an immediate decision on the Sub-Committee's proposal to replace the expression "country or territory" by the word "State" throughout the draft convention, the CHAIRMAN declared that, since there was no objection, the matter would be open to discussion.

152. Mr. KORETSKY (Union of Soviet Socialist Republics) emphasized that the expression "country or territory" was better than the word "State". States could have territories or parts of territories with different legislative systems. The use of the expression "country or territory" would ensure the application of a convention to the entire territory of States. The struggle against prostitution would have to be carried out particularly in the colonies and Non-Self-Governing Territories; and it was therefore necessary to make sure that such territories did not remain outside the scope of the convention. It would therefore be better to avoid the word "State" throughout the draft convention and use instead the expression "country or territory of the parties to the convention".

153. Mr. SUTCH (New Zealand) pointed out that the Third Committee had decided to use the expression "country or territory" because it had wanted the convention to apply in Non-Self-Governing Territories. However, as the colonial clause had been omitted, the word "State" in the convention included the metropolitan areas, the colonies and the Non-Self-Governing Territories.

154. His delegation did not object to the expression "contracting parties" but it seemed that in the absence of a colonial clause, the word "State" was more satisfactory.

155. Mr. KORETSKY (Union of Soviet Socialist Republics) recalled that the colonial clause, which had originally been included in article 27 of the draft convention, had been deleted in order to make the convention applicable to all the territories of the contracting parties, even if they were not considered to be colonies. If the expres-

sion "country or territory" was replaced by the word "State", some Powers might declare that territories which did not control their foreign relations — such as, for example, Malta and Southern Rhodesia — did not in fact form part of the State and were not therefore subject to the application of the convention.

156. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) drew the attention of the Committee to the fact that, as a result of the adoption of an amendment of the Ukrainian SSR, the Third Committee had inserted in article 24 of the draft convention the following provision: "For the purposes of the present Convention the word 'State' shall include all the colonies and trust territories of a State signatory to or accepting the Convention and all other territories for which such State is internationally responsible" (A/C.6/333).[1]

157. Mrs. BASTID (France), while pointing out that that definition of the State was not in accordance with the provisions of international law presently in force, said that there was no need to spend any more time on the question, since draft article 24 had not been referred to the Sixth Committee.

158. The USSR delegation proposed that the expression "country or territory" should be used throughout the draft convention. In that connexion, she observed that in France the word "country" had no juridical significance and had no value in international law.

159. It seemed that the USSR delegation feared that the signatories of the convention might show some bad faith in applying it. Such fears were certainly unfounded as it was to be hoped that the Administering Authorities, which had failed to have the colonial clause included in the convention, would accept the situation as it was without such a clause and fulfil their obligations scrupulously.

160. If the expression "country or territory" was used in draft article 8, it would allow a State to plead a special system of law in a part of its territory in order to deny extradition on the ground that in that territory the required conditions for extradition had not been fulfilled. The French delegation proposed the use of the expression "contracting parties" as more juridical and more in accordance with the tradition governing the drafting of international treaties which covered both unitary States and the political systems comprising a unitary State and the entities linked to it constitutionally. More specifically, the beginning of draft article 9 could be read as follows: "Contracting parties whose legislation does not recognize the principle of the extradition of nationals shall prosecute nationals who have returned to their territory after the commission abroad".

161. Mr. FITZMAURICE (United Kingdom) wished to reassure the representative of the USSR that, if his Government signed the convention, it would under no circumstances place Malta or Southern Rhodesia outside the scope of that convention on the pretext that those countries were not States as defined by international law. In practice, however, the deletion of the colonial clause would prevent the adherence of the United Kingdom to the convention until it had obtained the consent of all the territories it administered or for whose foreign relations it was responsible. In order to obtain that consent, it might be necessary to adopt special legislative measures in several of the territories. That might delay the adherence of the United Kingdom to the convention for several years. It might even happen that the refusal of a single one of those territories would prevent the United Kingdom from becoming a party to the convention. In the circumstances, it mattered little whether the word "State", the expression "country or territory" or any other similar formula was used. Like the representative of France, he did not approve the expression "country or territory", and he agreed with the representative of New Zealand that the word "State" was more satisfactory. However, he preferred the expression "contracting States", which was to be found in most conventions drawn up under the auspices of the League of Nations. Draft article 9 should however specify: "In the territories of the contracting Parties", on the clear understanding that, in the absence of the colonial clause, that formula would comprise the metroplitan State and all its dependent territories.

162. Mr. ZIAUDDIN (Pakistan) explained that the point had been raised in the Sub-Committee that, when the convention was signed, the unitary States would find themselves in a different position from the federal States. However, as draft article 24 clearly stated what should be understood by the word "State", the Sub-Committee had decided to propose that that word should replace "country or territory" wherever that expression appeared in the draft convention.

163. Mr. KORETSKY (Union of Soviet Socialist Republics) said that, in view of the information supplied on draft article 24 by the Assistant Secretary-General, he would not press his proposal.

164. He wished to point out, in reply to the observation of the representative of France, that the word "country", like many other expressions appearing in international treaties, had a very definite conventional meaning.

165. The CHAIRMAN put to the vote the Sub-Committee's proposal to replace the expression "country or territory" by the word "State" throughout the draft convention.

The proposal was adopted by 34 votes to one, with 4 abstentions.

DRAFT ARTICLE 9

166. The CHAIRMAN opened the debate on article 9 of the draft convention.

167. Mr. RENOUF (Australia) pointed out that, in mimeographed document A/C.6/L.88, an error had been made in reproducing the text recommended by the Sub-Committee. The words "the principle of" should be deleted at the beginning of the first paragraph.

168. Mr. COHEN (United States of America) said that he preferred the text proposed by the Sub-Committee. He wished to state that his Government did not raise any objection to the original text of draft article 9, provided that it was made

[1] Document A/C.6/333, issued as a mimeographed document on 26 October 1949, is identical with document A/C.3/526 and Corr. 1, and is therefore not included in the *Annex to the Sixth Committee*. See document A/C.3/526 and Corr. 1, in *Official Records of the fourth session of the General Assembly, Annex to the Third Committee*.

quite clear that the article referred to States which, for reasons of principle, did not accept the extradition of their nationals but punished them for offences committed abroad.

169. The United States recognized the principle of extradition of its nationals and agreed to extradite them. It could not, however, accept the principle that those nationals should be punished in the United States for offences committed abroad. United States legislation provided that any accused person should be brought face to face with witnesses. Clearly, that safeguard was of no value unless the trial was held at the place where the offence had been committed; otherwise it would be extremely difficult, or even impossible, to call the witnesses. For those reasons, the United States could not agree to punish its nationals for the offences referred to in the convention when they had been committed abroad.

170. Mr. Cohen agreed that, in certain cases, due to the fact that some countries refused to extradite their nationals, the treaties of extradition to which the United States was a party did not provide for a reciprocal obligation to grant a like extradition. He wished, however, to make it clear that, if United States nationals could not be extradited, it was not because American legislation did not permit the extradition of nationals, but because the extradition was regulated by treaties.

171. Mr. LOUTFI (Egypt) stated that the principle of the extradition of nationals was not recognized in Egyptian legislation. The provisions of the first paragraph of draft article 9 were sufficent to enable Egypt to punish its nationals who returned to their country after having committed abroad one of the offences referred to in the draft convention .The Egyptian delegation believed that the provision at the end of the first paragraph of draft article 9 relating to cases in which the offenders had acquired their nationality after the commission of the offence, was superfluous. Such a provision referred to purely exceptional cases, and should not be included in a convention intended to deal with general cases.

172. Mr. GUERREIRO (Brazil) entertained some doubts on certain points of detail dealt with under article 9, although, as a whole, the article was in conformity with Brazilian legislation.

173. The Brazilian delegation was of the opinion that it was unnecessary to specify in draft article 9 that someone who had been guilty of an offence committed abroad should be prosecuted and punished in the same manner as if the offence had been committed in the country of which he was a national. It was obvious that the State which tried the offender would apply its own laws to him. Moreover, it was to be expected that the legislation of that State — as well as that of the State on whose territory the offence had been committed — would contain provisions relating to offences referred to in the convention, since that State would hypothetically be a party to the convention. Brazil would prefer that the phrase in question should be deleted, in view of the fact that, in dealing with offences committed abroad by Brazilian nationals who were not extradited, Brazilian legislation provided that the penalty prescribed by the law of the country on whose territory the offence had been committed should be applied whenever it was less severe than the penalty prescribed under Brazilian law.

174. The Brazilian delegation shared the view of the Egyptian delegation on the last phrase of the first paragraph of draft article 9. It believed that a State whose legislation did not permit the extradition of nationals should not be absolutely obliged to prosecute and punish, in every case, its nationals who had returned to their country after having committed abroad any of the offences referred to in the convention. Indeed, certain countries, and Brazil among them, which did not recognize the principle of the extradition of nationals, might, however, make an exception to that principle if the offender had acquired his nationality after the commission of the offence. They considered that there was there an assumption that naturalization had been requested in order to foil extradition. In such a case, those countries should not be obliged themselves to try those new citizens whom they were prepared to extradite.

175. Mr. Guerreiro did not quite understand the scope of the second paragraph of draft article 9. It would seem to follow from the paragraph that a State which refused to extradite an alien would not be under the obligation to prosecute him and that, consequently, the offender would never be punished.

176. In the Brazilian delegation's view, draft article 9 could be more clearly worded by merely stating the principle that any contracting party which refused to extradite a person accused of having committed abroad one of the offences referred to in draft articles 1 and 2 of the convention should prosecute and punish that person for the offence which had given rise to the request for extradition.

177. Mr. RENOUF (Australia) explained that the second paragraph of draft article 9 had been inserted in the convention so that nationals of a State should not be in a less favourable position with respect to extradition than aliens.

178. As for the provision referring to offenders who had acquired their nationality after the commission of the offence, it had not been discussed at all in the Sub-Committee.

179. Mr. FITZMAURICE (United Kingdom) had no objection to draft article 9, but he wondered whether it was of any real practical use.

180. Like the United States, the United Kingdom believed that prosecution of an offence should only be undertaken if it had a reasonable chance of success. It was, however, extremely unlikely that British courts would succeed in punishing a United Kingdom national who had committed abroad one of the offences referred to in the convention, since it would be very difficult to obtain proof of his guilt.

181. With regard to the beginning of the first paragraph, Mr. Fitzmaurice suggested saying: "In States where the principle of extradition of nationals is not recognized by law . . ."

182. Mr. BARTOS (Yugoslavia) pointed out that, in Yugoslavia, as in many other countries of Central Europe, the extradition of nationals was not recognized by law, and that, in dealing with offences committed abroad by Yugoslav nationals, some distinction was made according to whether the victim was Yugoslav or an alien. In the former case, by a kind of fiction, the offender was punished as if the crime had been committed in

Yugoslavia, whereas, in the latter case, the principle of the amalgamation of the *lex fori* with the *lex loci delicti commissi* was applied so that the offender would not be in a more favourable position than if he had committed the offence in Yugoslavia, or in a less favourable position than if he had been tried by the courts of the country in which he had committed the crime. In view of those provisions of Yugoslav law, Mr. Bartos suggested the deletion from the first paragraph of draft article 9 of the words: "in the same manner as if the offences had been committed in that State".

183. Mr. ORIBE (Uruguay) fully understood the difficulties with which States would be faced in establishing the guilt of any of their nationals who had committed offences abroad and had then returned to their own country. He wondered whether it would not possible to persuade the signatories of the convention to relinquish the now outmoded principle of the non-extradition of nationals.

The meeting rose at 8.15 p.m.