HUNDRED AND SEVENTY-FIRST MEETING

Held at Lake Success, New York, on Monday, 24 October 1949, at 3.45 p.m.

Chairman: U E MAUNG (Burma),

later, Mr. M. LACHS (Poland).

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

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

1. The CHAIRMAN requested the Committee to continue the general debate on the draft declaration on rights and duties of States (A/925, paragraph 46).

2. Mr. HSU (China) stated that the draft declaration prepared by the International Law Commission was sufficiently satisfactory for action to be taken upon it by the General Assembly. The Assembly should therefore examine the draft, consider the proposals and amendments relating to it and, after the necessary revisions, adopt and proclaim a declaration on the rights and duties of States. The General Assembly, should it for any reason be unable to take a final decision on the draft, would have to refer it back to the International Law Commission for further study. If the draft were not adopted for reasons of a technical rather than a political nature, the International Law Commission would be the appropriate body to solve the difficulties. If, on the other hand, the objections were of a political rather than a technical nature, the General Assembly would simply have gained time through having attempted to find a solution. However that might be, it would be most unreasonable to shelve the draft and thus destroy any hope of having a declaration adopted. Moreover, it should be borne in mind that a declaration on rights and duties of States did not constitute merely a bill of rights but was also a source for the progressive development and codification of international law.

3. The United States proposal (A/C.6/330) noted the difficulties involved in formulating a declaration on the fundamental rights and duties of States which would be in keeping with the Charter of the United Nations and which would take into account the new trend of international law. The United States delegation thought that, in a formulation of that type, it was difficult to determine precisely what had already become international law and what was in the process of becoming international law. It might be justifiable to wonder, therefore, whether the International

Law Commission would be able to continue its work on the progressive development and codification of international law without a guide or a basis for its studies, and whether the draft, in the event of its not being adopted, could be utilized to those ends by the Commission.

4. Mr. Hsu thought that those two questions called for a negative answer. If not adopted and proclaimed by the General Assembly, the draft under consideration would be practically worthless, and the International Law Commission would find itself, as it were, wandering in the wilderness. If the United States proposal were adopted, the draft would cease to be a declaration and would become a mere document composed of a preamble and a few articles. It was claimed, of course, that the document would be invested with greater authority than other official documents, inasmuch as international tribunals and the jurists of all nations would be invited by the General Assembly to make constant use of it and to regard it as a source of law and a guide to the progressive development of international law. That would have been true if the draft in question had been submitted by the International Law Commission on its own initiative. The fact was, however, that the draft had been prepared in response to a special mandate from the General Assembly. The United States proposal invited the General Assembly to assert that it was almost impossible to formulate basic principles of international law, and to reject as unfit for adoption or proclamation the draft which contained those basic principles. It might be asked how a rejected text could be considered to have greater authority than other documents of the same type, merely because the rejection was to be accompanied by a recommendation.

5. Turning to the question of the procedure to be adopted, Mr. Hsu thought that the draft should be carefully examined. So should the various amendments submitted by the delegations and the dissenting opinions[1] of two members of the International Law Commission. All those amendments and opinions should be voted on; after that, if the draft were still found unsatisfactory, it should be referred back to the International Law Commission.

6. The fear had been expressed that the International Law Commission would not be able to improve upon the draft. There was no foundation whatsoever for such a misgiving, for, if the International Law Commission had been able to redraft the original Panamanian draft,[2] it was perfectly well able to present an improved version of the draft before the Committee. As a matter of fact, the chances for agreement were greater within the International Law Commission than within the Sixth Committee, where political considerations outweighed all others.

7. The International Law Commission had presented a satisfactory draft; owing to the little time at its disposal, however, the Commission had been unable to bring that draft to such a degree of perfection as to render any revision on the part of a higher authority unnecessary. If the General Assembly was itself unable to consider the draft, it should, therefore, refer the text back to the Commission. There was, moreover, another reason for favouring that solution. It could be asked whether the International Law Commission had presented a draft which contained as large a number of basic principles as possible or at least a number sufficient to obtain the approval of the majority of the Members present and voting in the General Assembly. In that connexion it should be noted that the fifth paragraph of the preamble to the draft mentioned "certain" fundamental principles. That word, indicating that the Commission had not been sure that the text it had drafted was sufficiently complete, was questioned by Mr. Hsu (A/C.6/L.4).[3]

8. It would be seen, moreover, that each of the articles of the draft declaration was based on an article of the initial Panamanian text. Even if the Panamanian draft had contained all the principles which the General Assembly would wish to see proclaimed, it would appear that the International Law Commission had given too literal an interpretation to the instructions of the General Assembly to utilize that draft as the basis for its work.

9. In conclusion, Mr. Hsu wished to draw attention to the fact that, although the report explained[4] why the draft did not contain any definition of the term "State" or any article on the existence and recognition of a State, it simply ignored the accusations[5] of one of the members who had stated that the draft did not proclaim certain fundamental principles without which a declaration on rights and duties of States could not be complete. Although the International Law Commission had not been obliged to discuss the substance of those principles, since the member who had raised the question had not offered any concrete proposal, the question might arise, nevertheless, whether such a negative attitude did not indicate that the Commission had not fully realized that it would be wise to study as large a number of principles as possible.

10. Mr. Hsu had no wish to criticize the work of the International Law Commission but simply to indicate that, in its desire to complete a draft declaration at an early date, the Commission appeared to have lost sight of the General Assembly's requirements. If therefore the draft declaration was referred back to the Commission, there was good reason to hope that, in the light of the discussion in the Committee and of the amendments submitted by various delegations, the Commission would consider a wider range of basic principles, would pay more attention to the needs of the society it served and would furnish the General Assembly with an explanation of its view that certain principles should not be embodied in the declaration.

11. Mr. Hsu fully realized that, even if the draft declaration was referred back to the International Law Commission, it was by no means certain that a declaration on rights and duties of States would finally be obtained. But the effort was worth making, since the world had a very real need of such a declaration to serve as a guide in the development and codification of international law. There was, moreover, no technical obstacle to the formulation of a declaration on rights and duties of States. The International Law Commis-

[1] See document A/925, footnote 3 to paragraph 46.
[2] See document A/CN.4/2, page 35.
[3] In that document, deletion of the word "certain" constituted the first of three amendments proposed by China to the draft declaration.
[4] See document A/925, paragraph 49.
[5] *Ibid.*, footnote 3 to paragraph 46.

sion should be in a position to submit a better text if it took into account the opinions expressed by the different delegations. If not, however, the General Assembly, which had a Committee of fifty-nine legal experts, was capable of undertaking that task itself.

12. Any failure to adopt and proclaim such a declaration could be due only to political causes. It was obvious why certain great Powers capable of ensuring their own defence, and certain small Powers which could rely on the great Powers, were unwilling to support a declaration which might prove embarrassing to themselves. It should be remembered, however, that there were less fortunate States, which were in need of protection in the form of an explicit declaration of that kind. While the contribution which such a declaration might make to the clarification of international law might be small, that contribution was, nevertheless, worth making since it might, without embarrassing the great Powers, be the means of preserving the existence of smaller States.

13. Mr. Hsu said that the draft declaration drawn up by the International Law Commission compared very favourably with similar declarations drawn up in the course of the last few years.

14. In the first place, the draft declaration was careful to enunciate the time-honoured rights and duties of States relating to independence (article 1), jurisdiction (article 2), intervention (articles 3 and 4), equality (article 5), self-defence (article 12) and good faith in carrying out their obligations (article 13). The draft declaration also contained provisions relating to the pacific settlement of disputes (article 8), and the outlawing of war (articles 9 to 11). Finally, the draft proclaimed a Government's responsibility to the international community for acts of inhumanity committed in a State (article 6) and enunciated the principle of the subordination of State sovereignty to the supremacy of international law (article 14).

15. Certain sections of the draft declaration were admittedly in need of revision, more particularly the fifth paragraph of the preamble, which appeared to conflict with the spirit and letter of the title of the declaration, and article 7, which seemed ambiguous and might be deleted (A/C.6/L.4)[1], in view of the existence of article 6.

16. The report nevertheless contained two serious omissions, the first of which related to external pressure and propaganda. To remedy that omission, Mr. Hsu suggested the insertion of the following articles after article 4:

"1. Every State has the duty to refrain from employing political or economic pressure to assure advantages from, or impose its will upon, any other State.

"2. Every State has the duty to refrain from, and to put a curb upon, propaganda and other activities calculated to spread hatred towards, or terror against, any other State.

"3. Every State has the duty to refrain from spreading, by whatever means, any ideology which adopts or countenances as an instrument of policy violence and deceit or any other combination of evil principles incompatible with international peace and security and fatal to the existence of the world order."

[1] In that document, deletion of article 7 constituted the second amendment proposed by China to the draft declaration.

17. The second omission related to the modification of the use of force by a State. Although the draft declaration outlawed war, it failed to enunciate one of the most important principles of international law, namely that the use of force, whether legitimate or not, must be governed by humanitarian principles. It also failed to enunciate the two corollaries of that principle, namely, the need to refrain from acts of cruelty towards enemy subjects and from acts of aggression against the enemy civilian population. That principle, together with its corollaries, had long been established in international law and should be retained in the interest of mankind.

18. Mr. Hsu was not unmindful of the objection that, since war had been outlawed, such a regulation might unduly restrict the legitimate employment of force by a victim of aggression while leaving the aggressor free to do as he pleased. Those objections, however, did not take account of the fact that a crime committed by a nation was different from a crime committed by an individual, in that a nation was composed of a body of individuals the majority of whom were probably not responsible at all. It followed that, in international life, indiscriminate methods were not suitable for repressing crimes. By the very nature of things, the employment of force must be regulated in international relations.

19. Nor was it correct to say that, without regulation, the aggressor would be free to do as he pleased. Humanitarian principles had generally been observed in the past by aggressor States against which the outlawing of war could not have been invoked, as well as by rebels in civil war whose action had always been declared illegal. Respect for humanitarian principles, therefore, had nothing to do with the outlawing of war, but was motivated by fear of reprisals and of intervention by third parties. In those conditions, there was every reason to believe that the outlawing of war would not make aggressors more prone than before to disregard humanitarian principles so long as peace-loving nations did not themselves trample upon them. Mr. Hsu recalled that in modern times, certain writers had tended to condone violation of humanitarian laws and certain countries had tended to follow the precedents set by such violations.

20. It was Imperial Germany that had been the first to strike a blow at humanitarian principles. According to the official German theory, the test of the legitimacy of a weapon, whether an actual weapon or a series of measures, was not whether that weapon could be used without undue cruelty but whether it would make it possible to bring the war to a speedy and successful conclusion; in the latter case, the method would prove more humane in the end. Despite that attempt to create the illusion of humanity, the Germans had frankly advocated the use of the most radical methods. In support of that same theory, others had since claimed that humanitarian principles, which could very well be applied in an epoch of limited wars, could no longer be invoked in an epoch of total wars. Still others had asserted that it would be unwise to stifle the possibilities of scientific progress by retaining those principles. While the expression "total war" might be new, it represented a fact which was quite old; such examples as the Revolutionary and Napoleonic Wars and the Thirty Years War provided ample proof of that.

Thus, the existing laws and customs of war, based upon humanitarian principles, could actually be traced back to the guilty conscience of mankind in the early seventeenth century and had been increasingly developed in the three succeeding centuries through both limited and total wars. Not until the end of the nineteenth century had the underlying principles been challenged by the Germans; since that time those principles had been violated in varying degrees by various belligerents.

21. Concerning the plea that humanitarian principles should be abandoned in the interest of scientific progress, it might be pointed out that at no period of history had those principles hindered scientific progress. Moreover, in advocating the adoption of those principles, there was no intention of outlawing any weapon, old or new, existing or yet to be invented. Humanitarian principles would merely serve as a criterion for judging the legitimacy of each weapon.

22. The German theory was completely iniquitous. It had not been formulated in the interest of scientific progress but in the interest of German aggrandizement. The German militarists, evidently believing that their war machine was powerful enough to subdue any nation, had sought to set aside those principles in order to deal a fatal blow at their victim before it had time to rally. It was common knowledge that that theory had brought most terrible disasters to its advocates. Moreover, apart from the motives which had inspired it, the theory was false in itself. The criterion which it set up, namely, the effectiveness of the weapons, was too highly subjective, because that effectiveness could be overestimated or the ability of the enemy to exert passive or active resistance might be underestimated. In every historical era, that thesis had caused the fall of empires and, in recent years, of two German Reichs. It was more dangerous than useful.

23. Notwithstanding the lessons of history, there were still good men who assumed that the German theory could be useful to peace-loving nations in opposing aggression, for they hoped that those nations would have weapons of such effectiveness that they would be in a position to prevent war so long as they were not encumbered by humanitarian principles. The greatest disillusionment lay in store for those people. If he who opposed aggression used such methods, the aggressor would have no qualms about using them first. It was essential to avoid setting a bad example. Besides, in an age of invention, no weapon could prevent war for any long period of time; as soon as would-be aggressors had discovered means of neutralizing the effects of a weapon, that weapon would cease to be useful. On the contrary, restraints upon would-be aggressors would have the effect of stimulating them to increase their efforts to conquer the weapons which deterred them. In the final analysis, war could only be avoided by good government, technological excellence, vigilance and co-ordination of military efforts.

24. The dictates of humanity had as good a chance of being respected at the present time as they had had three centuries ago. Human nature had certainly not changed radically since then. In recent years, submarine warfare, aerial bombardment of civilian populations and the atomic bomb had never been determining factors in the victory of those who had resorted to them.

25. Mr. Hsu admitted that, in the past, humanitarian principles might perhaps have been applied in an unduly liberal manner. It could be asked why property and monuments had been considered on an equal footing with human life, or why civilian needs should have taken precedence over military needs when it came to deciding, for instance, whether railway stations should or should not be considered military objectives. All those considerations suggested that it might be advisable for the General Assembly to undertake a new study of the laws and customs of war to make them more flexible. It would be foolish, however, to discard a principle merely because it had not always been wisely applied.

26. Luckily, mankind had more good sense than it appeared to possess. After the Second World War, the victors had not failed to prosecute the guilty in Germany and Japan for their crimes against humanity and against the laws and customs of war. Later, the General Assembly had endorsed the principles recognized thereby and had directed the International Law Commission to formulate them. Now that the General Assembly had before it a draft declaration on rights and duties of States, it should not lose the opportunity of adding to it an article concerning respect for humanitarian principles.

27. To that end, the representative of China wished to submit the following text for an additional article (A/C.6/L.4)[1] of the draft declaration.

"Every State has the duty to condition the employment of force by the dictates of humanity and, in consequence, to refrain from cruelty towards enemy persons and attacks directed at enemy civilian population."

Mr. Lachs (Poland) took the Chair.

28. The CHAIRMAN thanked the Vice-Chairman for presiding over the meeting during his absence and welcomed him both personally and on behalf of the members of the Committee.

29. Mr. CHAUDHURI (India) said that he was pleased to see that the representatives of Belgium and the United States shared to a great extent the views of the delegation of India.

30. In resolution 178 (II), the General Assembly had instructed the International Law Commission to prepare a draft declaration on rights and duties of States, taking as a basis of discussion the draft declaration submitted by Panama. That draft, which had been inspired by a deep idealism and shaped with great wisdom, showed a sound knowledge of international law. It was well to remember that the General Assembly had not requested the International Law Commission to prepare a draft declaration on its own initiative, but to take the Panamanian draft as a basis and to make of it a declaration which might serve as a practical guide to all the nations.

31. The draft under consideration was the work of eminent jurists, who were animated by good will and who represented several different juridical systems. It was obvious that they had held divergent views on many matters and had therefore incorporated in the draft only those principles and rules on which they had been able to reach the maximum amount of agreement.

[1] In that document, the following text constituted the third Chinese amendment, which called for the insertion of the proposed new article following article 12 of the draft declaration.

32. In the opinion of the Indian delegation, the value of the draft submitted by the International Law Commission did not lie in the fact that it constituted a declaration on international law with binding force, but that it was an unequivocal statement of the principles on which the United Nations Charter was based. The draft was not confined to a restatement or consolidation of universally accepted principles; it also incorporated those progressive principles which contributed to the development of international law. Even if it received the unanimous approval of the General Assembly, the declaration would not bind the Member States as would a treaty or a convention. It would, however, mark a step forward in the field of international law.

33. Several proposals had been made concerning the treatment to be accorded the draft submitted by the International Law Commission. Some delegation had suggested that it should be referred back to Member States. Another suggestion had been that the draft should be considered article by article and, if necessary, amended. The Indian delegation considered that the various articles of the draft were so closely co-related that it would be inadvisable to accept some and reject others. It should not be forgotten that the decisions taken by the Committee on the articles of the draft could be reached only after a relatively short debate governed by political considerations, whereas the conclusions of the International Law Commission were the result of exhaustive and carefully thought out deliberations. In the circumstances, his delegation doubted whether decisions of the Sixth Committee would be preferable to those of the International Law Commission. His delegation considered, furthermore, that those delegations which had found the draft prepared by the International Law Commission acceptable as a whole might very well change their views if its text was truncated or amended.

34. He pointed out the difficulties that would arise if the draft declaration was referred back to the Member States. If that was done, and if the General Assembly decided to request the International Law Commission to revise the draft in the light of the suggestions of the various Governments, the result might very well be that, before a new text could be drafted, the composition of the International Law Commission might undergo changes and a new exhaustive study of the second draft might therefore be required in order to ensure that it faithfully reflected the views of the Member States. Such a procedure might well involve more than five years.

35. The delegation of India was well aware that members of the Committee might think there was room for improvement in the draft declaration. India, for its part, regretted that the draft contained no definition of the State. Although it would have liked to see such a definition in the draft declaration, the delegation had not made a proposal to that effect since it realized that any attempt to define the idea of the State had little chance of success and would lead to all sorts of controversies.

36. Despite the doubts to which the draft declaration had given rise, his delegation considered that it provided a source of international law to which Governments, international tribunals and jurists might have recourse for the solution of questions pertaining to the rights and duties of States. The value of the document as a source of international law would be greatly lessened, or even completely lost, by the addition, amendment or deletion of any particular article. For that reason, the delegation of India supported the principle of the draft resolution (A/C.6/330) put forward by the United States of America. It would accept any amendment to that draft resolution which might be proposed, provided that such an amendment did not in any way prejudice that principle.

37. In conclusion, Mr. Chaudhuri said that he had intentionally abstained from commenting on the different articles of the draft declaration, but that he reserved his right to do so in the event that the Committee decided to open a discussion on each individual article.

38. Mr. MATTAR (Lebanon), although he accepted the extremely wise decision[1] of the International Law Commission not to include a definition of the State in the draft declaration, considered that it would be useful to define that idea.

39. According to a French jurist, the State was a group of human beings settled in a particular region, obeying a common authority and possessed of powers for achieving the common good of the group by lawful means. The State was thus a moral person, having rights and duties which derived from the nature of its personality and the relationships established with other moral persons. If the harmony of international relations was to be ensured, it was essential to define the fundamental rights and duties of States.

40. The International Law Commission had submitted to the General Assembly a draft declaration on rights and duties of States which, in the opinion of the delegation of Lebanon, was truly a work of art on which the Commission should be congratulated. The draft declaration, which was based on the Charter of the United Nations, set forth in fourteen articles all the fundamental rights and duties which derived from the legal personality of States and their interrelationship in normal circumstances. Extraordinary circumstances could obviously give rise to particular rights and duties of States but, by reason of their abnormal and temporary nature, those rights and duties had no place in a declaration on the rights and duties of States.

41. The delegation of Lebanon considered that no fundamental right or duty of States had been omitted in the draft declaration, which was so near to perfection that it needed no amendment.

42. With regard to the action to be taken on the International Law Commission's draft, the Lebanese delegation supported the solution advocated by the United States (A/C.6/330). That delegation would even be prepared to go further and to propose that the General Assembly should not merely take note of the draft declaration but should approve its content.

43. On the question of the method which the Sixth Committee should adopt in studying the draft declaration, the delegation of Lebanon considered that the provisions of the draft should be discussed together, not separately, since its various articles were so closely linked with each other that any addition or deletion would considerably

[1] See document A/925, paragraph 49.

modify the substance of the draft. Mr. Mattar reserved the right, however, to take part in the discussion on each article of the draft in the event that the Committee decided to open such a discussion. He hoped, however, that the situation would not arise and he appealed to members of the Committee to accept the draft declaration in the form submitted by the International Law Commission.

44. Mr. BARTOS (Yugoslavia), after congratulating the members of the International Law Commission on the statement of principles they had succeeded in drawing up, which constituted a remarkable contribution towards the codification and development of international law, said that his delegation viewed that work with all the respect it deserved but also with all the reservations which a scientific work could arouse. It seemed to Yugoslav statesmen and lawyers that the United Nations should not be content with supporting a statement of principles, but that it should go further and provide for the adoption, under its auspices, of an actual convention on rights and duties of States. Relations between States were indeed a day-to-day matter which should be governed by clear rules. The United Nations Charter and other international documents had limited themselves to laying down general principles which did not enable all the problems arising out of international life at the present time to be solved and which were not an adequate basis upon which to construct a comprehensive system of international law providing for the detailed regulation of relations among States. A convention on the rights and duties of States was therefore necessary; and the Yugoslav delegation considered that there were manifold reasons why the United Nations should take the initiative in drawing up such a diplomatic instrument.

45. The founding of the United Nations, born of the experience of a gigantic war against aggressor States, had not only been the most remarkable historical event of the present time in the field of international co-operation, but had also inspired the peoples with the great hope that the Organization would lead to the prevention of new wars of aggression, whether motivated by territorial expansion or by the desire of a State to impose its will upon other nations. Article 1 of the Charter itself gave the Organization the primary task of maintaining peace and security and of developing friendly relations among nations based on respect for the principle of equal rights and the self-determination of peoples. The nations had thus seen before them the prospect of a permanent peace guaranteeing them a peaceful and independent life. The colonial peoples, in particular, had the prospect of an early, if not immediate, independent political existence. Consequently, the United Nations enjoyed in the world an effective and moral authority hitherto never achieved by any association of States; it was therefore qualified, by virtue of that fact and also of the obligations it had assumed in that respect, to sponsor such a declaration of the rights and duties of States.

46. It was not enough to say that the United Nations was competent to carry out that task; to accomplish it as soon as possible was the urgent duty of the Organization. Although the Charter laid down the principles which should govern peaceful relations between States on the basis of their sovereign equality and the right of peoples to self-determination and to a free existence within their boundaries, and although those principles were denied by no one, actual conditions showed that words fell far short of deeds. The actions of some powerful States were greatly at variance with the rules to which they had subscribed and, if their behaviour were viewed in all objectivity, it became obvious that the basic principles of the United Nations were in effect either being deliberately misinterpreted, completely ignored, or violated as a result of the inequality maintained between States. In the present state of affairs, it was difficult to determine exactly all those violations of the Charter, since principles had not been worked out in detail but had only been laid down in general terms. It was therefore essential not only to restate those premises, but also to develop them and to specify them in greater detail, taking into account present historical conditions which were more than threatening, which were fraught with a very real danger of a rupture of the peace, with all the grave consequences which that would have for the whole world. Therefore, if the United Nations did not wish to have its power to contribute towards the maintenance of peace and security—which were indivisible and applied equally to all States—put in jeopardy, the United Nations should, in order to eliminate the causes of the precarious situation now characteristic of international relations, adopt without delay, a declaration on rights and duties of States.

47. The Yugoslav delegation, in its realistic approach to the situation, was aware of the fact that pressure and aggression in relations among States could not be done away with by means of mere prohibition. It would be possible to attain that objective only when all Governments actually ceased to impose their will upon other peoples. That stage had not yet been reached. The adoption of a declaration on rights and duties of States would not change the laws of history or oblige any Government which refused to do so to refrain from undemocratic practices in its relations with other States. The existence of such a declaration would, however, make it more difficult for possible aggressors to justify their aggression before their own peoples by hypocritical propaganda, and would enable public opinion to assess correctly the actions of the aggressor Governments and to act in time to prevent such actions from being committed. Peace-loving forces and States would thus be able to ascertain and to denounce more clearly and unhesitatingly all acts of pressure and, with even greater assurance, acts of aggression.

48. The present state of international relations, and especially the existence of the United Nations, made it possible to go even further and, in accordance with clear legal provisions, to tie in advance the hands of those who would be inclined to threaten the sovereignty and independence of other States. The abuse of superior power and the exploitation of the weakness of others would thus become unequivocal violations of international law, which world opinion would easily recognize. The protection of States would therefore be easy to organize and conditions conducive to international pressure and aggression would be eliminated. Aggression could be prevented and countered in time. For that reason, the Yugoslav delegation believed that the adoption of a declaration on rights and duties of States, which contained an unambiguous condemnation of all action prohibited in relations among States, would be of considerable practical use.

49. Moreover, that declaration would enable the various organs of the United Nations better to fulfil their task of denouncing and preventing all aggression. The Security Council, to take one example, would find it much easier to establish threats to the peace and to security if definite rules existed which laid down the fundamental rights of States and their duties towards other States in the field of the maintenance of international peace and security. Such definitions would encourage States to refrain from committing the acts forbidden by the declaration, and would facilitate the concentration of pacific forces and States throughout the world against such violations. The Security Council's task would thus be easier and the position of the United Nations as guardian of international peace and security would be strengthened.

50. With respect to States which were the object of any kind of international pressure—and one could not honestly deny that such pressure was used at the present time—the adoption of a declaration of that kind would certainly improve the situation, for it would be easier for those States to denounce before the United Nations and before world public opinion the attacks directed against their sovereignty and the threats to their independence. In that way, the psychological effect of the declaration would help to free those States from the pressures which were impeding their peaceful development. The declaration would be a manifestation of the progressive spirit on the political plane and it would strengthen faith in the principles of the Charter and the effectiveness of the United Nations as an instrument for ensuring the maintenance of peace and security and the independence and sovereignty of States.

51. The deliberate suspension in the development of those principles of the Charter under which the States not entirely self-governing should attain to full independence was a weakness of present international law. That question had already been raised in the Organization, but the relevant provisions of the Charter had been the subject of discussion and misinterpretation, as a result of which the development of those States towards sovereignty was progressing only with extreme slowness. The representative of Israel had pointed out[1] in that connexion that the International Law Commission had neglected certain fundamental principles which were embodied in the Charter. A declaration of rights and duties of States should emphasize those principles so as to expedite their full application. It should deal with the essential aspects of those problems, facilitate the birth of new States, open the way to the emancipation of peoples still subjected to an alien authority and hasten their entry into the community of sovereign and independent States. That would constitute a forward step in the unification of law, not only in the field of the relations between States but also in that of the birth of States and the development of recently liberated peoples.

52. For all those reasons, the Yugoslav delegation was of the opinion that the adoption of a declaration on rights and duties of States on such lines would mark definite progress in international law, for it would endow the community of nations with an effective instrument enabling it to reduce or prevent any pressure by one State on another State and to facilitate the development and organization of new States.

53. That was why the representative of Yugoslavia very much approved of the initiative taken by the Republic of Panama to secure the adoption of a declaration on rights and duties of States. That such a declaration was needed was undeniable. To accomplish its purpose, however, that declaration should be complete, and should do more than enumerate a few general principles while neglecting their concrete aspects. It should answer the needs of historical reality and the present situation, and should apply to those conditions the fundamental principles and spirit of the Charter. Such a declaration should not pass over in silence the right of peoples to self-determination, the outlawing of wars of aggression, and the right of peoples to construct their own States and freely to pursue their internal development, all concepts which already formed part of positive law. Thus, in spite of the quality of its work, it could not be said that the International Law Commission had entirely fulfilled its task. The Yugoslav delegation therefore deemed it necessary to submit to the Sixth Committee a counter draft declaration (A/C.6/326), all of the provisions of which were based on principles already enunciated, either in the Charter or in other instruments of positive international law. In submitting its draft, the Yugoslav delegation was motivated only by the desire to make its own contribution to the efforts to achieve international peace, security and co-operation.

54. After those general remarks, Mr. Bartos replied to the criticism of his draft by the Greek delegation.[2]

55. Mr. Spiropoulos had said that the Yugoslav draft was only the result of the present political situation in Yugoslavia and not the expression of the Yugoslav delegation's profound legal convictions; he had added that the Yugoslav delegation should explain why Yugoslavia, during the past two years, had not observed, in respect to Greece, the rules of articles 6, 10 and 11 of its own draft.

56. Mr. Bartos pointed out that the statement he had just made clearly showed that the Yugoslav delegation considered that a declaration on rights and duties of States should be based, not on legal abstractions, but on an adaptation of the existing texts of positive international law to the political requirements not only of Yugoslavia but of the whole world. That method alone would enable a declaration to be prepared that might contribute to the improvement of relations as well as to the strengthening of international peace and security. Mr. Bartos was surprised that the Greek representative had not hesitated to accuse of a lack of good faith a State which, at the same time as his own country, was the subject of conciliation procedure. Such conduct undoubtedly violated the basic rules of relations between States.

57. However that might be, it was not true that Yugoslavia had not respected, with regard to Greece, the provisions of articles 6, 10 and 11 of its draft. In fact, the cause of the unhappy events which had taken place in Greece lay not in the intervention of Greece's northern neighbours but in the internal situation of Greece itself. The sympathy shown by the Yugoslav people towards those who fought for advancement throughout the world in general and in Greece in particular, together with the fact of providing humanitarian

[1] See the Summary Record of the 170th meeting, paragraphs 59 to 93.

[2] See the Summary Record of the 169th meeting, paragraphs 48 to 51.

aid to the victims of the struggle, no more constituted interference in the internal affairs of another State than it constituted a violation of international law. Yugoslavia had always respected the principles formulated in those articles and now requested that they be respected, from whatever quarter they might be threatened. They were the general principles of the positive international law of civilized nations; such had always been, and always would be, the opinion of Yugoslavia.

58. In criticizing article 8 of the Yugoslav draft, Mr. Spiropoulos had expressed surprise that the Yugoslav delegation should want to introduce into international law the notion of courteous relations between States as a principle of international law. But that article only reproduced article 8 of the Panamanian draft declaration.[1] A similar formula was to be found in the Venezuelan comments on the latter draft, in the Cuban draft of 1945 and in project No. 8 of the American Institute of International Law.[2] If the Yugoslav delegation had considered it advisable to reproduce that principle, it was because it had realized that it was only applied very irregularly in present-day diplomatic practice.

59. The representative of Greece had claimed that the Yugoslav point of view expressed in article 5 of the Yugoslav draft stating that "Foreigners may not claim rights different from, or more extensive than, those enjoyed by nationals", was completely mistaken. According to him, foreigners might have more extensive rights than nationals in a country, under an exceptional régime, for instance. Mr. Bartos considered that such a régime could only be one of capitulations belonging to the past and not to positive law; it had been replaced by the principle of non-discrimination contained in the Charter. Moreover, Mr. Spiropoulos had claimed that a State was entitled to deprive its nationals of every right but was obliged to guarantee an international standard for foreigners. In the eyes of the Yugoslav delegation, a State should not be able to treat its citizens as slaves, for Article 62, paragraph 2, of the Charter required that all Member States guarantee respect for human rights and fundamental freedoms for all, both nationals and foreigners, without discrimination. That principle was the subject of article 9 of the Yugoslav draft. Lastly, the Greek representative had stated that there were certain rights which foreigners did not enjoy. He was doubtless referring to the so-called reserved rights which were the result of the internal organization of a State and which, consequently, according to Article 2, paragraph 7, of the Charter, remained outside the sphere of inter-State relations. The Yugoslav delegation had merely included in its article 9 an international rule already contained in article 7, paragraph 2, of the Panamanian draft and in article 7 of the 1933 Convention of Montevideo.

60. Mr. Spiropoulos had attempted to bring out certain contradictions in the Yugoslav draft, which, in his opinion, would condemn it from the legal point of view. As an example he had quoted the second sentence of article 4, "Every international act contrary to the principle of the sovereign equality of States is null and void", comparing it with article 24, which said that, in such a case, the State concerned "has the right to seek by peaceful means the annulment of the obligations assumed under duress". There was no contradiction there; in fact, only non-existent action was in itself without effect; action that was null, on the other hand, should be annulled by the competent organs. As a result, if the declaration provided for the nullification of an action, it must prescribe the procedure of annulment. If the unilateral right of pronouncing the nullity of a bilateral action were left to any State, veritable international anarchy would ensue.

61. All Mr. Spiropoulos' criticism was, in fact, directed at proving that the Yugoslav draft had no legal value in itself and that the only provisions of any interest were already included in the draft declaration drawn up by the International Law Commission. Thus, the Greek representative had criticized article 7 of the Yugoslav draft, maintaining that it would be impossible to prohibit intervention in international law since such intervention existed everywhere and should exist. Mr. Bartos pointed out that non-intervention in the affairs of a State was one of the fundamental postulates of international law, the value of which was in no way diminished by the fact that it had very often been violated by States seeking to abuse their influence in international life. Since the Holy Alliance, it would be difficult to find an avowed defender of the principle of intervention, of which Mr. Spiropoulos was apparently an ardent supporter. The truth was that the Yugoslav delegation had taken from the draft by the International Law Commission all the provisions it considered valid and in conformity with the existing state of positive internatonal law. Thus, article 3 of the Commission's draft, prohibiting intervention, had been used practically word for word as article 7 of the Yugoslav draft. It would therefore appear that Mr. Spiropoulos' criticism went beyond the Yugoslav draft to the text of the draft declaration drawn up by the International Law Commission itself.

62. The Brazilian representative, for his part, had reproached the Yugoslav delegation for having included in its draft the right of peoples to self-determination, which, in his opinion, was not a legal principle.[3] Mr. Bartos pointed out that it could not be denied that that was indeed a right which, as the Syrian representative had so correctly remarked,[4] constituted the very germ of the State. That right was indeed a legal principle, since it had been recognized as such by both capitalist and socialist States. That right appeared, in fact, in President Wilson's Fourteen Points, in the Atlantic Charter, in the United Nations Charter and in Soviet legislation on nationality. It could therefore be seen that the members of the International Law Commission had provided for everything in their draft except the right involved in the very birth of the State, a right which had been recognized as a principle of international law before the existence of the Charter, which had confirmed it. That criticism, moreover, in no way detracted from the importance of the document drafted by the International Law Commission, which constituted a scientific instrument of great value and which, in the opinion of the Yugoslav delegation, should serve as the basis for a diplomatic convention that was indispensable to the

[1] See document A/CN.4/2, page 36.
[2] *Ibid.*, pages 76 and 77.
[3] See the Summary Record of the 170th meeting, paragraph 27.
[4] *Ibid.*, paragraphs 104 and 105.

achievement of the essential task of the United Nations, namely, the maintenance of international peace and security.

63. Mr. Bartos reserved the right to give his views later on the amendments to the International Law Commission's draft, each of which provided subject matter for useful comments, and on the proposals concerning the legal fate of that document. He emphasized that, in submitting its counter-draft, the Yugoslav delegation had, above all, wanted to draw attention to shortcomings in the text of the declaration prepared by the International Law Commission.

64. Mr. PÉREZ PEROZO (Venezuela) recalled that, when the draft declaration had been voted upon in the International Law Commission, two of the Commission's most distinguished members had voted against it.[1] Furthermore, it was clear from the current debate in the Sixth Committee that even the delegations in favour of the draft admitted that it contained some faults, while others proposed substantial amendments and had even gone as far as to submit a complete new text to replace the one prepared by the International Law Commission. All that proved that the Commission's draft could not form an adequate basis of agreement. As the declaration was meant to reflect the will of States and set forth only the rights they had agreed to claim and the duties they were prepared to fulfil, it was imperative that the principles to be included in the declaration should be chosen on the basis of the broadest possible agreement between the States, whose duties and rights were being proclaimed.

65. The important point was not whether the General Assembly would adopt the draft; indeed a simple majority would not suffice to endow the declaration with the authority it should have in the eyes of international public opinion. Practically unanimous approval of that declaration should be aimed at; a negative vote, or even the abstention of some of the Member nations would rob the declaration of much of its force. It should be remembered also that a negative vote of two of the great Powers would considerably reduce the scope of the declaration.

66. A declaration on rights and duties of States was so important that Governments were amply justified in exercising caution before giving their approval. It was easy to understand that many States were reluctant to support principles which were as yet untried, all the more so because the declaration to be adopted was intended to be semi-permanent while international law was in a state of constant evolution.

67. Members of the International Law Commission, who had acted in the capacity of experts and not of representatives of their respective Governments, had held diametrically opposed views on some of the principles set forth in the draft declaration. Thus, one of the members thought that article 6 of the draft went beyond the United Nations Charter, while another believed that article 14 infringed the sovereignty of States.[2] Assuming that certain Governments shared that view, it was permissible to think that the inclusion in the draft declaration of provisions such as the one which laid down that international law was above national sovereignty could constitute a serious obstacle to the adoption of the draft.

68. The Statute of the International Law Commission laid down that the Commission should bring to the notice of Member States all material prepared by it on the progressive development of international law and its codification. He was not attempting to decide whether the International Law Commission should or should not have communicated its draft to Member States before submitting it to the General Assembly, but merely wished to stress the fact that the Commission was a subsidiary body of the General Assembly composed solely of experts, while decisions which furthered the progressive development of international law or its codification were political and could be taken only by Member States. The very clear distinction between the political and technical aspects of the activities of the United Nations showed that the political aspect was predominant. As an example, he cited numerous instances in which the Economic and Social Council had instructed a committee of experts to study some question and then had communicated the results of those studies to Governments for their views. He also cited cases in which the Assembly had rejected the work of experts and had requested a committee composed of representatives of Governments to do the work over again.

69. His delegation considered that, in drawing up particularly important instruments under which obligations were assumed by signatory States, all drafts should be communicated to Governments before being considered by the General Assembly. The International Law Commission had refrained from communicating to Governments the draft declaration on rights and duties of States before submitting it to the General Assembly not because the Commission had considered that to do so would serve no useful purpose but because it believed that it had no obligation to do so and that it was for the General Assembly to decide how to deal with the draft. The General Assembly was therefore free to send the draft to Governments if it wished.

70. His delegation did not reproach the International Law Commission with having failed to communicate its draft to Governments, but felt, however, that the document was sufficiently important to warrant consultation with the Governments before its examination. It had been possible for Governments to comment on the Panamanian draft, but it should be remembered that there were grave differences both in substance and form between that draft and the one prepared by the International Law Commission. It had been said that very few Governments had taken the opportunity to express their views on the Panamanian draft declaration on the rights and duties of States, and that therefore the transmission of the draft prepared by the International Law Commission would not provoke many comments. He emphasized that the Panamanian draft had been a working document, which had perhaps been the reason why it had aroused relatively little interest on the part of Governments. They would feel much greater interest in the draft drawn up by the International Law Commission.

71. Venezuela ardently hoped that the General Assembly would adopt a declaration on rights and duties of States, but nevertheless felt that, in the interests of the proposed declaration, too much haste should be avoided. It would be better to spend another year on drafting the declaration and secure a larger number of signatures. For

[1] See document A/925, paragraph 46.
[2] *Ibid.*, footnote 3 to paragraph 46.

that reason, the delegation of Venezuela would support the Argentine proposal (A/C.6/332) that consideration of the draft drawn up by the International Law Commission should be postponed to the fifth session of the General Assembly. The Venezuelan delegation was not of the opinion that the draft should be referred back to the International Law Commission in order that the latter might recast it in the light of the observations made by Governments, since the delegation considered that the Commission's work was completed; moreover, the alterations which might have to be made in the draft declaration were not of a legal nature, but arose from political considerations. Governments would be able to make their views known at the following session of the General Assembly, and the draft declaration could then be given its definitive form.

72. For practical reasons also, the draft should not be referred back to the International Law Commission with the observations of Governments. The Commission had a number of tasks to perform and should not be asked to spend a great deal of time on the draft declaration to the detriment of other no less important questions entrusted to it by the General Assembly.

73. The delegation of Argentina had suggested submitting the draft declaration to institutions devoted to the study of international law. The Venezuelan delegation considered it unnecessary to consult those organizations. It would certainly be useful to have their views on the Panamanian draft, but a purely legal opinion was not required with regard to the draft prepared by the International Law Commission. The General Assembly was concerned only with the views of Governments.

74. With reference to the procedure to be followed in considering the draft declaration, his delegation considered that, if it were decided to transmit the draft to Governments in order that they might express their views, it would not be necessary to consider each article and the amendments and proposals submitted by some members of the Committee. It would be enough for delegations to express their views during the general debate.

75. His delegation considered it essential that Governments should be consulted before the draft drawn up by the International Law Commission was considered in detail. That was one reason why the representative of Venezuela opposed the suggestion of the United States delegation that Member States should be requested to consider the declaration as a source of law and a guide for its progressive development. In order to do that the General Assembly—that is, the Governments themselves—must first examine the principles it was being asked to recognize. It was well known that a number of Governments were not in agreement on some of those principles.

76. The Venezuelan delegation, understanding fully what had prompted the United States delegation to make that proposal, considered some of them to be justified, and shared the anxieties expressed by the United States representative at a previous meeting.[1] Nevertheless, that delegation felt that the General Assembly should spare no effort with a view to the adoption of a declaration on rights and duties of States. The United States proposal should be considered only after all efforts to do so had proved fruitless. The next step should be to postpone consideration of the draft declaration to the following session of the General Assembly and to request Governments to submit their observations on the draft.

The meeting rose at 6.15 p.m.

[1] See the Summary Record of the 168th meeting, paragraph 88.