The sentence was rejected by 21 votes to 13, with 23 abstentions.

88. The PRESIDENT put the remainder of paragraph 3 to the vote.

The remainder of the paragraph was rejected by 41 votes to 5, with 10 abstentions.

89. The PRESIDENT declared that since none of the paragraphs of the USSR draft resolution had been adopted, it was unnecessary to put the draft to the vote as a whole.

The meeting rose at 1.05 p.m.

TWO HUNDRED AND SIXTY-SECOND PLENARY MEETING

Held at Flushing Meadow, New York, on Thursday, 1 December 1949, at 3 p.m.

President: General Carlos P. RÓMULO (Philippines).

Application of Liechtenstein to become a party to the Statute of the International Court of Justice: report of the Sixth Committee (A/1054)

1. Mr. FERRER VIEYRA (Argentina), Rapporteur of the Sixth Committee, presented the report of the Sixth Committee and the accompanying draft resolution (A/1054).

2. The PRESIDENT put to the vote the resolution proposed by the Sixth Committee.

The resolution was adopted by 40 votes to 2, with 2 abstentions.

Registration and publication of treaties and international agreements: report of the Sixth Committee (A/1100) and report of the Fifth Committee (A/1108)

3. Mr. FERRER VIEYRA (Argentina), Rapporteur of the Sixth Committee, presented the report of the Sixth Committee and the accompanying draft resolutions (A/1100).

4. He drew the attention of the General Assembly to two aspects of the matter which were of particular interest. First, he referred to the progress made during the year, notably in the publication and registration of treaties and agreements.

5. In the report submitted by the Secretary-General (A/958) as well as in the supplementary working document submitted to the Sixth Committee on the state of publication up to 26 October 1949, it was shown that up to that date twenty-two volumes containing treaties registered or filed and recorded up to 24 December 1948 had been published.

6. At present there was a difference of only ten months between the registration and the publication of treaties.

7. The General Assembly knew that the principal objective of Article 102 of the Charter was to obtain publication of agreements or conventions signed by the various States; its aim was to fight the diplomatic secrecy of past years.

8. The Sixth Committee[1] had agreed that it was necessary to continue publication of the series of treaties at the same rate and had therefore included in paragraph 3 of draft resolution A, a provision requesting the Secretary-General to take the necessary measures to bring about the earliest possible publication of all registered agreements and treaties.

9. He referred to Article 102 of the United Nations Charter, which stated that every treaty and international agreement entered into by any Member of the United Nations after the Charter came into force should as soon as possible be registered with the Secretariat and published by it, and that no party to any such treaty or international agreement which had not been registered in that way could invoke that treaty or agreement before any organ of the United Nations. In other words, before any treaty or agreement, bilateral or multilateral, could be invoked before the United Nations, and that included the International Court of Justice, it had to be registered with the Secretariat.

10. When in 1946, during the second part of the first session of the General Assembly, the rules for the application of Article 102 of the Charter had been approved,[2] a clear distinction had been drawn between the elements which characterized two different legal procedures, namely the deposit of an agreement or international instrument of any kind, and the registration of an agreement or international instrument. The matter had been discussed at length in connexion with the publication of such documents.

11. Mr. Ferrer Vieyra considered that under Article 102 of the Charter the depositing and registration of an international instrument was a legal obligation binding upon those States which were parties to that instrument. The United Nations was only obliged to bring about the earliest possible publication of treaties and international agreements registered by Member States. Only under certain determined conditions was the Secretariat authorized, in the rules for the application of Article 102, to register treaties. Those conditions were when the United Nations was a party to a treaty, and when the United Nations, not being a party to a treaty, had been given such authority in a special clause or article.

12. In the draft resolution submitted by the Sixth Committee, it had been suggested that a paragraph should be added to article 4 of the regulations to give effect to Article 102 of the Charter, authorizing the United Nations to register multilateral treaties when it was the deposi-

[1] For the discussion on this subject in the Sixth Committee, see *Official Records of the fourth session of the General Assembly*, Sixth Committee, at its 174th meeting.

[2] See *Official Records of the second part of the first session of the General Assembly*, 65th plenary meeting.

tary of such treaties. That introduced an important innovation as the depositary of a treaty was thereby authorized to register the document without actually being a party to it.

13. In the opinion of the Rapporteur, the Sixth Committee's proposal should be adopted by the General Assembly in view of the special legal nature of the United Nations. When the parties to an agreement or treaty deposited that instrument with the United Nations it should be considered that they had done so with the fundamental objective of fulfilling the stipulations of the Charter in that respect. It could not be accepted as a legal criterion that when the parties to an agreement had deposited it with the United Nations, that agreement could not be invoked before any organ of the United Nations. To deposit an agreement or a treaty with the United Nations was to manifest a desire to give that document the greatest possible legal value. For that reason, Mr. Ferrer Vieyra thought that the draft resolution submitted by the Sixth Committee must be approved by the General Assembly.

14. With regard to the actual text of the paragraph to be added to the first part of article 4 of the regulations to give effect to Article 102 of the Charter, he pointed out that it only referred to "multilateral treaties or agreements". He did not think that legal arguments were sufficiently strong to limit the provisions to multilateral treaties and agreements and to exclude bilateral treaties or agreements deposited with the United Nations. The reasons expressed in the case of multilateral agreements were equally valid for bilateral agreements. Furthermore, there was no legal provision that would expressly prevent the provision being extended to cover agreements. The text as proposed, however, referred exclusively to multilateral agreements or treaties. Perhaps it would be advisable to consider the the possibility and the advantages of extending, in the future, the same treatment to bilateral agreements or treaties.

15. The PRESIDENT put to the vote draft resolution A proposed by the Sixth Committee.

The resolution was adopted unanimously.

16. The PRESIDENT then put draft resolution B to the vote.

Resolution B was adopted by 49 votes to none, with 3 abstentions.

Reparation for injuries incurred in the service of the United Nations: report of the Sixth Committee (A/1101)

17. Mr. FERRER VIEYRA (Argentina), Rapporteur of the Sixth Committee, presented the report of the Sixth Committee and the accompanying draft resolution on reparation for injuries incurred in the service of the United Nations, an item on which the General Assembly had requested an advisory opinion from the International Court of Justice;[1] that opinion had been issued on 11 April 1949 (A/960).

18. He considered that it was one of the most important documents on international law which had recently appeared.

19. The request before the Court had led it to study the classical problem of the subjects of international law, and the problem of the legal capacity of international bodies.

20. The legal nature of the advisory opinion had been extensively discussed by the Sixth Committee. The United States of America, India and Iran had submitted a joint draft resolution proposing that the General Assembly should accept the advisory opinion of the International Court of Justice as an authoritative expression of international law. The Sixth Committee had decided, however, that an advisory opinion of the Court was not binding upon the General Assembly, which continued to enjoy discretionary powers. It had also stated that the advisory opinion was not even binding upon the Court itself which, in the application or later interpretation of a legal norm, might follow a criterion distinct from that enunciated in the advisory opinion. A distinction had been made between an advisory opinion and a judgment of the Court, and the binding nature of the latter upon the parties in dispute had been recognized.

21. The Sixth Committee had considered the question and had recognized that an advisory opinion had the authority of a judicial decision. Thus, two elements had been distinguished; binding force and authority. The Committee had been in complete agreement that the advisory opinion of the Court lacked the binding force of its judgments and, with reference to its authority, it had stated that, as an expression of the thought of the most important legal organ of the Organization, it derived, not from the Assembly's acceptance of it, but from its intrinsic value and from the "status" of the organ from which it emanated.

22. The Committee had also considered the question of whether the Assembly should approve the conclusions of the International Court of Justice. The majority had thought that the Assembly should not pass judgment on the value of the legal content of an advisory opinion and that, in principle, it was not the business of the Assembly to approve or reject the opinions of the International Court on legal questions.

23. The Sixth Committee had expressed the fear, in that connexion, that the words "authorized expression of international law" might be interpreted as giving the Court's advisory opinion the force of a new rule of international law which was not the meaning which the Sixth Committee wished to attach to it. It had therefore decided to abide by the precedent set by the General Assembly when, in its resolution 197 (III), it had noted the Court's advisory opinion on the admission of new Members. The authors of the joint resolution, to which he had already referred, together with other representatives, had stated that that procedure did not mark any implicit or explicit substantive disagreement with the Court's replies, neither could it be interpreted as indicating that the Court's advisory opinion was not an authoritative expression of international law.

24. In his opinion, the Sixth Committee's procedure in not passing judgment on the value of the advisory opinion of the Court was the best decision that could have been taken. There was no need to recognize the authority of an

[1] See *Official Records of the third session of the General Assembly, Resolutions*, No. 258.

opinion of the Court because it derived from the very nature of the body which gave that opinion; furthermore, by instructing the Secretary-General to take certain measures, the Assembly was tacitly indicating whether it accepted the Court's conclusions or not.

25. It should never be forgotten that the General Assembly retains its discretionary powers at all times. The Court might study the legal aspect of a problem, but the Assembly alone should consider it from the political point of view.

26. The General Assembly, in its resolution 258 (III), referred to the series of tragic events which had lately befallen agents of the United Nations engaged in the performance of their duties which raised, with greater urgency than ever, the question of the arrangements to be made by the United Nations with a view, in the future, to ensuring to its agents the fullest measure of protection and reparation for injuries suffered; it had therefore requested an advisory opinion from the Court on two questions of fundamental importance.

27. In the first place, the Court had attempted to interpret the phrase "agent of the United Nations"; on page 177 of its advisory opinion it had said that it "understands the word 'agent' in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out or helping to carry out, one of its functions, in short, any person through whom it acts".

28. The Court had therefore given a very broad interpretation to the phrase. But perhaps the use of the expression "whether a paid official or not" had given rise to variations in the interpretation of that paragraph of the Court's advisory opinion.

29. Mr. Ferrer Vieyra recalled that Article 105, paragraph 2, of the Charter, on privileges and immunities, spoke of "representatives of the Members of the United Nations and officials of the Organization". He also recalled a study on the word "agent" made by Judge Azevedo in his individual opinion which followed the advisory opinion of the Court, according to which "officials are included in the motion of 'agent', but representatives of Members are not, although the Organization may be interested in supporting a proposed claim for injuries suffered by such representatives in the performance of their duties, e.g., in places where organs to which they belong are sitting."[1] Judge Krylov had not, however, agreed with that point of view. In his dissenting opinion he had stated:[2] "I am also unable to associate myself with the following affirmations of the majority of the Court. The Court considers that it may understand the term 'agent' in the very widest sense. I think that the term 'agent' must be interpreted restrictively. The representatives of the Governments accredited to the Organization and the members of the different delegations are not agents of the Organization. Nor are the representatives of the Governments in the different Commissions of the United Nations agents of that Organization".

30. As Judge Azevedo said "the different kinds of duties that are performed in the interest of the Organization are not fully set out in Article 100 of the Charter, nor yet in Article 105, which mentions both officials and representatives of Members". There had been some discussion in connexion with the Convention on the Privileges and Immunities of the United Nations and in connexion with the privileges and immunities of specialized agencies on the position of persons who were neither representatives of Governments nor officials of the United Nations, but who should nevertheless enjoy the privileges and immunities in question. The concept of "representatives" included all members of delegations regardless of the relative importance of those persons. The concept of "official" was equivalent to "employee". The position of "experts" who were not officials but who were working for the benefit of the Organization and that of agents, advisors and lawyers in the service of the parties to disputes submitted to the International Court of Justice, had been duly considered.

31. The chief problem which he wished to draw to the Assembly's attention, however, was whether the representatives of Member States should be considered as included within the general meaning of the term "agents", as that word was used in the Court's advisory opinion.

32. There were cases when a representative's work acted first in the interests of his Government and, to a secondary extent, in those of the United Nations, but there were other occasions when the reverse might be true. He therefore considered that Judge Krylov had been right when he had stated that the Court understood the word "agent" in its broadest sense, though Judge Krylov thought it was incorrect to do so. The term "agent" should be interpreted in the widest possible sense and should include representatives of Member States. When an agent suffered an injury, it must be determined whether he had been acting primarily on behalf of the United Nations or on behalf of his Government.

33. The Court had further given its opinion on the nature of an "international claim". It considered that competence to bring an international claim was co-existent with the capacity to resort to the customary methods recognized by international law for the establishment, presentation and settlement of claims. Protest, request for an inquiry, negotiation, and request for submission to a court of arbitration or to the Court in so far as that might be authorized by the Statute might be included among those methods. In principle, such a claim should be made between two political entities, equal in law, similar in structure, and both direct subjects of international law. Such a claim should be dealt with by means of negotiation and, in the existing state of the law as to international jurisdiction, it could be submitted to an international court only with the consent of the States concerned. As the Court had stated, that was a capacity which belonged to States.

34. Did the United Nations, however, have the capacity to bring an international claim? On that subject, the Court had said: "The subjects of law in any legal system are not necessarily

[1] See page 193 of the advisory opinion of the International Court of Justice (A/960).
[2] *Ibid.*, page 218.

identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community."

35. According to the International Court of Justice, the Charter did not give an explicit answer to that question, which could only be dealt with by considering what general characteristics the Charter had intended to give and had, in fact, given to the Organization.

36. According to the Court: "The Charter has not been content to make the Organization created by it merely a centre 'for harmonizing the actions of nations in the attainment of these common ends'". The Organization had been assigned a special task. It was a political body, charged with political tasks of an important character and covering a wide field, namely the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in the solution of problems of a social, cultural or humanitarian character. It was to employ political means in its relations with Member States. The Convention on the Privileges and Immunities of the United Nations of 1946 created rights and duties between each of the signatories and the Organization; and it was difficult to see how the Convention could operate except upon the international plane and as between parties possessing international personality.

37. The Court had added that, in its opinion, the Organization exercised its functions and enjoyed its rights by virtue of its international personality and its capacity to operate upon an international plane.

38. In the Sixth Committee there had been no objection to the idea expressed by the Court on the legal personality of the United Nations; but one of the paragraphs of the advisory opinion had been the subject of an interesting comment. The paragraph read as follows:[1] "The Court's opinion is that fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims."

39. In the Sixth Committee it had been affirmed that in conformity with international law each State had power jointly with another State to establish an entity enjoying objective international personality. Consequently, the fact that the Court alluded to a "vast majority" of States might cast doubt upon the validity of that principle of international law and negate the objective international personality of specific international organizations. He was of the opinion that the Court had only meant to say that States were able, by an expression of their sovereign will, to create international entities with objective personality.

40. The International Court had given a unanimously affirmative answer to question I (*a*) submitted by the Assembly. According to that answer, in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a Member State or of a non-member State, the United Nations as an Organization had the capacity to bring an international claim against the responsible *de jure* or *de facto* Government with a view to obtaining the reparation due in respect of the damage caused to the United Nations.

41. By "damage caused to the United Nations" was understood damage caused to the interests of the Organization itself, to its administrative machine, to its property and assets, and to the interests of which it was the guardian. The grounds of the claim were that the State responsible had failed to carry out an obligation imposed by international law, and by so failing had caused damage to the Organization. It should be noted that both the question and the answer referred to damage in circumstances in which an "agent" of the Organization was involved. He was, however, of the opinion that the wide conception of an international claim in case of damage suffered by the Organization to its property and assets did not require that an "agent" of the Organization should always be involved.

42. The PRESIDENT, at that point, reminded the Rapporteur that his responsibility was to present the report of the Committee only. Should he wish to express his own views he could arrange to do so by inscribing his name on the list of speakers.

43. Mr. FERRER VIEYRA (Argentina), Rapporteur of the Sixth Committee, explained that he had merely been making an analysis of the form in which the Committee had interpreted the Court's advisory opinion. He would, however, respect the President's observation and read the resolution approved by the Sixth Committee as it appeared in document A/1101.

44. Mr. PÉREZ PEROZO (Venezuela) stated that in the Sixth Committee his delegation had supported the draft resolution under discussion in the Assembly, and it would vote in favour of it. The draft had been based on the advisory opinion of the International Court of Justice on reparation for injuries incurred in the service of the United Nations and, therefore, in the Sixth Committee's opinion, it constituted the most appropriate means of solving the problem which had led the Assembly to request that advisory opinion in December 1948.

45. His delegation had always thought that such reparation was necessary not only for fundamental reasons of justice but also in the interest of the United Nations itself. If the Organization did not ensure proper protection of its agents, it would weaken the willingness of people to collaborate on dangerous missions.

46. His delegation had already expressed its agreement in the Sixth Committee with the Court's opinion. It had also accepted that part of the opinion, to which the most objection had been raised, namely the capacity of the United Nations to bring a claim on behalf of the victim or of the persons entitled through him, but had based its acceptance on its own interpretation of the significance and scope of that capacity.

47. While recognizing the competence of the Organization to claim reparation for injuries incurred by its officials in situations for which

[1] See page 185 of the advisory opinion of the International Court of Justice.

a State seemed responsible, the Court, by expressly recognizing the concurrent claims of the Organization and of the State of which the victim was a national, had not forgotten that State's right to afford its protection to the victim. The Court had confined itself to pointing out that the United Nations had the right to include in the claim the damage incurred by the victim or persons entitled through him.

48. The draft resolution under consideration was designed to apply the Court's conclusions inasmuch as it authorized the Secretary-General to represent the United Nations in making claims for reparations when necessary. Likewise, in view of the possibility of competition between the rights of the Organization and those of the State of which the victim was a national, the General Assembly authorized the Secretary-General to enter into negotiations with the State concerned with a view to reconciling such conflicting rights.

49. The State could agree to the bringing of a single or joint action, or it might prefer to act individually and oppose any action in its name.

50. He thought that, in the latter case, the Secretary-General would automatically cease any attempt at joint action and confine himself to entering a claim for the damages suffered by the United Nations, regardless of the action the State might bring. In that event the Secretary-General would only have to report to the Assembly on the result of his negotiations in his annual report, and that would give an idea of the state of claims in general. It could be assumed that the Assembly would confine itself to taking note of the situation set out in the report. His delegation considered that the refusal of a State to agree to a proposal for joint action could not be discussed in the Assembly, because, as the State concerned could not be prevented from presenting its claim separately, such a discussion could serve no useful purpose and would probably be political in nature, or in other words, irrelevant to the just reparation of the damages inflicted.

51. Mr. Pérez Perozo stressed the necessity in the cases under consideration of respecting the State's right to bring suit for protection of its nationals on its sole initiative.

52. By recognizing the international legal personality of the United Nations, the International Court of Justice had also recognized its competence to enter a claim for damages inflicted upon its agents, but that did not mean that the principle traditionally accepted by international law, the so-called "diplomatic protection", was disregarded.

53. When the Court had used the word "agents" in giving its opinion, it had used it in its broadest sense; it was advisable, however, to distinguish between two categories of agents in the service of the United Nations, in order to estimate more accurately to what extent the right of the State to protect its nationals could prevail over the Organization's right of functional protection. The status of an agent who belonged to the permanent Secretariat and had sustained injuries would, for example, differ from that of a representative of a Member State attached to a commission of inquiry; both would be agents of the United Nations, but the latter would also be a representative of his Government, because States rather than individuals were as a rule appointed to commissions. The importance of the Court's conclusion on the United Nations right to bring claims for injuries sustained by its agents lay in the fact that, if that right had not been recognized, the State against which the claim was brought might not accept the Secretary-General's claim even if he were proceeding with the consent of the State of which the victim was a national, because the former might deny the competence of the United Nations, under established international law, to present such a claim. After the Court's conclusion, duly accepted by the General Assembly, the same objection would not stand when the United Nations brought a claim on behalf of the agent who had sustained injuries, although that did not mean that the right of the State to ensure the diplomatic protection of its national who had been the victim of the illegal act was denied.

54. His delegation trusted that in cases of competition between the rights of the Organization and those of the State, the latter would refrain from taking action on its own account, and would leave the claim to be brought by the United Nations. Thus, the fact that the United Nations was sole claimant would be a valuable guarantee that the case would proceed within strict bounds of impartiality and justice, without any threat of sanctions such as had unfortunately occurred in certain cases in which claims had been brought by States, under pretext of the diplomatic protection of their nationals. Such action by the United Nations alone, or jointly with others, should be of special interest to the weaker States, because claims for injuries sustained by their nationals would be more likely to succeed and because, when the claim for reparation was brought against one of them, the United Nations would not claim more than due reparation for the injury sustained.

55. The Venezuelan delegation also trusted that the Secretary-General would perfect a system of contracts with agents sent on dangerous missions, providing for the immediate and adequate identification of such persons or of the persons entitled through them in case of injury. A well-meditated insurance plan would make the contract system more feasible. Thus, not only would the victims or persons entitled through them be covered against any disappointment at the amount of the indemnity or the delay necessary to prove the claim, but there would also be the possibility that the reparation paid to the agent who had sustained injuries would be included in that claimed by the United Nations on its own account, because it could be considered that the United Nations had already made a disbursement in payment of the injuries sustained by the agent under the contract. Once reparation had been made, there would be no good reason for the State concerned to claim to validate its rights separately, because the essential purpose of the claim would be to obtain indemnification for the injuries sustained by the agent. Once the indemnity had been paid by the United Nations to the agent or persons entitled through him in fulfilment of the contract, it might be unnecessary for the Secretary-General to open negotiations with the State of which the victim was a national with a view to joint action,

because the United Nations would also claim the repayment of the sums which it had already paid out. It would be exceptional for the State concerned to try in such cases to exercise its right to the protection of its national who had sustained injuries, unless it harbored ulterior motives. Moreover, the payment of the indemnity by the United Nations under the contract would automatically remove any difficulties which might arise if the agent who had sustained injuries were a stateless person or if his own State took no interest in his protection. All such considerations induced his delegation to stress the importance which it attributed to the plan which the Secretary-General should draw up in order to organize a system of model contracts.

56. In conclusion, his delegation's view with regard to claims could be summarized as follows: absolute respect for the right of each State to protect an agent of the United Nations who had sustained injuries if that agent was its own national; it was hoped, nevertheless, that the State concerned would accede to the Secretary-General's proposal for joint action; immediate cessation of any attempt at joint action by the Secretary-General should the State concerned prefer to act individually; the Secretary-General should confine himself, in such a case, to informing the Assembly of the occurrence; the assurance, proposed by the Secretary-General in his report, that the claimants would not make excessive demands and that the threat of sanctions would not be used; the assurance also that the State concerned would not be faced with multiple claims, by the United Nations, the agent who had sustained injuries and the State of which he was a national; and finally, the planning and completion by the Secretary-General of a system of contracts under which an immediate and adequate indemnification of the victim or persons entitled through him would be guaranteed.

57. Mrs. BASTID (France) said that, when the history of the United Nations came to be written, the resolution on which the General Assembly was about to be asked to vote would appear of the highest importance. The tragic death in Palestine of the United Nations Mediator, Count Bernadotte, and several of his companions, had given rise to a new problem, or at least to a problem new in scope. At its third session the General Assembly had studied the question in all its aspects to decide only that it was difficult, if not impossible to give instructions to the Secretary-General.

58. Though, in 1948, there had been agreement on affording to representatives of the United Nations the greatest possible protection and compensation for any losses which they might have suffered, considerable doubt remained regarding what the United Nations could do. Had it the necessary international legal personality? Could it claim damages for the loss of its representatives? Could it even request compensation for those representatives, or give them adequate international protection?

59. At the previous session, the delegation of France had expressed well-defined views on those various questions. Those views had been based on the following principles: the United Nations enjoyed full international legal personality; the position of its representatives was governed by the primacy given to the international civil service. France had been among the first to recognize those principles, to which it had remained faithful. Thus, in 1948, the situation had seemed to the French delegation sufficiently clear to enable the Assembly to give immediate instructions to the Secretary-General.

60. Despite its efforts, that view had found little support. The question had appeared new and difficult. There had been hesitation regarding the international legal personality of the United Nations and the protection which could be given to the individual independently of the diplomatic protection extended by a national State. In short, the Assembly had thought it necessary to seek counsel and guidance and had applied to the Court for an advisory opinion. France had willingly agreed that a problem of such capital importance should be laid before the highest constitutional authority and the highest judicial authority in existence.

61. France had continued to show its especial interest in the problem by the submission of a written memorandum and by an oral statement,[1] Its views on the legal points under discussion had been clearly stated in both. The argument which the French delegation had upheld from the beginning was that which received the full approval of the Court. Its ruling was that the United Nations enjoyed very wide powers, powers to lodge international protests, powers to take action in respect, not only of Member, but of non-member States; powers, in the case of loss or injury suffered by a representative of the United Nations, to claim compensation both for the loss to the United Nations and to the victim and his legal beneficiaries.

62. The Court had brought the problem of conflicting claims between the jurisdiction of the national State and that of the United Nations into proper perspective by pointing out that the sets of rules, to the breach of which their respective claims referred, were not identical—an opinion which generally prevented, or was likely to prevent, disputes.

63. The Court had suggested special or general agreements, in case of need, between the United Nations and the States.

64. Confronted with that opinion, so substantial and covering such new problems, pregnant with possibilities, the Assembly had to define its attitude.

65. Two principles made it possible to define exactly what that attitude must be.

66. The first principle was the following: the Assembly of the United Nations, an essentially political body, was qualified to examine questions of law, to give opinions upon them, opinions which undoubtedly did not make law but were of great importance for the definition and specification of the rule of law, because they came from representatives of States and, in the final analysis, as things stood, the assent of States ensured the development of international law.

67. The second principle was that the advisory opinions of the International Court of Justice were not necessarily binding. An opinion handed

[1] See *Official Records of the third session of the General Assembly, Part I*, Sixth Committee, 112th meeting.

down by the Court did not make it mandatory upon the United Nations to take action, in the same way as a judgment of the Court would be mandatory upon States in litigation. Thus, the Assembly could discuss law. The Assembly was not bound by the Court's opinion. Those two points were established.

68. If that were so, what must be the Assembly's attitude to the opinion handed down by the Court? It was true that there was no written rule governing that matter. It was, however, one of the common problems of relations between organs, one known to all constitutional structures. The question could be very much simplified. The politicians and lawyers in the Assembly had been faced with a problem about which they had been unable to reach agreement. By appealing to the Court, they had recognized that it deserved examination by the highest legal authority. Should that legal opinion be reviewed, judged and, as it were, screened by the Assembly before it took any action? The French delegation did not think it should. The role of the Assembly, the political body, was to decide upon action by accepting, refusing to accept or partially accepting the Court's opinion. It was not possible for it to act, so to speak, as a higher court in reviewing the opinion in order to give its judgment on its legal value.

69. A division of competence was essential; that principle had already been respected by the Assembly when, in the resolution adopted on the opinion of the Court concerning the admission of new Members, States had been recommended to respect the opinion, but the Assembly had not pronounced on its value. A different interpretation would undoubtedly lead in certain cases to the statement that the Court's opinion conformed to the opinion of States—and that would obviously be very important—but there might be certain reservations on specific points in the operative part of the resolution or on the grounds for it; in that case, far from strengthening the Court's opinion, the Assembly resolution would weaken it without any corresponding practical advantage either for the Assembly or for the Court; it would also have the disadvantage of being detrimental to the Court's prestige.

70. Even though the Court's opinion was not binding on States, the French delegation thought that it was authoritative both on account of the capacities of those who had drawn it up and of the Court's methods of working.

71. That was why the draft resolution submitted by the French delegation and agreed to by the majority of the Sixth Committee merely referred to the opinion and gave certain instructions to the Secretary-General. By placing those two elements in conjunction, which was a logical deduction, it had been discreetly but unquestionably indicated that the Assembly was following the line of action suggested by the Court and by application of its opinion.

72. Thus, far from involving the possibility that the resolution might be interpreted as expressing reservations or reticence with regard to the Court's opinions—which were those professed by the French delegation itself—that formula made it possible to retain the Court's organic independence. In taking that action, the French delegation had been inspired by the desire to strengthen an Assembly jurisprudence, the outlines of which could already be seen, and to contribute to a wise division of activities in international life.

73. In brief, the French delegation asked the General Assembly to approve the resolution submitted by the Sixth Committee; it urged the representatives of Member States not to lose sight of the basic purpose of the resolution, which was to ensure as wide and effective protection as possible to officials of the United Nations, or, in essence, as wide and effective protection as possible to the international civil service. The international civil service was, after all, judged according to the amount of independence it enjoyed and true independence could not be hoped for if United Nations officials had to rely solely on their national States for protection when they ran the risks connected with their duties on behalf of the community of Member States. That was the real point of the resolution; that was why it was of the utmost importance for the United Nations that it should be adopted.

74. Mr. MELENCIO (Philippines) said that the General Assembly should give favourable consideration to the draft resolution under discussion. In the course of their duties, the agents of the United Nations often had to face the danger of physical violence prompted by embittered political feelings in the areas to which they had been assigned. There had been several instances of United Nations agents being killed or injured either as a result of premeditated attack or through the failure of the Government concerned to extend the necessary protection. The outstanding instance had been the deaths of Count Bernadotte and Colonel Serot.

75. The draft resolution before the Assembly provided for reparation not only in respect of injuries sustained by the agents of the United Nations but also for damages suffered by the United Nations itself. Four main objections had been raised against that resolution during the discussion in the Sixth Committee. It had been contended that the United Nations was not vested with a legal capacity to prosecute, that the sovereignty of the States would be impaired, that the domestic legislation of the States concerned should prevail in the case of claims by individual agents, and that the United Nations should not be converted into a kind of super-State.

76. The Philippine delegation was in full agreement with the opinion of the International Court of Justice that the United Nations was vested with a legal personality under the Charter. Its legal capacity was composed of the separate and distinct sovereignties of the Member States, for all of them should be deemed to have relinquished some part of their respective sovereignties in favour of the United Nations a a whole. That entailed no diminution of their respective sovereignties but lent moral authority to the resolutions and policies adopted by the United Nations.

77. It should follow, therefore, that the agents of the United Nations enjoyed certain rights which the United Nations was bound to uphold and protect. It also followed that when those agents were injured or killed in the performance of their duties through the failure of any given State to give them adequate protection, that particular State became responsible for whatever

damage might have been caused to the United Nations or to the individual victims.

78. In other words, although the United Nations was not expressly entitled under the Charter to prosecute claims for damages to itself or to its agents, its right to do so should be recognized as implicit in the Charter, for without such a right it would be unable to fulfil its duties adequately. In assuming such a right, the United Nations was merely asserting its broader right to secure respect for its undertakings. If its right to prosecute claims were not recognized, its activities would be crippled from the outset and its efforts to initiate its fundamental policies would be defeated.

79. The United Nations had far-reaching political missions to perform and foremost among them was the maintenance of peace and security throughout the world. It would be unable to fulfil that mission if its agents were not accorded the necessary protection for the execution of their duties. Such protection was, in a broader sense, a matter of duty for all Member States, since they were all expected to adapt themselves to the needs of the Organization.

80. There might be a new concept of international law, but it was a progressive concept and a sound precedent, which had been made necessary by the creation of the United Nations. In any event, international law had already been profoundly affected by the advent of the United Nations and it should be developed in order to meet the new requirements of a changing world situation. There was no need for any apprehension on the grounds that the sovereignty of any State involved might be impaired. The Secretary-General had outlined the procedure to be followed in the prosecution of claims for damages and that procedure would maintain full respect for the rights of the States concerned. The Secretary-General would determine which cases seemed likely to involve the responsibility of a State. He would then consult with the Government of the country of which the victim had been a national in order to ascertain whether it had any objection to the presentation of a claim or whether it wished to join in submitting such a claim. He would then present, in each case, an appropriate request to the State concerned for the initiation of negotiations to determine the facts and the amount of reparation involved. It was proposed that any difference of opinion between the Secretary-General and the State concerned which could not be settled by negotiation should be submitted to arbitration.

81. The procedure envisaged was, therefore, that of amicable settlement by arbitration. Compulsion was not contemplated; national sovereignty, therefore, could in no way be impaired. On the contrary, the draft resolution expressely stipulated that such sovereignty would be ensured, because the Secretary-General would have to reconcile any action by the United Nations with the rights inherent in the State of which the victim was a national.

82. Furthermore, nothing in the proposed procedure for prosecuting claims for injuries to agents of the United Nations precluded them from waiving all claim to intervention by that Organization. They would not be precluded from resorting exclusively to such remedies as were open to them under the domestic law of their own country.

83. Finally, there was nothing in the entire plan envisaged in the draft resolution which could be interpreted as vesting the United Nations with the attributes of a super-State. The plan would rather enhance the prestige of the United Nations and respect for its authority. Every Member of that Organization must naturally regard such a result as desirable. The Philippine delegation would therefore vote for the draft resolution.

84. Mr. FITZMAURICE (United Kingdom) said that, in the course of presenting the report of the Sixth Committee, the Rapporteur had made a number of remarks which were quite outside the scope of the report as such and must be regarded as representing his own personal views which he had a perfect right to express. Mr. Fitzmaurice agreed with some of those views and not with others.

85. The United Kingdom Government regarded the advisory opinion of the Court in the case under discussion as a valuable contribution to the elucidation of the constitutional and legal position of the United Nations as an organization and as an international entity. The advisory opinion paved the way towards a very necessary protection for the servants and agents of the United Nations in the performance of their functions. He welcomed it and also the draft resolution, for which he would vote.

86. Mr. SPIROPOULOS (Greece) stated that, when the question of the capacity of the United Nations to lodge claims against States had been discussed the previous year in the General Assembly, his delegation had taken the view that the United Nations was not entitled to lodge claims on behalf of its agents when they had suffered damages at the hands of foreign Governments.

87. A new situation had, however, arisen as a result of the advisory opinion of the Court. He very strongly supported the draft resolution before the Assembly. When the question had been discussed in the Sixth Committee some delegations had expressed the view that the draft resolution should not be adopted because the opinion of the Court was not binding.

88. He could agree with that view if the question were to be considered in its strictly legal aspect. There was, however, another aspect of the matter. In that connexion, he recalled the practice of the Council and the Assembly of the League of Nations. The value of an advisory opinion from the Permanent Court of International Justice had been considered by the League of Nations. Everyone had agreed at that time—unfortunately the practice in the United Nations had been quite different—that it was a question of procedure and not of substance and that a simple majority vote would be sufficient for requesting an advisory opinion of the Court. Nevertheless, a great number of jurists in the League of Nations had felt that the vote by the Council or the Assembly of the League should be treated as a vote on a substantive matter. At that time, everyone had considered that the advisory opinions of the Court were binding upon the Council and the Assembly not from the purely legal but from the moral point of view.

89. In the case under consideration, the legal situation was very simple. The previous year, the Secretary-General had felt that it would be possible to make some claims against various Governments for damages incurred by agents of the United Nations. Of course, he could have made those claims without asking the opinion of the General Assembly, but he had wanted to have its opinion. That was why he had presented a report (A/674) to the General Assembly and asked its opinion on the matter. The question had been discussed, and, in view of the fact that there had been many differences of opinion, it had been decided that it would be wise to request an advisory opinion of the International Court of Justice.

90. That advisory opinion was at the moment before the Assembly. The question was whether the Assembly must follow the opinion of the Court.

91. The Assembly was, in his view, morally obliged to accept the reasoning of the Court. The previous year, the General Assembly had decided to request an advisory opinion of the Court because it had not wanted to solve the question by a simple majority vote but rather to have the opinion of the highest legal organ in the world.

92. The delegations which had voted in favour of asking for an advisory opinion could not simply say that they had changed their minds. They had undertaken a moral obligation to abide by the opinion of the Court.

93. The Secretary-General wanted to know whether he could lodge a claim against a Government. According to the opinion of the Court, which was the highest expression of international law, claims could be lodged against Governments. The Court had decided on the matter, and it was right for the Secretary-General to act in conformity with that opinion.

94. The opinion was not, of course, binding. A State against which the Secretary-General lodged a claim might not agree to submit it to arbitration; that was its right. The arbitration tribunal might not recognize the competence of the United Nations to bring a claim against a State.

95. Those constituted entirely separate problems which did not have to be decided at the moment. The only thing that the Assembly would be stating in its resolution was that the Secretary-General was authorized to lodge a claim against a State.

96. Mr. BARTOS (Yugoslavia) stated that his delegation wished to explain its vote. Though his delegation would vote for the draft resolution regarding reparation for injuries incurred in the service of the United Nations, certain points should be elucidated with a view to avoiding complications at a later date.

97. The Yugoslav delegation noted that the matter concerned was an advisory opinion rendered by the International Court of Justice, and not a judgment having the authority of *res judicata*. In voting for the draft resolution, therefore, the Yugoslav delegation would be guided by the practical grounds on which the advisory opinion had been based.

98. With all due respect to the International Court of Justice, the Yugoslav delegation reserved the right to draw from the facts and legal rules cited by the Court conclusions different from those cited in the advisory opinion. Hence it did not consider itself bound by the conclusions of the Court.

99. The Yugoslav delegation stressed that in the case of an agent, other than a stateless person, injured in the service of the United Nations, the persons entitled through him could have recourse to international legal protection by the national State or by the United Nations.

100. The Yugoslav delegation considered that paragraph 2 of the draft resolution was sufficient affirmation of the idea that means of international action were available to the United Nations.

101. Subject to those reservations, the Yugoslav delegation would vote in favour of the draft resolution, since it wished to reach a practical solution within the frame work of international co-operation which would guarantee reparation to persons suffering injuries or loss of life in the service of the United Nations.

102. Mr. GÓMEZ ROBLEDO (Mexico) repeated, more specifically, the reservations he had made in the Sixth Committee when the resolution concerning reparation for injuries incurred in the service of the United Nations had been adopted.

103. In making those reservations, he fully realized that he was dissociating himself from the majority opinion of the International Court of Justice and that he must have very serious reasons for disagreeing with the opinion of a tribunal which deserved the highest respect. Nevertheless, he considered that in no case the Court's advisory opinions, even if unanimous, could be legally binding on States.

104. What precise value should be put upon such advisory opinions? It should unquestionably be very high, above that attributed to any other individual or collective opinion, judging it on its extrinsic merits, because it came from the most eminent body of jurists in the world. It was therefore desirable in principle, to agree with the Court's opinion. But the extrinsic merits of a judicial decision must always yield to its intrinsic merits, and the latter must govern the ultimate acceptance or rejection of the decision. In international law, which was unquestionably a co-ordinating, not a subordinating law, there was no other way of reasoning.

105. In the discussion of that point, it had even been stated that the International Court of Justice created law not only by its judgments but also by its advisory opinions. He regretted that he could not agree with that interpretation, which was perhaps inspired by an unjustified transference into the field of international relations of the judicial functions exercised by national Courts; under Anglo-Saxon law the Courts might have such important functions. Nevertheless, such transference was forced and it was not correct to suggest that judicial organs should be given such power to create law. It was well known that, in domestic law, the creative process did not take place within the framework of written laws and regulations alone, but was also accomplished through administrative acts and, to a lesser degree, through legal judgments; the most advanced theories on the subject had not, however, gone so far as to declare that the binding force of a judgment could extend beyond the litigants or the case in connexion with which it had been pronounced.

106. It was so stated in Article 59 of the Statute of the International Court of Justice. The Mexican representative recognized that the Court might sometimes create new law which would be valid so far as the litigants and the case it had decided were concerned, when that case was not covered by any formal treaty or accepted custom and had to be settled by applying the general principles of law. In such cases, as in domestic law, the principle that the law constituted a comprehensive whole must be fully applied since the administration of justice must not be hampered by the existence of *lacunae* in positive law.

107. The advisory functions of the Court were, however, governed by criteria which differed radically from those under which it operated in its jurisdictional function. In its advisory capacity it did not have, and could not have, the power to create new law, but only to elucidate a given situation in the light of previous law while leaving States entirely free to use the criterion which seemed best to them.

108. The delegation of Mexico had gladly accepted the unanimous opinion of the Court recognizing the legal personality of the United Nations, and consequently its legal capacity to make an international claim for damages suffered directly by the United Nations as a result of injuries suffered by any of its agents in the exercise of their functions. His delegation had voted for the resolution proposed in the report of the Sixth Committee as a whole, so that it should not appear that it wished to place any obstacle in the way of just compensation due to the United Nations when the Organization itself had been injured. For reasons which it considered to be just and well-founded, however, and in accordance with the main guiding principles of Mexican policy in international affairs, it had had to differ from the majority of the Court regarding the legal capacity of the United Nations to make international claims for the reparation of injuries suffered directly by the victim or persons entitled through him. The majority view had been far from being unanimously accepted. Four eminent judges of the Court, Judge Hackworth, Judge Badawi Pasha, Judge Krylov and Judge Winiarski had disagreed with their colleagues on that point, and the votes cast by the first three of the above-named judges could be taken as arguments in support of the Mexican delegation's view. While there was no necessity to detail those arguments, he would like to quote the unassailable dialectical position of Judge Hackworth, who had said that there was nothing in international practice, the Charter of the United Nations or any other agreement to justify the functional protection which the majority of the Court wished to confer on the United Nations by giving that right as much, if not more, significance than diplomatic protection.

109. Article 100 of the Charter had been cited as a basis for that singular legal concept of functional protection. That Article provided as follows: "In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization." But that Article could only be applied to the staff of the Secretariat and not to all United Nations agents and could only mean what it said, namely, that such officials were in no way agents of their Governments. That was correct, but it was a far cry between that and interpreting Article 100 as if it involved the denationalization of a member of the Secretariat not only in his international service but in every act of his life and even in death; that was a feat of incredible legal acrobatics. Nationality, that legal, political and almost biological tie between man and his country, was not lost through international service, nor was it even temporarily suspended as the representative of Ecuador had stated in the Sixth Committee. The words of Judge Hackworth were relevant.

"This bond between the Organization and its employees, which is an entirely proper and natural one, does not have and cannot have the effect of expatriating the employee or of substituting allegiance to the Organization for allegiance to his State. Neither the State nor the employee can be said to have contemplated such a situation. There is nothing inconsistent between continued allegiance to the national State and complete fidelity to the Organization. The State may still protect its national under international law. One can even visualize a situation where that protection might be directed against acts by the Organization itself."[1]

110. Besides the legal grounds, reasons of expediency had been adduced in support of functional protection, for example, the fact that in certain cases where the authority of the Organization might give added weight to the claim of the State of which the victim was a national, or, that in other cases, the said State might not be interested in protecting its citizens. But those exceptional cases could not justify the general exercise of a right which lacked legal basis. Further, in such marginal situations, an official or his dependents might be granted a reasonable indemnity without the necessity of fixing humanitarian and exceptional measures by a general and binding standard.

111. The Mexican delegation did not agree with the majority of the Court that functional protection should be exercised in connexion with agents of the United Nations who were citizens of the State against whom the claim was being lodged. In that connexion his delegation conformed to the present stage of the legal and political evolution of humanity, thus following the example of Judge Krylov, another dissenting judge, who had stated as follows:

"The conflict between the existing rules of international law (diplomatic protection of citizens) and the rules declared by the Court to be in existence—i.e., the rules of functional protection—is still further intensified by the fact that the majority of the Court even declares that the protection afforded by the United Nations Organization to its agent may be exercised against the State of which the agent is a national. We are thus far outside the limits of the international law in force.

"I have not lost sight of the fact that the protection afforded by the United Nations is only functional, i.e., it is only asserted in cases where the agent of the Organization is 'performing his duties', but the conflict between the two methods

[1] See page 201 of the advisory opinion of the International Court of Justice (A/960).

of protection — that of the United Nations Organization and that of the State — nevertheless subsists.

". . . It should also be observed that the relations between a State and its nationals are matters which belong essentially to the national competence of the State. The functional protection proclaimed by the Court is in contradiction with that well-established rule."[1]

112. In conclusion, Mr. Gómez Robledo stated that the right of the United Nations to claim for damages directly caused to it could only be applied, as far as his Government was concerned, in cases where there had been a denial of justice and after the usual judicial procedure had been followed in the courts of the country involved.

113. The Mexican delegation therefore made the following two formal reservations in connexion with the report of the Sixth Committee: first, the Mexican Government did not recognize the legal capacity of the United Nations under existing international law, to make any claim for damage caused directly to the victim or persons entitled through him particularly when Mexican citizens were involved between whom and the Government there was not, and could not be, any other legal relation than that provided for in domestic legislation. Secondly, as regards claims of the first type, which were intended to obtain reparation for damages caused directly to the United Nations, from a strictly formal view-point the Mexican Government could only admit that such claims were legitimate in case of denial of justice and after all the legal proceedings provided for by the Constitution and the laws of the Republic of Mexico had been exhausted.

114. The PRESIDENT then put to the vote the draft resolution proposed by the Sixth Committee.

The resolution was adopted by 48 votes to 5, with 1 abstention.

Information from Non-Self-Governing Territories: report of the Fourth Committee (A/1159) and report of the Fifth Committee (A/1166)

115. Mr. DE MARCHENA (Dominican Republic), Rapporteur of the Fourth Committee, recalled that the General Assembly had referred to the Fourth Committee the report of the Secretary-General (summaries and analyses of information transmitted under Article 73 e of the Charter) and the report of the Special Committee on Information Transmitted under Article 73 e of the Charter (A/923).

116. The Committee had devoted several meetings[2] to the discussion of the six draft resolutions submitted by the Special Committee which had studied the problem throughout 1949. Those draft resolutions concerned the optional transmission of information in accordance with the first part of the standard form relating to Non-Self-Governing Territories; equality of treatment in education, the language of instruction, the suppression of illiteracy, and international co-operation on social, economic and educational problems in Non-Self-Governing Territories. The draft resolutions also concerned the establishment of a special committee on information transmitted under Article 73 e of the Charter.

117. In the course of its 123rd to 127th meetings, the Committee had discussed five other draft resolutions and amendments to them.

118. The draft resolutions were: a proposal by Egypt inviting any special committee appointed by the General Assembly to examine the factors that should be taken into account in deciding to which territories Chapter XI of the Charter applied; a proposal by India, to be substituted for the text proposed by the Special Committee, that a special committee should be established by the General Assembly, under Article 73 e, of the Charter, to study the information received, which resulted in the resolution contained in document A/1159; a joint proposal submitted by Cuba, Ecuador and Guatemala, inviting the Secretary-General to complement the summaries and analyses by periodical publication of data on special aspects of the progress achieved in Non-Self-Governing Territories; a joint proposal by Mexico and the United States of America recommending that the Special Committee should concentrate, without prejudice to the consideration of the other functional fields referred to in Article 73 e of the Charter, on one field each year and in particular, in 1950, on the problem of education; and lastly, a proposal by Australia requesting the Secretary-General to keep the Special Committee informed of the nature of the technical assistance accorded to Non-Self-Governing Territories by specialized international bodies.

119. As a result of the Special Committee's report, the Fourth Committee had dealt with subjects that closely concerned the Non-Self-Governing Territories and their millions of inhabitants and that work had been most valuable.

120. He drew the General Assembly's attention particularly to the draft resolutions on methods for the eradication of illiteracy, international collaboration in regard to economic, social and educational conditions in Non-Self-Governing Territories, technical assistance, and the future of the Special Committee on Information Transmitted under Article 73 e of the Charter. The last named draft resolution was a result of keen debate as to whether the Committee's mandate as a subsidiary organ of the General Assembly should be for one year or three years or whether the Committee should be established as a permanent subsidiary organ of the General Assembly.

121. Mr. de Marchena also drew the General Assembly's attention to the draft resolution on territories falling under Chapter XI of the Charter, as it incorporated the conclusions of a debate on the General Assembly's competence to decide whether or not a territory came into the category of territories whose peoples had not yet attained a full measure of self-government.

122. Unlike what had happened in the Fourth Committee during previous sessions, at the current session the draft resolutions had been recommended to the General Assembly by a substantial majority, which led one to hope that there was a

[1] See page 218 of the advisory opinion of the International Court of Justice (A/960).

[2] For the discussion on this subject in the Fourth Committee, see *Official Records of the Fourth Session of the General Assembly*, Fourth Committee, 108th to 129th meetings inclusive and 139th and 142nd meetings.

well-defined and common determination in regard to the application and implementation of the provisions of Article 73 e and Chapter XI of the Charter.

123. The PRESIDENT referred Members of the General Assembly to the report of the Fifth Committee on the financial implications of draft resolution IX recommended by the Fourth Committee (A/1166).

124. Mr. WINIEWICZ (Poland) said that his delegation had already stressed in the Fourth Committee the need for respecting not only the letter but also the spirit of Chapters XI and XII of the Charter in connexion with Non-Self-Governing Territories. The majority of the Fourth Committee had shared the same view and those who were trying to uphold the tradition of colonial exploitation had remained in the minority.

125. One of the draft resolutions submitted to the General Assembly provided for the re-establishment of a special committee on information, while another dealt with the territories referred to in Chapter XI of the Charter. Those texts represented a step forward in the application of the provisions of the Charter concerning dependent territories. As those provisions were inadequate, much far-sighted statesmanship was required to make them work properly. The draft resolutions therefore could not be accepted as a final clarification of the meaning of the Charter. Poland looked forward to a more precise interpretation which would eventually make it impossible for a colonial Power to nullify the efforts of the United Nations by its failure to co-operate. Poland would collaborate with all who wished to fight against colonialism throughout the world.

126. The special committee to be re-established under the draft resolution would examine and analyse all the available information on the economic, social, cultural and humanitarian living conditions of the dependent peoples. It would also co-ordinate the efforts of nations striving to achieve the ideals set forth in the Charter. With the signature of the Charter the fate of dependent peoples had become the sacred obligation of every Member of the United Nations and had ceased to be a matter for internal legislation by the Governments of colonial Powers.

127. Chapter XI had torn down the veil of secrecy shrouding the fate of over 200 million human beings. The United Nations was responsible before world public opinion for the fate of the Non-Self-Governing Territories and though it was still only a moral responsibility, the United Nations should censure all colonial Powers which neglected the interests of the dependent peoples.

128. The colonial Powers did not properly understand the vast changes in their position since San Francisco. The recent discussions in the Fourth Committee had not been reassuring with regard to the attitude of those Powers. They had again been reluctant to submit the necessary information and some of them had even stated their intention of transmitting no further data regarding some of their colonies. In some instances they had sought to escape behind the idea of sovereignty, in particular when the problem of the European colonies in Latin America had been raised.

129. In the British House of Lords, Lord Listowel had gone even further than the United Kingdom representative in the Fourth Committee and had practically stated that his Government felt that it was entitled to interpret the provisions of the Charter as it wished. That was not an astonishing statement from a colonial Power which refused to fly the United Nations flag in Trust Territories.

130. On 29 November the London *Times* had stated in a leading article that, if the United Kingdom conformed to the provisions of the Charter and the decisions of the Assembly, it would be placed, with all its experience in colonial administration, in the intolerable position of having to submit to the direction of a purely political body in discharging its responsibilities to the colonial peoples. That article was another indication of the prevalent unco-operative attitude for which the *Times* suggested certain reasons, for example, the Special Committee might make data, which had been submitted for information only, the basis of resolutions and criticisms affecting many aspects of day to day administration in the colonies.

131. The nations which, in the Assembly, had spoken so frequently of the need to observe the Charter were the first to refuse to comply with its provisions when the fate of dependent peoples was at stake. That clearly showed their lack of sincerity.

132. An analysis of all the available information, insufficient as it was, did not indicate a satisfactory situation in the Non-Self-Governing Territories. The data were not reassuring in spite of the fact that they were merely cold figures and statistics. The dependent peoples were still treated merely as labourers engaged in procuring raw materials for the metropolitan Powers; race discrimination prevailed; educational needs were neglected; native culture was suppressed and self-governing institutions were looked upon as dangerous centres of obstructionism; merciless military occupation methods were applied. He quoted the Malayan Peninsula, to which he had already referred in the Fourth Committee, as an example.

133. The human misery which lay behind the information submitted by the colonial Powers emerged with convincing force from other sources. Bloody disturbances had recently taken place in one of the Non-Self-Governing Territories for which the United Nations was responsible. Nigerian labour and political organizations had sunk their differences in an all-party united front and had formed an emergency committee to protest against the shooting of miners who had been fighting for a basic daily wage of approximately 84 cents. Meetings had been held and resolutions passed to indicate, as *The New York Times* had said, that the people of Nigeria would not tolerate such action. He did not intend to embark upon a detailed discussion of the abuse of native labour by the colonial Powers but he referred to that one instance to show the kind of information which had to be evaluated under Article 73 e and the events which could be prevented if the United Nations focused public attention on some situations in the dependent territories.

134. The interest of the United Nations, however, was not confined to the material well-being

of dependent peoples or to their position as an eventual market for consumer goods in order to help the capitalist countries to escape the curse of economic crises. The United Nations was not interested in discovering whether higher wages for the indigenous inhabitants would produce more tin or rubber for the metropolitan Powers. It was rather concerned with the final goal of self-government and independence for dependent peoples, on the basis of the principles of Article 55 of the Charter.

135. Self-government and national independence might be achieved by the application of Article 77 c of the Charter, which provided that dependent territories might be placed voluntarily under the Trusteeship System, or the progress from dependence to independence might develop in some other way; the aim, however, remained the same. In order to assess the true situation in any dependent territory, therefore, it was essential that the relevant data on the development of institutions of self-government should be supplied.

136. Certain colonial Powers had shown an unco-operative attitude in that connexion also. They had contended, and still maintained, that the Administering Powers alone were entitled to determine whether or not a territory was non-self-governing. They had claimed that they were in no way bound by the Charter to submit any information on the development of institutions of self-government among their dependent peoples. It was hardly likely that Malta had become a self-governing territory simply because the United Kingdom had failed to submit any information about it under Article 73 e of the Charter.

137. General Assembly resolution 66 (I), of 14 December 1946, had listed seventy-four territories as falling within the scope of Article 73 e. The General Assembly was the only body which could release a colonial Power from the obligation to send information on the status of the dependent peoples. In order to take any such decision, the Assembly must examine all the relevant facts.

138. The draft resolution under discussion provided that such work should be assigned to the Special Committee. His delegation would therefore support it whole-heartedly. If that draft resolution were adopted, it was to be hoped that the colonial Powers would supply the relevant information, or, if they failed to do so, the General Assembly would stigmatize that failure as it deserved.

139. Political advancement was only one aspect of the economic and social advancement of the indigenous population in the Non-Self-Governing Territories. It was the road towards independence. Any denial of information on that subject would, at least, imply the denial of their right to self-government and thus be a violation of the Charter. That was the only possible interpretation of the intentions of the authors of the Charter; it could not be perverted by any kind of legal subterfuge.

140. Mr. FARRAG (Egypt) said his delegation would support all the draft resolutions submitted by the Fourth Committee. He would speak only on draft resolution VIII concerning the territories to which Chapter XI of the Charter applied.

141. A number of vital questions affected the work of the United Nations and its relations with Non-Self-Governing Territories which were not within the terms of reference of the Special Committee. One of those questions concerned the application of resolution 222 (III) regarding the cessation of the transmission of information. That resolution had been adopted by the General Assembly in view of the fact that the number of territories in respect of which information was transmitted to the Secretary-General had decreased since 1946. But the United Nations had had no official means of ascertaining whether that decrease had resulted from the attainment of independence or full self-government by the territories concerned, or from other factors.

142. The Special Committee had discussed communications (A/915, A/915/Add. 1) received by the Secretary-General from Administering Powers concerning the cessation of the transmission of information on certain territories. Comments had been made on those communications in the Special Committee, but it had rightly decided that consideration of the issue was not within its particular competence and should be referred to the Fourth Committee. That had been done and the Fourth Committee had approved resolution VIII which was before the General Assembly.

143. That draft resolution completed the procedure laid down in resolution 222 (III). The two Administering Powers concerned had given different reasons for ceasing to transmit information under Article 73 e, but they had concurred in the view that it was exclusively within the competence of the Administering Powers to determine the territories whose peoples had not yet attained full self-government. If accepted, that view would render resolution 222 (III) ineffective and would, in the long run, make Chapter XI a dead letter, no matter how well intentioned the Administering Powers might be.

144. The above view might have been correct before the coming into force of the Charter of the United Nations. In Chapter XI, however, the Charter had created a new principle under which the relationship between Non-Self-Governing Territories and the Administering Powers could not be exclusively a matter for the domestic constitutional laws of the latter. That was quite clear from the text of Article 73 under which the Administering Powers had accepted certain obligations in respect of the Non-Self-Governing Territories, among them the obligation to transmit regularly to the Secretary-General of the United Nations information relating to economic, social and educational conditions in those Territories.

145. Under the League of Nations, the Administering Powers had been under no obligation to transmit such information; but they were obliged to transmit information regularly to the United Nations. If they failed to do so they would be requested by the Organization to observe the obligation.

146. That new principle had been repeatedly recognized and emphasized by the representatives of the Administering Powers in their statements at the first part of the first session of the General Assembly. At that time the ideals which had inspired the creation of the Charter had still been fresh in representatives' minds, and the statements made then had been in conformity with those ideals. It would be useful to recall the fine words of two eminent statesmen, Mr. Dulles and Mr. Creech Jones, who had spoken as represen-

tatives of the United States and the United Kingdom at the General Assembly in February 1946.[1] Mr. Dulles had said that his delegation made it clear once and for all that the declaration regarding the Non-Self-Governing Territories was not merely the concern of colonial Powers but also the concern of the United Nations. Mr. Creech Jones had said that he would again like to say—because the United Kingdom was already working on the principles defined in the Charter—that the United Kingdom whole-heartedly rejoiced that at last there was an international colonial convention in Chapter XI which all colonial Powers subscribing to the United Nations would be required to observe.

147. That statement contained two points. First, that there was an international colonial convention in Chapter XI, and secondly, that the colonial Powers subscribing to the United Nations would be required to observe that convention.

148. The answer to the question which authority was responsible for requesting the colonial Powers to observe that international colonial convention was clear: it was the United Nations, and more particularly, the General Assembly.

149. In discharging that responsibility, in 1946 the General Assembly had requested Member States to enumerate the Non-Self-Governing Territories under their administration. They had listed seventy-four such territories. There were at the moment only sixty-two Non-Self-Governing Territories upon which information was transmitted; information had ceased to be transmitted on twelve Non-Self-Governing Territories. If that cessation had been due to the attainment of self-government, that would be a matter for general rejoicing. When information ceased to be transmitted on one of the Non-Self-Governing Territories already listed, or when no information at all was submitted on some of those Territories, it was the duty of the General Assembly to request the Administering Power concerned to observe the obligation imposed upon it by Article 73 of the Charter.

150. Mr. Bailey, the representative of Australia, had said in the Fourth Committee in 1946[2] when the same question had been discussed that if no information was submitted for some territory, any Member of the General Assembly would be entitled to call attention to that fact. That was exactly the meaning of draft resolution VIII which was before the General Assembly. Resolution 222 (III) could be considered a first step in the procedure necessary for the implementation of Chapter XI of the Charter. Draft resolution VIII completed that procedure by requesting the Administering Powers to observe the new international colonial convention created in Chapter XI of the Charter.

151. The substance of that draft resolution had been discussed in Sub-Committee 2 of the Fourth Committee in 1946.[2] The question had not been pressed to the point of drafting a resolution, because at that time the need for it had not arisen. Since then important events had taken place. The number of Non-Self-Governing Territories had decreased and a theory contrary to the principles of Chapter XI of the Charter had been advanced: that the determination of Non-Self-Governing Territories lay exclusively within the competence of the Administering Powers. A remarkable feature of the discussions in Sub-Committee 2 of the Fourth Committee in 1946 had been participation by the representatives of the Administering Powers in a constructive spirit of international co-operation. Mr. Bailey, whom he had quoted, had represented Australia, which was an Administering Power.

152. The records showed that the representatives of the Administering Powers had not considered that examination of the problem had involved any encroachment upon the sovereign rights of the Non-Self-Governing Territories under their administration. They had not said one word which might be construed as questioning the competence of the General Assembly and its Committees to deal with the problem. He noted with regret that at the moment a few Administering Powers refused to recognize that the General Assembly was entitled to request Administering Powers to continue to transmit information until the Non-Self-Governing Territory concerned ceased to be non-self-governing.

153. During the discussions in the Fourth Committee on the draft resolution, some representatives of the Administering Powers had said that, if the draft resolution were intended to define the term "Non-Self-Governing Territory", they would not oppose it; but if it were meant to give the General Assembly the right to decide whether a particular territory was or was not non-self-governing, they would oppose it.

154. That stand was clearly self-contradictory. If they accepted the definition, they should accept its logical consequence: namely, that if a particular territory fell within that definition, it was a Non-Self-Governing Territory and therefore the Administering Power responsible for it should not fail to supply the necessary information.

155. It had been argued in the Fourth Committee that the Administering Powers were entitled to cease transmitting information on the ground that Article 73 e contained a reservation to the effect that the transmission of information was subject to such limitation as security and constitutional considerations might require.

156. It had been said in that connexion that the reasons for the inclusion of that phrase had been made abundantly clear at the San Francisco Conference, which had accepted them.

157. On consulting the records of the San Francisco Conference in that respect, he had failed to find any reference to the reasons which had been said to have been made abundantly clear.

158. As all Members knew, Chapter XI had been drafted by Committee 4 of Commission II of the United Nations Conference on International Organization. The records of that Committee, which appeared on pages 561 to 576 of volume X of the United Nations Conference on International Organization, did not state the reasons for the inclusion of that phrase.

159. The report on that Committee had been submitted to Commission II of the United Nations Conference on International Organiza-

[1] See *Official Records of the first part of the first session of the General Assembly*, 27th plenary meeting.

[2] For the discussion on this subject in Sub-Committee 2 of the Fourth Committee, see *Official Records of the second part of the first session of the General Assembly*, Fourth Committee, annex 21, pages 278 and following.

tion. The record of Commission II regarding Chapter XI which appeared on pages 125 to 154 of Volume VIII also failed to mention the famous reasons. It was, therefore, for the General Assembly to look into the meaning of that phrase.

160. An analysis of the phrase would show that it contained two points: first, there could be limitation of the transmission of information; secondly, the limitation should be imposed because of security and constitutional considerations.

161. As regards the first point, the limitation of the transmission of information did not in any way mean the complete cessation of information. Any limitation of information should be the exception to the rule, which was the transmission of information, and it should be very sparingly applied. If the framers of the Charter had visualized an eventual complete cessation of information by the Administering Powers, they would have indicated such an intention in quite different terms.

162. As regards the second point, the General Assembly had the right to examine the constitutional or security considerations in order to determine whether or not they were well founded. The General Assembly had, in fact, already given its ruling on that point by adopting resolution 222 (III), in which it requested the Administering Powers to inform it of any change in the constitutional position or status of any Non-Self-Governing Territory as the result of which the transmission of information had ceased.

163. It went without saying that the General Assembly did not mean that the information on the changes in the constitutional position or status of the territories concerned would be sent to the archives of the Secretariat where it would rest undisturbed. That information must be examined and commented upon, if necessary.

164. He therefore appealed to the Administering Powers to adopt a liberal attitude in the interpretation of Chapter XI, of which Mr. Stassen had stated in the Committee which had drafted the Charter that it was a living document and must evolve, must change, and must grow into something greater and better.

165. The same idea had been very well expressed in 1946 by the representative of Norway, who had said that he felt that Chapter XI might be developed into a Magna Carta of liberty which would give new faith and hope to millions of people who had made great sacrifices during the war but who were not represented among the United Nations.

166. He hoped that the draft resolution would receive the unanimous support of the General Assembly. He requested that the vote should be taken by roll-call.

167. Mr. DE BRUYNE (Belgium) said that, in order to define his delegation's attitude to draft resolution VI, which the Fourth Committee, quoting Article 73 e of the Charter, had submitted to the Assembly for the purpose of re-establishing the Special Committee, he was obliged to re-state certain legal considerations he had already outlined in the Fourth Committee.

168. Under Article 73 e, the States responsible for the administration of the Non-Self-Governing Territories referred to in Chapter XI of the Charter had undertaken to transmit to the Secretary-General information relating to conditions in those Territories. Sub-paragraph e carefully defined the nature of that information and the subjects with which it had to deal. It referred only to statistical and other information of a technical nature relating to economic, social and educational conditions. That was the information which States had undertaken to transmit; their commitment did not, therefore, extend to information of a different nature or information relating to other fields, such as the political field. Furthermore, they had agreed to transmit that information only subject to such limitation as security and constitutional considerations might require.

169. Consequently the commitment entered into under Article 73 e was limited in scope. More especially, sub-paragraph e granted no power of control, or even verification, to the United Nations or its organs. It merely recognized that the Secretary-General had the power to receive the information transmitted to him, a power which included that of classifying and analysing that information and, in short, of facilitating access thereto by Members of the United Nations.

170. In particular, the States concerned had not agreed to report to the United Nations, to come and justify their actions before it or to render an account of their actions to it. Sub-paragraph e stipulated moreover in express terms that the information was transmitted "for information purposes".

171. That was, moreover, quite understandable. The territories in question formed an integral part of the national soil of the contracting States. In the case of Belgium, for instance, the Congo was under the exclusive sovereignty of the Belgian State. States had subscribed of their own free will to Chapter XI which had been described as a "Declaration" in order to indicate clearly its origin and its very special character. That accounted for the contrast between Chapter XI and Chapters XII and XIII, which concerned territories with an entirely different status.

172. While the Charter regulated the status of the Trust Territories and provided for United Nations participation in their organization and in the supervision of their administration, it contained no such provisions concerning the territories referred to in Chapter XI.

173. It was true that some representatives had invoked Article 10, which provided that the General Assembly could discuss any questions within the scope of the Charter and could make recommendations concerning such questions to the Member States. The purpose of that Article was not, however, to determine the extent of the obligations of those States. The freedom allowed to States under Article 73 e could not be restricted by the Assembly's recommendations. Those recommendations could not impose on the States measures of control or other obligations which they had not accepted. Provided therefore that a State observed the explicit stipulations of Chapter XI, and in particular those of Article 73 e, it must be regarded as keeping its promises, whether or not it complied with the conditions which the Assembly might recommend. The recommendations as such had no binding force. Moreover, the Assembly had no power of decision in the matter. In particular it had no power to make any

decision with compulsory effect on the manner in which States must proceed in order to act correctly in accordance with Chapter XI, or on the question whether they had or had not acted correctly.

174. Furthermore, the Assembly was obliged to remain within the scope of the Charter. It was, however, exceeding its constitutional powers if it claimed to be able to call upon States to fulfil obligations which were not covered by the text of the Charter. It was also exceeding its powers when it set up subsidiary organs vested with powers which presupposed the fulfilment of such obligations on the part of the States.

175. It was, however, Article 2, paragraph 7, of the Charter which especially restricted the powers of the Assembly.

176. That paragraph stated that no provision of the Charter authorized the United Nations to intervene in "matters which are essentially within the domestic jurisdiction of any State" nor required Members to submit such matters to settlement under the Charter.

177. That principle was an interpretation rule which took precedence over all the provisions of the Charter, apart from those related to the application of the measures of coercion provided for in Chapter VII. That rule was, moreover, binding on all the organs of the United Nations, whether principal, secondary or subsidiary, for obviously none of them could have more power than the Organization itself.

178. It was therefore legally impossible to interpret Article 73 e or any other provision of Chapter XI — as permitting intervention in matters which were essentially within a State's domestic jurisdiction. The same limitation affected the interpretation of Article 10.

179. Once the sphere reserved by Article 2, paragraph 7, was in question, the Assembly was powerless to intervene. Consequently, its action, in that case, must be particularly circumspect; it could never go as far as "intervention". Although the Assembly could hold a discussion in which any Member would be entitled to express his opinion, it could not give directives to States, in any form whatsoever.

180. The Charter did not define the meaning to be attached to "matters which are essentially within the domestic jurisdiction of any State". Further, the San Francisco Conference had rejected by a large majority a Belgian amendment which would have conferred on the organs of the United Nations the power to decide without appeal whether a matter was or was not essentially within a State's domestic jurisdiction.

181. He had recapitulated the rules applicable in the matter; draft resolution VI, submitted by the Fourth Committee, did not, however, respect those rules. That draft resolution was intended to re-establish for a long period a body, the Special Committee, the previous activities of which revealed a growing tendency to assume functions with regard to the territories envisaged in Chapter XI similar to those exercised by the Trusteeship Council with regard to the Trust Territories. States were to appear before it to give an account of the way in which they exercised their sovereignty, even in matters which were essentially within their domestic jurisdiction. Moreover, the trend of the Special Committee's activities merely reflected the tendency shown by the Assembly itself. Thus, when the first Special Committee, then modestly entitled the *ad hoc* Committee, had been established in 1946,[1] the Assembly had limited its powers of recommendation to procedural measures only. The question at issue was what procedure should be followed in transmitting the information under Article 73 e and ensuring the useful co-operation of the specialized agencies. Already in 1947 the General Assembly had issued instructions going further than those of 1946.[2] It had recommended a standard form to serve Member States as a guide in the preparation of information. That standard form had, moreover, exceeded the obligations assumed by those States as it had included *inter alia*, a chapter providing for the transmission of data of a definitely political character, a matter which was not covered by Article 73. At the same time the General Assembly had given additional competence to the Special Committee which it had set up, that of making general technical suggestions. Further, it had not, in doing so, excluded questions which were essentially within the jurisdiction of Member States. The General Assembly had confirmed those powers in 1948.[3]

182. The draft resolution proposed for adoption went even further. Indeed, it contained a general clause under which the Special Committee was henceforward to judge, in the spirit of Article 55 of the Charter, whether or not the action taken by States in the economic, social and educational fields was in conformity with the Assembly's resolutions. It should be added that the Special Committee, which had never been continued for more than one year, was being continued for three years and was thus on the way to becoming a permanent institution.

183. That progressive interference and intervention was apparently not to stop there. The resolution provided in effect that, in 1952, the General Assembly should re-examine the Committee's mandate. That precise stipulation was deliberate. It had given rise to a debate in the Fourth Committee, which had been fully aware of its implications.

184. Belgium was firmly resolved to continue to observe faithfully the provisions of Chapter XI, which it had freely accepted as a sacred trust. It had no intention, however, of going further or of submitting to measures taken or situations created in disregard of the limits of its obligations under the Charter. In particular, the Territory of the Congo was under Belgian sovereignty. Belgium would never consent to its being treated as a Trust Territory. The draft resolution presented by the Fourth Committee represented a new phase of an evolution that was contrary to the Charter.

185. The Belgian delegation would therefore be obliged to vote against the draft resolution and, should the draft resolution be adopted, it would be bound to reserve the full freedom of its Gov-

[1] See *Resolutions adopted by the General Assembly during the second part of its first session*, No. 66.

[2] See *Official Records of the second session of the General Assembly, Resolutions*, Nos. 142 and 146.

[3] See *Official Records of the third session of the General Assembly, Resolutions*, Nos. 218 and 219.

ernment in regard to the attitude to be taken concerning that measure.

186. The PRESIDENT announced that the list of speakers would be closed at the end of the meeting.

187. Mr. MCNEIL (United Kingdom) felt it necessary to explain the attitude of his Government, not only to the particular resolutions before the General Assembly, but also to a tendency which had appeared during the previous years and which had culminated in the discussions in the Fourth Committee in 1949.

188. He was referring to the tendency to extend the scope of Chapter XI, in other words, to read into the Charter obligations and functions which were not in it.

189. It had been largely due to the initiative of his Government that the Declaration on Non-Self-Governing Territories in Chapter XI had come to be written into the Charter. That Declaration affirmed principles which had inspired the colonial policy of the United Kingdom long before the United Nations had come into existence and which the United Kingdom would have continued to apply even if there had been no Charter.

190. The only element in the Declaration which entailed any new practices was the acceptance of a specific and limited obligation to transmit to the Secretary-General certain clearly defined classes of technical information. Although that obligation had not been devised by the United Kingdom his delegation had accepted it because it accorded with the practice of the United Kingdom to make known as widely as possible the work which it was doing in the overseas territories for which it was responsible. Moreover, it seemed to the United Kingdom, as a sponsoring Power of the United Nations, desirable and appropriate that the economic and social data available to the Organization should be as complete and as nearly universal as possible, particularly in view of the high hopes placed by all in the work of the specialized agencies.

191. In good faith, therefore, his delegation had supplied the information required under the Charter, believing that it would be used, as the Charter specified, for information purposes. He doubted whether the good faith in supplying the information had been met by equally good faith on the part of the other signatories of the Charter.

192. When studying the ten resolutions passed by the Committee, it was difficult to recognize in them Article 73 e as it stood in the Charter. He found instead a confirmation of the tendency to which he had just referred, and to which the United Kingdom representatives had drawn attention time and time again in the Special Committee and in the Fourth Committee, namely, the tendency to depart further and further and quite irresponsibly from Chapter XI and to pass General Assembly resolutions on an assumption which was expressly omitted from the Charter.

193. He was referring to the completely invalid assumption that, in subscribing to the Declaration in Chapter XI, Member States responsible for the administration of Non-Self-Governing Territories had accepted the principle of international supervision over the administration of those Territories. That such a departure from the Charter had been taking place had been admitted by some representatives. They had nevertheless sought to explain or excuse that departure by appeals to the spirt of the Charter, or to the possibility of the growth of conventional interpretation.

194. There had been attempts in other fields to modify the Charter by what Mr. Vyshinsky had once most appropriately called "back-door methods". Attempts to modify the Charter by those "back-door methods" had always been opposed by the United Kingdom delegation, but no delegation had been more determined, and perhaps more correctly determined, in its opposition to that "infiltration" of the Charter than the delegation of the Soviet Union. The most obvious example was the recent one connected with a modification of the practice relating to the admission of new members.

195. The constant insistence of Mr. Vyshinsky, and before him of Mr. Molotov, on the letter of the Charter as applied to the matter to which he had just referred, was an attitude with which Mr. McNeil was completely in accord but it stood out in very sharp contrast to the attitude adopted by representatives of the Soviet Union in the Fourth Committee, who had attempted time and time again, together with representatives of other Member States, by appeals to the spirit of the Charter, to read into Chapter XI obligations and principles which could not be found there. There was no doubt much to be said for an appeal to the spirit of an international convention on points where the terms were not clear, but the majority of those who had appealed to the spirit of the Charter in relation to the subject under discussion were invoking in support of their arguments particular doctrines which had been deliberately excluded from the Charter by majority votes taken in proper and constitutional form at San Francisco.

196. By no stretch of the imagination could the spirit of the Charter be interpreted to cover points which particular delegations would have liked to see inserted in the Charter, but for which, rightly or wrongly, fortunately or unfortunately, they had completely failed to obtain the requisite vote. The procedure for revising the Charter was well known, and his Government subscribed to the Charter as it stood. It had complied and would continue to comply to the best of its ability with its requirements in respect of the Non-Self-Governing Territories for which it was responsible.

197. There were, however, many features in the ten draft resolutions which not only went far beyond any requirement of the Charter but also ran counter to the requirements of the current situation in many of the Non-Self-Governing Territories for which his Government was responsible. There appeared to be a widespread but totally fallacious belief in the United Nations that, unless a Territory was fully self-governing or completely independent its peoples had no share in their government and administration at all and that their affairs were managed on an entirely authoritarian basis by direct control from the metropolitan Power.

198. The representatives of the United Kingdom had repeatedly tried to remove that misapprehension, but apparently they had been unsuccessful; he sometimes thought that the people to whom

the information was directed did not want to listen to the clarification.

199. The responsibility for the administration of the Non-Self-Governing Territories with which the United Kingdom was concerned was devolving, to a rapidly increasing extent, on the peoples of the Territories themselves. The most striking, and quite recent, example was the report by the Committee on Constitutional Reform in the Gold Coast, under the chairmanship of Mr. Justice Coussey, a distinguished African Judge of the Supreme Court of the Gold Coast. That Committee, which had a membership of thirty-eight, was composed exclusively of Africans. No one who read the report could fail to be impressed by that evidence of the political maturity of those people in the Gold Coast. His Government had accepted the report, subject to certain comments, as providing a workable plan within the framework of which constitutional developments could proceed.

200. Thus, through their own rapidly developing institutions, the colonial peoples to whom he had been referring were continuously finding free expression of their will in relation to the matters which most closely affected them. Those colonies were not independent nations, a subject of delight to lawyers who sometimes abounded in the Fourth Committee, but he assured the Assembly that there was a rapidly growing sense of local pride in, and loyalty to, indigenous institutions and traditions. In the current phase of their political growth, those people themselves were certainly not prepared to tolerate a greater degree of international intervention in their domestic affairs than other countries, which were independent, would be willing to accept. He thought that that had been made strikingly and persuasively clear by his colleague; Mr. Grantley Adams of the Barbados, speaking for the United Kingdom at the previous sessions of the General Assembly. Those who advocated that the Non-Self-Governing Territories should be submitted to that discriminatory treatment were themselves guilty of engendering that very feeling of inferiority which it should be the object of any enlightened colonial policy to remove.

201. Few countries were immune from criticism, and he did not pretend that the United Kingdom was. Many Member States were frequently the object in debates of severe strictures by others in that respect. The Administering Powers, however, were in a rather different category from other sovereign States because of their special responsibilities. That perhaps laid them more open to criticism than others. Certainly, they were criticized in very full measure in the Fourth Committee which had become a byword for irresponsible criticism. In that Committee, his delegation felt that the representatives of some of the States which were not confronted with the difficulties and responsibilities of the Administering Powers allowed themselves, and were permitted at times, to exceed the limits of fair and objective criticism. Such statements, to which his colleagues felt bound to take exception, not infrequently came from the representatives of States which were by no means beyond criticism in the conduct of their own affairs, particularly in cases where they, too, bore responsibility for the progressive development of indigenous peoples, who, in so far as they had not yet achieved maturity, were still undeveloped.

202. Those statements appeared all too often to be inspired by emotion, sometimes by envy, rather than by the dispassionate objectivity which the Administering Powers considered they had a right to expect. As one of the Administering Powers, his country doubted whether those Powers were receiving fair treatment in many matters of concern not merely to them, but also to the peoples whom they administered, and indeed, as was becoming progressively clearer, of great concern to all who were jealous of the reputation and the powers of the United Nations itself. Certainly, much that was said from time to time was not calculated to make it easier for the Administering Powers to discharge their obligations to the people, to themselves or to the United Nations.

203. The United Kingdom, whose experience and record as an architect of institutions of self-government was unrivalled, was not prepared to put back the clock by committing the peoples of Non-Self-Governing Territories to policies in the formulation of which they had had no say and which the United Kingdom frequently found misguided and sometimes incompetent.

204. Four of the ten draft resolutions, resolutions VI, VII, VIII and X, dealt with the future of the Special Committee and the additional responsibilities which it was proposed to assign to it. In agreeing in 1946, 1947 and again in 1948 to the establishment of that Committee for a further year only, his Government had made it clear that, in its view, the only functions which the Committee could usefully perform, and indeed the only functions which it could perform without conflicting with Chapter XI of the Charter, were procedural functions. His Government had felt that the function of that Committee was and should be to perfect the technique of transmission so as to ensure that the "statistical and other information of a technical nature relating to economic, social and educational conditions" in the Non-Self-Governing Territories was canalized to the specialized agencies, where it would be considered by experts in a non-political atmosphere who would also have before them information on similar problems existing in Member States. There was no justification for spotlighting or highlighting conditions in the Non-Self-Governing Territories. The problems which existed there could not be considered in isolation; they formed a part of world problems which were to be found in under-developed areas irrespective of how their political status happened to be defined by jurists. The specialized agencies should study those problems on a world, or perhaps on a regional basis, and should submit the results of their findings to the General Assembly in their annual reports. For those reasons, he could not agree that it was either necessary or appropriate to set up a special committee for a three-year period with functions which far exceeded those which had been given even to the 1949 Committee. His delegation would therefore vote against draft resolutions VI, VII and VIII, and would abstain from voting on draft resolution X.

205. His delegation must also vote against draft resolutions II and III because, quite apart from certain technical objections with which members of the Fourth Committee were familiar, those

two draft resolutions invited the Administering Authorities to take certain action in respect of their Non-Self-Governing Territories and thus implied the existence of international accountability in respect of the administration of Non-Self-Governing Territories, for which there was no provision in Chapter XI or any other chapter of the Charter. For those reasons, even though his Government was in fact taking action in accordance with those resolutions, his delegation would nevertheless vote against the two draft resolutions.

206. Draft resolutions IV, V and IX dealt primarily with the role to be played by the specialized agencies and the Secretary-General in dealing with the matters covered by Article 73 e of the Charter. He regarded those resolutions as unnecessary in the sense that, in many cases, the action called for was already being taken and that, where it was not, it would merely involve a duplication of work and proliferation of paper and functions. His delegation's detailed comments on those three resolutions had been made in the Fourth Committee and he did not propose to repeat them, but his delegation, while abstaining in the vote on draft resolution IV, would have to vote against draft resolutions V and IX.

207. In relation to draft resolution I, which was a request to the Administering Authorities to transmit certain additional information in respect of the Non-Self-Governing Territories for which they were responsible, information which they were not required to transmit under the provisions of Article 73 e of the Charter, his Government had made itself so clear on the point on so many occasions that it was hardly necessary for him to re-state the position. But, since his Government was not required to transmit that information, and did not propose to do so, his delegation must vote against the draft resolution, as it had done in the case of similar resolutions in the past.

208. In short, for the reasons stated in the plenary meeting and in the Fourth Committee his delegation must vote against all the draft resolutions with the exception of draft resolutions IV and X in respect of which it would abstain from voting. In voting thus, his delegation must fully reserve the position of His Majesty's Government in respect of any matters arising out of those resolutions if they were adopted by the Assembly.

209. He found no pleasure in having to make a statement of that kind. He had to make it because his delegation must be as jealous for the character and reputation of the United Nations as for its own responsibilities, and he was very happy to be joined in that attitude by several distinguished, responsible and modest delegations.

The meeting rose at 6.30 p.m.

TWO HUNDRED AND SIXTY-THIRD PLENARY MEETING

Held at Flushing Meadow, New York, on Friday, 2 December 1949, at 10.45 a.m.

President: General Carlos P. RÓMULO (Philippines).

Information from Non-Self-Governing Territories: report of the Fourth Committee (A/1159) and report of the Fifth Committee (A/1166) (*concluded*)

1. Mr. GARREAU (France) recalled that in the Fourth Committee[1] the French delegation had abstained from voting on four of the proposed resolutions and had voted against the other six. It had, moreover, entered the most express reservations as to the possible consequences of the adoption of the six draft resolutions concerned. He would like explicitly to repeat those reservations in the General Assembly.

2. He would not resume the discussion that had taken place in the Fourth Committee. All were aware of the French delegation's fundamental objection to that part of the Committee's work. What was proposed was the institution for three years of the Special Committee and the investiture of that Committee with excessive—the French delegation had even said, and he repeated, unconstitutional—powers.

3. The French delegation affirmed, and based its affirmation on the text of the Charter itself and the San Francisco discussions, that an innovation such as a special committee with a tendency to become a permanent body and to be invested with real power of control over territories subject to French sovereignty was in conflict with the intention of the signatories of the Charter, and hence such a committee could only be established by amending the Charter.

4. The Charter was a contract. By definition, that contract could not express anything other than the common will of all the contracting parties. It could hardly be claimed that Chapter XI expressed the common will of the signatories of the Charter—he stressed the word "common"—to place the Non-Self-Governing Territories under international control.

5. Such an assertion was clearly untenable and, therefore, in whatever way it was sought to twist the texts, France adhered to the terms of the contract and denied the Assembly the right to modify it by a simple resolution adopted by a majority vote. His country would also, however, like to emphasize the respect with which it was observing the obligations that were really contained in Chapter XI and the fact that it had never ceased to observe them.

6. Those obligations were of two kinds. One of them was a formal obligation and was binding on France in relation to the United Nations; the other was one of substance and was binding on France in relation to the populations of the Non-Self-Governing Territories.

[1] For the discussion on this subject in the Fourth Committee, see *Official Records of the fourth session of the General Assembly*, Fourth Committee, 108th to 110th, 113th to 127th and 142nd meetings.