UNITED NATIONS

GENERAL ASSEMBLY

Distr.
LIMITED

A/AC.119/L.1
24 June 1964

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

SYSTEMATIC SUMMARY OF THE COMMENTS, STATEMENTS, PROPOSALS AND SUGGESTIONS OF MEMBER STATES IN RESPECT OF THE CONSIDERATION BY THE GENERAL ASSEMBLY OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

(Prepared by the Secretariat)

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INTRODUCTION

1. The item entitled "Consideration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" was first considered by the Sixth Committee of the General Assembly at the seventeenth session of the Assembly (agenda item 75), and the discussion was resumed at the eighteenth session (agenda item 71).

2. In connexion with this item the Assembly adopted, at its seventeenth session, resolution 1815 (XVII) of 18 December 1962. The full text of this resolution is contained in Annex A. By operative paragraph 3 of the resolution the Assembly inter alia listed the following principles for further study:

> "(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;
>
> (b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;
>
> (c) The duty not to intervene in matters within the domestic jurisdiction of any State in accordance with the Charter;
>
> (d) The principle of sovereign equality of States."

The Assembly also adopted, under the same agenda item, resolution 1816 (XVII) of 18 December 1962, entitled "Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law". This was considered as a separate item at the eighteenth session (agenda item 72).

3. At the conclusion of its consideration of the agenda item indicated in paragraph 1 above at the eighteenth session, the General Assembly adopted resolutions 1966 (XVIII) and 1967 (XVIII) of 16 December 1963. The full text of these resolutions is also contained in Annex A. By resolution 1966 (XVIII) the Assembly established the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, and referred to it the four principles set out in paragraph 2 above, so that it might:

"....draw up a report containing, for the purpose of the progressive development and codification of the four principles so as to secure their more effective application, the conclusions of its study and its recommendations, taking into account in particular:

(a) The practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations;

(b) The comments submitted by Governments on the subject in accordance with paragraph 4 of resolution 1815 (XVII);

(c) The views and suggestions advanced by the representatives of Member States during the seventeenth and eighteenth sessions of the General Assembly."

By operative paragraph 3 of resolution 1967 (XVIII) the Assembly further requested the Special Committee

"to include .... in its deliberations ... the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the rights of the parties to any dispute to seek other peaceful means of settlement of their own choice."

4. To assist the Special Committee in its work the General Assembly requested the Secretary-General, in both resolutions 1966 (XVIII) and 1967 (XVIII), to furnish the Committee with certain documentation. The present document is submitted pursuant to the request, in operative paragraph 4 (a) of resolution 1966 (XVIII), that the Committee be provided with a "systematic summary of the comments, statements, proposals and suggestions of Member States on the item" [i.e. the item described in paragraph 1 above]. The document is intended to cover all the proceedings and documentation relating to the item in question. It does not deal with other items, which have been before the United Nations, and in the course of the consideration of which there has been a discussion of one or more of the four principles referred to the Special Committee. These items will form the subject of a separate document (A/AC.119/L.2), which has been requested in operative paragraph 4 (b) of resolution 1966 (XVIII). The Secretary-General's report on the question of methods of fact-finding, requested in resolution 1967 (XVIII), has been submitted in a separate document (A/5694).

5. In the chapters that follow, each of the principles coming within the mandate of the Special Committee is considered separately. Each chapter is divided into two parts. Part A sets out formal written proposals relating to the principle in question, made at either the seventeenth or eighteenth session of the General Assembly or submitted in writing between the sessions, with such brief explanation as appears necessary. The proposals are arranged in the order of their original submission. It is to be noted that they are proposals which were not pressed to a vote in view of the adoption of resolutions 1815 (XVII) and 1966 (XVIII). Part B of each chapter contains a summary of other comments, statements and suggestions of Member States covering the various aspects of the principle concerned, under headings appropriate to these aspects. In some cases, where numerous arguments were advanced, these have been summarized in sub-paragraphs arranged to cover the whole range of views involved. These sub-paragraphs have been numbered purely for purposes of convenience and this numbering does not signify any order of importance. References are given throughout the document to the relevant United Nations records from which the material was taken. With respect to the seventeenth session of the General Assembly the printed records were available and citations are therefore to these records. The citations to meetings all refer, unless otherwise indicated, to meetings of the Sixth Committee (the Official Records of the General Assembly are for practical purposes abbreviated, to GAOR). As regards the eighteenth session of the Assembly the final printed records were not issued at the time of preparation of this document and references are therefore to the mimeographed documents and the provisional summary records. However, in this latter respect, corrections to the records submitted by delegations have been incorporated.

CHAPTER I

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

A. Formal written proposals by Member States[1/]

6. At the seventeenth session of the General Assembly, Czechoslovakia submitted to the Sixth Committee a Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States (A/C.6/L.505). At the eighteenth session of the Assembly, when the Sixth Committee again took up consideration of the relevant agenda item, the representative of Czechoslovakia referred to this Declaration, and suggested that the principle under consideration should be stated (A/C.6/SR.802, pp. 5-6) in the words of the following paragraphs of his delegation's draft Declaration:

"The principle of prohibition of the threat or use of force

"The use of force in international relations and wars between States are barbaric methods for the solution of international disputes extrinsic to the dignity and respect of the human being, and have been repudiated and outlawed by nations. In conformity with the generally recognized rules of international law, and the Charter of the United Nations in particular, the threat or use of force against the territorial integrity or political independence of any State, as well as plotting, preparing or unleashing of an aggressive war, shall be prohibited.

"This does not affect either the use of force upon a decision of the Security Council made in conformity with the Charter, or the rights of States to take, in the case of an armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter.

"The principle of general and complete disarmament

"General and complete disarmament under strict international control offers an effective guarantee of peaceful coexistence and co-operation among States irrespective of their differing political, social and economic systems. All States have the obligation to act in such a manner that an agreement on general and complete disarmament under strict international control may be reached as speedily as possible and be faithfully observed.

1/ The full text of these proposals may be found in Official Records of the General Assembly, Annexes, seventeenth session, agenda item 75.

"The principle of prohibition of weapons of mass destruction

"Until an international agreement on the elimination of nuclear weapons, cessation of their production and destruction of all stockpiles has been reached as the first step towards the complete prohibition of nuclear weapons, it is prohibited to be the first to use these weapons. The States which are the first to use the nuclear weapons shall be regarded as having committed a very grave crime against mankind.

"The principle of prohibition of war propaganda

"War propaganda in any form, instigation to the unleashing of a nuclear war, to striking as first the nuclear blow, propaganda aimed at the incitement of national and racial hatred shall be prohibited as incompatible with the generally recognized norms of international law and contrary to the purposes and principles of the United Nations Charter. States have the duty to take, within the framework of their jurisdiction, all measures, in particular legislative ones, which would put an end to instigation to war and any propaganda inimical to peace and mutual understanding among nations.

"The principle of collective security

"Peace is indivisible. States shall strive to unite their efforts in conformity with the United Nations Charter with the purpose of maintaining international peace and security. An armed attack against any State affects the interests of all others.

"All States shall have the obligation to refrain from giving any assistance to the aggressor and in accordance with the provisions of the Charter shall participate in collective measures aimed at the removal of any breaches of peace."

7. Cameroon, Canada, Central African Republic, Chile, Colombia, Congo (Leopoldville), Dahomey, Denmark, Japan, Liberia, Nigeria, Pakistan, Sierra Leone and Tanganyika submitted a draft resolution to the Sixth Committee (A/C.6/L.507/Rev.1 and Rev.1/Add.1) at the seventeenth session, whereby, in operative paragraph 2, the General Assembly would have affirmed:

"... that the Charter [of the United Nations] is the fundamental statement of principles of international law governing friendly relations and co-operation among States, notably, the obligation to respect the territorial integrity and political independence of States and the obligation to settle disputes by peaceful means".

8. At the seventeenth session, also, Afghanistan, Algeria, Cambodia, Ceylon, Ethiopia, Ghana, India, Indonesia, Mali, Morocco, Somalia, Syria, United Arab Republic and Yugoslavia submitted a draft resolution (A/C.6/L 509/Rev.1), whereby the Assembly would have reaffirmed:

> "... that the following principles shall, in accordance with the Charter of the United Nations, govern relations among States:
>
> "I. States shall refrain from the threat or use of force in international relations in any manner inconsistent with the Charter of the United Nations and shall, accordingly, desist from resorting to, or relying upon, force in any of its forms in their relations with other States, or of exerting pressure, whether military, political or economic, against their political independence, national unity or territorial integrity."

9. At the eighteenth session no formal written proposals were introduced which would have the effect of elaborating or elucidating the principle considered in this Chapter.

B. Other comments, statements and suggestions by Member States

10. Apart from the formal proposals covered in the preceding section, Member States expressed, at both the seventeenth and eighteenth sessions of the General Assembly, and in written comments submitted between the sessions, a great variety of views of both a general and specific character regarding the principle forming the subject of this chapter. These may be conveniently summarized under a number of headings, including general views on the principle, the meaning of the term "force", the meaning of the term "threat of force", exceptions from the prohibition of the threat or use of force, the meaning of the phrase "territorial integrity or political independence", the meaning of the phrase "in their international relations", the meaning of the phrase "in any other manner inconsistent with the purposes of the United Nations", the question of disarmament, first use of nuclear weapons, the question of nuclear weapons tests, the question of war propaganda, prohibition of the preparation of a war of aggression, the question of defining aggression, participation in collective measures for the maintenance of international peace and security, restraint from actions that might increase tension, prohibition of assistance to States resorting illegally to force, non-recognition of the effects of the breach of the principle and free access to the sea for land-locked countries. The present

section of this paper therefore summarizes the views expressed under these headings. Where necessary, as elsewhere throughout this document, these views have been grouped to indicate the various trends of opinion which were advanced, without regard as to whether they were expressed at the seventeenth or eighteenth sessions or in writing.

1. General views on the principle

11. At an early stage of the debate at the seventeenth session, in the course of general remarks on the agenda item before the Committee, the representative of India expressed the view that it was essential to study a number of principles: first of all, the prohibition of war in all its forms - a principle which might be enunciated in several different ways, perhaps as the Czechoslovak representative had expressed it, along the lines of Article 1 (1) of the Charter. (GAOR, XVIIth session, 759th meeting, paragraph 2)

12. In written comments, made in the light of General Assembly resolution 1815 (XVII), the Government of Czechoslovakia stated that, in discussing and formulating the principle, it was necessary to refer to the provisions of Article 2 (4) of the Charter and to such important documents as the Statute of the International Military Tribunal for the trying of the principal war criminals of the European States of the Axis, the Declaration of the Bandung Conference of 1955 and others.

13. The Government of Israel expressed the view that the obligation to refrain from threats or use of force against any other State (paragraph 3 (a) of resolution 1815 (XVII)), as well as the obligation to seek a resolution by peaceful means of any dispute, the continuance of which is likely to endanger international peace and security (paragraph 3 (b) of resolution 1815 (XVII)), exist irrespective of whether the States concerned do or do not maintain normal relations. Such obligations among Member States arise from their membership in the Organization and from the provisions of the Charter (A/5470, p. 22).

14. In another general view, the Government of Sierra Leone stated that its foreign policy affirmed that no non-African nation had any territorial claim over any part of African soil, and that every effort should be made to bring an end

to colonial régimes in all parts of Africa. The Government also stated that war was not inevitable, and should not be regarded as a means of settling international disputes, but that such disputes should be settled by peaceful means within the United Nations framework, where necessary (A/5470, p. 40).

15. The Government of Sweden noted that the principle raised a number of most difficult questions of customary international law and of interpretation of the United Nations Charter and the practice under the Charter. For example:

(a) Is the expression "threat or use of force" confined to armed physical force, such as may be involved in military demonstrations, blockades and reprisals, or does it cover various types of economic coercion, subversion, revolutionary propaganda, etc., as well?

(b) What is the significance of the expression "in their international relations"?

(c) What bearing does Article 51 of the United Nations Charter - concerning the right to self-defence - have upon the principle formulated in Article 2 (4)?

(d) What significance is to be attached to the circumstance that force is being used by one Government upon the invitation of a Government (A/5470/Add 2, p. 5)?

16. In view of the specific enunciation of the principle here concerned in Assembly resolution 1815 (XVII), more general comments were made upon it at the eighteenth, than at the seventeenth session. At that session, the representative of Venezuela considered that the Committee should ask itself to what extent it was even advisable to interpret the principle. In his view such an interpretation would require answers to the questions: What constituted the threat or use of force? Did the phrase cover the use of force internally by a State or was it applicable only, as the Charter stated, to international relations? And what was the definition of indirect aggression (A/C.6/SR.820, p. 5)?

17. The representative of the United States said, among others, that, in principle, Article 2 (4) of the Charter covered a wide range of prohibited acts, but the diversity of the acts which had brought that provision into play had gone beyond what the framers of the Charter could have specified.

The response of the United Nations, in the encouraging number of cases in which it had been able to act effectively, had inevitably been tailored to fit the particular problem, and the decisive element had often been the ingenuity with which the procedures available under the Charter had been applied in a novel situation. The failures of the United Nations or of international law had rarely been due to lack of clarity in the legal obligations of the parties under Article 2 (4). They had been due rather to weakness of resolve by particular States in particular circumstances, to support any system of law whatsoever among States. If a more detailed code had been written into the Charter it would very likely have failed to provide for the unanticipated situations which Article 2 (4), as it now stood, covered adequately. The framers of the Charter had wisely considered that, instead of promulgating rules which the rapid development of international relations would soon render irrelevant, it was better to establish a basic standard of conduct which might be enriched through experience but which would be stable enough to be applicable over many generations. What was most needed was the vigorous and astute application, to each new disruptive situation, of the peace-keeping powers which the Charter had placed in the hands of the Organization. Correspondingly, States must honour, in good faith, the standards of the Charter in their individual actions (A/C.6/SR.[illegible], pp. 16-17).

16. The representative of Ghana, however, considered that a case existed for the further clarification of the obligations of all States under Article 2 (4) of the Charter, and for the more effective application of that principle. The principle had also been proclaimed in a number of post-war international instruments: in principle 7 of the Bandung Declaration, part I of the Belgrade Declaration, the Charter of the Organization of African Unity, and article 5, paragraph (e), of the Charter of the Organization of American States. Any codification of the principle would have to take those documents into account. In his delegation's view, the codification of that principle, without attempting definitions, should indicate clearly some of the things that constituted a threat or use of force. States should be enjoined to refrain from resort to military, political, economic or other pressure, directly or indirectly applied, in their relations with other States. Some of the situations which impeded the

application of Article 2 (4) were: the reservation by States of the right to conclude military alliances regarded as offensive by other States; the establishment and maintenance by States of military bases in territories other than their own; the manufacture, reception, storage or testing of nuclear weapons or other weapons of mass destruction and of nuclear launching devices; and the concentration of armed forces on borders as a coercive measure. He also recalled provisions of General Assembly resolution 1815 (XVII) and of the Belgrade Declaration dealing with general and complete disarmament (A/C.6/SR.815, p. 14).

19. The representative of the United Kingdom understood the provisions of Article 2 (4) of the Charter to be read in the light of the Charter as a whole and of the general rules of international law when the Charter had been concluded. There was, and indeed must always be, a close and vital link between Article 2 (4) and the provisions of Chapters VI and VII of the Charter, particularly Article 39 which dealt with "any threat to the peace, breach of peace, or act of aggression ..." (A/C.6/SR.805, p. 4).

20. The representatives of Iraq and Indonesia, however, were of a different opinion. The representative of Iraq said that, in order to interpret the principle, and indeed, generally speaking, any legal principle, it was necessary to take into account the other legal provisions which were in force on the same subject, and which might have some bearing on the principle. In order to determine the exact scope of the principle of the prohibition of the threat or use of force, it was necessary to turn to Article 51 of the Charter, which recognized the inherent right of self-defence. On the other hand, however, there was no need to take account of provisions which did not affect the principle to be interpreted such as those of Chapter VI of the Charter, relating to the pacific settlement of disputes, or those of Chapter VII, concerning United Nations action with respect to threats to the peace, breaches of the peace, and acts of aggression. In particular, there were no grounds for claiming that the prohibition expressed in Article 2 (4) of the Charter should be made subject to the decisions of the Security Council. If the threat or use of force were not sufficiently serious to justify intervention by the Security Council, it none the less constituted the threat or use of force within the meaning of Article 2 (4)

and other sanctions could be applied in order to ensure respect for the principle. It was, moreover, clear that the normative development of international order could not be linked to a corresponding development of institutions. He stressed the need for making clear the exact meaning of the word "force" and further stated that certain questions of principle also needed to be cleared up. Could a State which unleashed an armed conflict in violation of the Charter expect to have the rules of the law of war applied to it, and if so, to what extent? Here, too, the question of legal sanctions arose. What action should be taken with respect to advantages acquired through the threat or use of force? The preparation of detailed rules enabling those various questions to be solved would be in accordance both with the letter and the spirit of the Charter and with the requirements of international security (A/C.6/SR.808, p. 6).

21. The representative of Indonesia recognized that the principle could be examined in the context of Chapter VII, but her delegation concluded that the only text which supported legitimate recourse to force by any State was Article 51. In order to ensure more effective application of the principle and in order to establish peaceful relations among States, Article 2 (4) of the Charter should not be interpreted too narrowly, and the scope and meaning of Article 51 should not be widened (A/C.6/SR.809, p. 5).

22. The representative of Cambodia considered that the use of force should be severely penalized by international law. The existence of large stockpiles of nuclear weapons still held over mankind the threat of total destruction, but it must be acknowledged that encouraging efforts had been made to reach an agreement on general and complete disarmament (A/C.6/SR.812, p. 3).

23. The representative of the United States said that it was clear that the injunction in Article 2 (4) to refrain from the threat or use of force against "any State" applied to "any State" and not merely to States Members. Thus, States which were not Members of the Organization but nevertheless were governed by the provisions of Article 2 (6) of the Charter, received the protection of Article 2 (4). A further question arose then: were non-member States not only the beneficiaries of, but bound by Article 2 (4)? In the view of his Government, they were, because of the principle of reciprocity.

They were so bound, further, because the principles of Article 2 (4) had by now achieved status in general international law because Article 2 (6) provided that the Organization should ensure that States which were not Members of the United Nations should act in accordance with the Principles of the Charter so far as might be necessary for the maintenance of international peace and security, and because the international interest in the maintenance of peace and security clearly required that they should be so bound. He stated that it should be added that in practice they had always been treated as bound by the paragraph. The phrase "any State" raised an additional question: could any State, by denying the statehood of another entity, be free to attack it? The history of the United Nations indicated that, in practice, the international community would not permit an attacker by withholding recognition from its victim to evade the prohibition of Article 2 (4) (A/C.6/SR.808, p. 12).

24. The representative of Mexico did not doubt that the provision of Article 2 (6) of the Charter, like any revolution which represented the real interests of mankind, would become an irrevocable part of the new international law. That precept was particularly suitable for progressive development: it would be useful to consider the means by which the clear obligation imposed by paragraph 6 could be carried out. The task would require a series of documents which some day should be assembled in the appropriate instruments (AC.6/SR.806, p. 9). He expressed a similar opinion to that of the representative of the United States on the interpretation of Article 2 (4) and (6) of the Charter (A/C.6/SR.806, p. 5). So, also, did the representative of Ceylon (A/C.6/SR.805, p. 10).

2. The meaning of the term "force"

25. The meaning of the term "force" was the subject of some discussion, certain delegations not seeking to define it explicitly, while others thought it necessary to enumerate the various elements comprised by the term. The representative of the United States, for example, thought it undesirable to spend time trying to define the word "force"; it would be more useful to examine what could be done when someone threatened to use it or did unlawfully employ force (A/C.6/SR.808, p. 18).

26. Many other States, however, offered their definition or understanding of the word "force". The Government of Jamaica, for one, emphasized that force in its original form had almost disappeared from contemporary international law. However, "force" in a subtler form had been obviously undermining international peace and security (A/5470, p. 27). Other delegations stated that the prohibition of the use of force covered, or should cover, the use of regular military, naval or air forces (United Kingdom, A/C.6/SR.805, p. 6) and traditional forms of pressure such as ultimate and military demonstrations (Yugoslavia, GAOR, XVIIth session, 753rd meeting, paragraph 31). It was also stated to cover all forms of pressure, avowed or unavowed, direct or indirect, against the territorial integrity or political independence of a State (Syria, A/C.6/SR.812, p. 5) including military, political, or other pressures, directly or indirectly applied (Ghana, A/C.6/SR.815, p. 14), and all the forms of coercion or violence which might counsel a State to act against its will (Bolivia, A/C.6/SR.814, p. 7; Pakistan, A/C.6/SR.816, p. 4). Pakistan further suggested that it might be proper to regard any "threat to the peace" within the meaning of Article 39 of the Charter as a manifestation of "force" (ibid.).

27. Several States understood the term "force" to include economic force, pressure or coercion (Bolivia, A/C.6/SR.814, p. 7, Brazil, A/C.6/SR.817, p. 12; India, A/C.6/SR.825, p. 3; Indonesia, A/C.6/SR.809, p. 5; Morocco, A/C.6/SR.820, p. 16; Pakistan, A/C.6/SR.816, p. 4, A/C.6/SR.825, p. 2), when brought to bear against a country's independence or integrity (Algeria, A/C.6/SR/809, p. 13). The representative of Nigeria stated, for example, that the Sixth Committee should not overlook the use of economic force, which was sometimes more dangerous than physical force, particularly for the developing countries. There was a difference, however, between economic sanctions imposed by the United Nations against countries deliberately flouting the principles of the Charter and economic pressure employed by big Powers to coerce weaker nations. The delegation of Nigeria held that there was a violation of the principle here concerned, if economic aid was employed to compromise the political independence of a State. The delegation of Nigeria further stated that any advantage gained by force, whether military, political or economic, should not be recognized (A/C.6/SR.814, p. 18). The term "force" was also expressly linked with both

economic and political pressures or manifestations (Yugoslavia, A/C.6/SR.804, p. 5). Ceylon stated there was no reason why the term "force" should not cover such forms of coercion in view of the mode of operation of certain Powers and their subversive agencies (A/C.6/SR.805, p. 11), while Iraq (A/C.6/SR.808, p. and Tunisia (A/C.6/SR.822, p. 12) expressed the view that the term comprised these forms of coercion when the economic or political pressure reached a certain degree of gravity.

28. The representative of the United Kingdom did not share that view and stated that "force", in the particular context of Article 2 (4), connoted physical force or armed force and did not include other forms of economic or political pressure. To extend the prohibition to these measures would require some new agreement (A/C.6/SR.805, p. 7). Neither was the suggestion that the term might include economic pressure shared by the representative of the United States (A/C.6/SR.808, p. 10).

29. The representative of Algeria, although considering that the term "force" covered every form of economic coercion brought to bear against a country's independence or integrity, stated that Article 2 (4) obviously did not extend to all illegal forms of political or economic pressure covered by the principle of non-intervention, and the prohibition it laid down did not apply to the specific cases provided for in Article 51 and Chapter VII of the Charter (A/C.6/SR.809, p. 13).

30. In addition to the use of armed force, military demonstrations and economic and political pressures or coercion, the following were considered by some States as being covered by the term "force" within the meaning of Article 2 (4) of the Charter:

(a) permission or, a fortiori, encouragement by a State or irregular forces or armed bands to operate against a neighbouring State from bases within its own territory (United Kingdom, A/C.6/SR.805, p. 6);

(b) sending of so-called "volunteers" to participate in military or para-military operations within the territory of another State (United Kingdom, A/C.6/805, p. 6);

(c) fomenting of civil strife in the interest of a foreign Power, as implied in General Assembly resolution 380 (V) on Peace through Deeds (United States, A/C.6/SR.808, p. 10; Algeria, A/C.6/SR.809, p. 13);

(d) subversive acts (India, A/C.6/SR.825, p. 3) in particular, training financing and arming of troops by the armed forces of a State with the view of replacing economic and social systems which that State did not like and the activities of certain administrative agencies which, while not openly included in any recognized branch of a State's armed forces, have the same contacts and facilities for obtaining war material as its regular armed forces and carried out subversive activities in other States (Cuba, A/C.6/SR.820, p. 10); economic blockade (Algeria, A/C.6/SR.809, p. 13) and a blockade against a Member State instituted not as a collective security measure by the Security Council under Article 42 of the Charter, but unilaterally as a weapon in the relations between the two States (Cuba, A/C.6/SR.820, p. 10; India, A/C.6/SR.825, p. 3). Blockade and quarantine were nothing else but secondary yet definite forms of coercion. Any other interpretation would contradict the precepts of jus contra bellum (Tunisia, A/C.6/SR.822, p. 12);

(e) certain forms of self-help in international relations which bore a unilateral enforcement character (Czechoslovakia, GAOR, XVIIth session, 753rd meeting, paragraph 31);

(f) unduly broad interpretation of the right of self-defence under Article 51 and of the provisions of Chapter VIII concerning enforcement action by regional agencies (Czechoslovakia, ibid.);

(g) war propaganda (India, A/C.6/SR.825, p. 3) or propaganda directed against the political independence or territorial integrity of other States (Czechoslovakia, GAOR, XVIIth session, 753rd meeting, paragraph 31);

(h) the "position of strength" policy (Czechoslovakia, ibid.; Romania, A/C.6/SR.815, p. 3);

(i) operations involving the use of armed force categorized as wars of liberation (United Kingdom, A/C.6/SR.805, p. 6). This latter view was not shared by some other States - (see Section 4 of the present chapter "Exceptions from the prohibition of the threat or use of force"). The representative of Algeria, for one, stated that his

country and the other States represented at the Addis Ababa Conference did not agree that such a use of force was a violation of Article 2 (4) of the United Nations Charter. As the United Kingdom representative had said, the Charter itself contemplated the lawful use of force in certain circumstances. One of those circumstances was individual or collective action in the exercise of the right of self-defence. The Addis Ababa Conference had simply exercised that right by providing for collective action to assist national liberation. It was the colonial countries which, in violation of the United Nations Charter and the Declaration on the granting of independence to colonial countries and peoples, were responsible for wars of national liberation (A/C.6/SR.805, p. 8).

31. The Government of Jamaica observed that serious consideration should be given to various aspects of "psychological" warfare in order to determine whether this constitutes "force" within the meaning of the Charter (A/5470, p. 27).

3. The meaning of the term "threat of force"

32. The meaning of the term "threat of force" was also the subject of some discussion, more particularly at the eighteenth session of the General Assembly. The representative of Yugoslavia, for example, observed that the definition of the threat of force should also cover direct or indirect means of pressure aimed at the territorial integrity or political independence of a State, and should more particularly include the arms race (A/C.6/SR.804, p. 5); the representative of Tunisia similarly considered that the principle prohibiting the threat or use of force should apply not only to physical force but also to economic and political measures which merely disguise aggression and perpetuate gunboat diplomacy (A/C.6/SR.822, p. 12). In the view of the representative of Ceylon, also, the phrase "threat or use of force" was wider than the words "resort to war" used in the Covenant of the League of Nations, and there was no reason why it should not be still further extended to cover economic or psychological methods of coercion (A/C.6/SR.805, p. 11).

33. The representative of Cyprus noted that there was a consensus of opinion that the "threat of force" could consist not only of circumstances but also of verbal threats (A/C.6/SR.822, pp. 3-4).

34. The representative of the United States made the following observations on that subject: when a foreign force had ensconced itself in the territory of another State with that State's consent and the consent was subsequently withdrawn, it might well be that the refusal to withdraw those troops would constitute a threat of force in violation of Article 2 (4), and a threat to the territorial integrity and independence of the State thus occupied. It would seem immaterial that the foreign military presence was not a part of a plan aimed at supplanting the constituted Government or supporting territorial claims. A second type of case to be considered was the presence in a State's territory of a foreign armed force which did not recognize the authority of that State. That would presumably constitute a threat to the State's political independence and territorial integrity. It might not always be clear, however, that what was involved was a threat of force "in ... international relations" within the meaning of Article 2 (4). It would be necessary to establish that the intruders were agents of a foreign State, or to impute responsibility for their acts to a foreign Government. Article 2 (4) might also be violated when one State furnished assistance to armed groups in revolt against the Government of another State or provided "volunteers" to fight under the insurgent command, since the responsibility for an act was shared among all those who knowingly participated in its execution.

35. In the opinion of the representative of the United States furthermore, the threat of force, as well as the use of force, was proscribed, for a State which chose a policy of force could, by making a threat, infringe the provisions of the Charter even before any force had been used. It should be possible, under certain circumstances, taking into account a State's past record of conduct and knowing whether it was committed to a programme of remaking the world in its own image or whether its statements were made purely for domestic consumption, to arrive at a considered judgement as to whether that State was guilty of making a threat of force within the meaning of the Charter. The threat to a State could also take very subtle forms, calling for the gradual refinement of legal standards of international practice. Thus, the presence of an overwhelming foreign military force, even beyond the frontier, could, in a weaker State, strengthen the hands of representatives of the foreign State if they were seeking to effect political change by circumventing constitutional processes. It could also benefit a power-seeking minority group which would otherwise be incapable of upsetting constitutional processes. Such a presence could forestall the enforcement of the

law against acts of violence committed on political opponents, or disrupt the normal functioning of a Government in order to destroy it. In such circumstances, there was clearly a threat to the political independence of a State (A/C.6/SR.808, pp. 13-15).

36. The Government of Brazil considered it advisable to make explicit the fact that the mere show of force, given the intention of exerting pressure on a State which can be clearly inferred from objective circumstances, constitutes a form of the use of force to be condemned (A/5470, p.6). In the view of the delegation of the United Kingdom, the language of Article 2 (4) already made it plain that it prohibited a show of armed force for the purposes falling within that provision. Whether, and in what circumstances, such a threat was to be inferred was again essentially a question of fact. The United Kingdom delegation accepted that a threat could be deduced from circumstances just as well as from express words, but doubted that it was necessary to state that point expressly, particularly since the circumstances in which a show of force might amount to a prohibited threat of force must in each case depend on a proper appreciation of the facts (A/C.6/SR.805, p. 7).

4. Exceptions from the prohibition of the threat or use of force

37. A number of States stressed that the sole exceptions to the absolute prohibition of the threat or use of force in international relations were those expressly provided in the Charter, which should be interpreted strictly (Yugoslavia, A/C.6/SR.804, p. 5). Certain of these States expressly limited it to enforcement action ordered by the Security Council, and, in conformity with Article 51, individual or collective self-defence in the event of an armed attack (Bulgaria, A/C.6/SR.807, p. 11; Cuba, A/C.6/SR.820, p. 9; Cyprus, A/C.6/SR.822, p. 4; India, A/C.6/SR.825, p. 3; Israel, GAOR, XVIIth session, 767th meeting, paragraph 15; Mexico, A/C.6/SR.806, p. 8; Philippines, A/C.6/SR.823, p. 2; Spain, A/C.6/SR.813, p. 5).

38. The representative of Mexico stressed that, aside from the two aforementioned situations, the use of force had been permanently prohibited in the relations among Members of the United Nations and, in view of Article 2 (6) of the Charter, also in the wider international community (A/C.6/SR.806, p. 8).

39. The representative of the United States (A/C.6/SR.808, p. 12) considered that in addition to the exceptions already indicated, measures which the General Assembly might recommend under Articles 10 and 11, as well as those which regional agencies might take under Chapter VIII were "effective collective measures" adopted in accordance with the Charter. The United Kingdom representative also expressed the view that where an action by the Security Council was not possible, by reason of the lack of unanimity of its permanent Members, the General Assembly might recommend collective measures including, when necessary, the use of armed force. The representative of the United Kingdom further took the position that Article 51, read with Article 2 (4), did not entirely replace or render irapplicable the whole corpus of pre-existing international law on the use of force in self-defence. For example, in the opinion of a number of authorities, although Article 51 used the words "if an armed attack occurs", a State was not bound to wait until it was overwhelmed by an actual attack before it took such action as was necessary to avert an imminent attack. Furthermore, the fact that Article 2 (4) included limiting words with regard to the threat or use of force suggested that there might be circumstances, not within the express provisions of the Charter, in which the use of force might be lawful. On the basis that Member States had those rights which general international law accorded, except in so far as they had surrendered them in accordance with the Charter, it was possible to envisage cases other than the exercise of the right of self-defence in which the use of force might be permissible if it did not offend against Article 2 (4) of the Charter (A/C.6/SR.805, pp. 5-6).

40. The representative of Australia shared that view by saying that the changes in international relations and in the United Nations since 1945 served only to emphasize the gravity of the extreme literal interpretation of Article 2 (4) and Article 51, without reference to the inherent right of self-defence under general international law. The peace-keeping system of the Charter had plainly envisaged Security Council enforcement action, where necessary, against an aggressor. Since 1945 it had become clear, however, that a State threatened with annihilation by a more powerful State could not be sure that the Security Council would be able to act or would act, or even that a majority could be found to take action in the General Assembly under the Uniting for Peace resolution. A flexible interpretation of the Charter provisions would permit a threatened State to use

force to ward off a threatened attack, so long as it did not do so against the territorial integrity or political independence of another State (A/C.6/SR.817, p. 10).

41. However, the position just stated was not shared by a number of delegations, in particular, Ceylon, Cuba, Cyprus, Indonesia, Panama, Philippines, Spain and the United Arab Republic.

42. The representative of Ceylon stated that an interpretation of Article 51 in support of the alleged right of a State to defend itself by force against a threat to its security not amounting to an "armed attack" had given rise to serious abuses. He submitted that any measures for the prevention and removal of threats to the peace other than armed attacks must be collectively carried out by the Members of the United Nations as a whole, and not by a front of Members acting on their own. Any other interpretation would be contrary to the letter and spirit of the Charter, and would be a serious threat to the authority of the United Nations (A/C.6/SR.805, p. 11). In the view of the representative of the United Arab Republic the Sixth Committee should not retreat from the position reached in 1945 (A/C.6/SR.805, pp. 5-6).

43. The representative of Spain said that interpreting the Charter so broadly as to justify preventive or anticipatory self-defence could destroy its value completely. It was sound legal logic that the exceptions to a principle should always be given a restrictive interpretation, especially when they were formulated as clearly as those provided for in Article 51 (A/C.6/SR.813, pp. 5-6). The representative of Cuba noted that a broad interpretation of Article 51 might easily be converted into a pseudo-juridical weapon for perpetrating aggression. To accept a State's unilateral judgement that conditions endangered its particular interests as authorizing the threat or use of force by it or its allies would be to legitimize wars of aggression or so-called preventive wars (A/C.6/SR.820, p. 9). The representative of Panama took a similar view (A/C.6/SR.824, p. 4). The representative of Cyprus emphasized that the aim of the Charter was to limit as far as possible cases in which a State could take justice into its own hands and to give Article 51 a broad interpretation would be a step backward (A/C.6/SR.822, p. 4). In the view of the representative of the Philippines, nothing that had happened since the promulgation of the Charter justified departure from that principle. He suggested that the idea of preventive self-defence must be discarded

and other means than force must be found to remedy injustice or to stave off a threat (A/C.6/SR.823, p. 2).

44. The representative of Indonesia recalled that Article 51 of the Charter limited the use of force in the exercise of the right of self-defence to the case of a State which was a victim of an armed attack, and laid down that even then, the use of force should be temporary only, pending action by the Security Council. Construing the expression "armed attack", Mr. Jessup considered that under the terms of the Charter alarming military preparations by a neighbouring State justified an appeal to the Security Council, but the threatened State was not entitled to use force in anticipation of an attack (A/C.6/SR.809, pp. 5-6).

45. The representative of Pakistan noted that one of the most widely discussed problems was that of exceptions to the principle of prohibition of the threat or use of force. The fact that the Sixth Committee and the International Law Commission had never been able to define the term "aggression" suggested that if the Committee wished to make progress, it should concentrate on the positive content of the principle rather than on the nature of its violations (A/C.6/SR.816, pp. 4-5).

46. In connexion with the exceptions from the prohibition of the threat of the use of force the question of resort to force to achieve self-determination arose. The representative of Algeria advanced the view that a people fighting for its liberation was fighting a just war. A war of liberation was a case of self-defence, and the maintenance of colonialism was a case of clear-cut aggression (GAOR, XVIIth session, 761st meeting, paragraph 19; A/C.6/SR.805, p. 7). This position was supported by Hungary (A/C.6/SR.806, p. 4) and a number of other States. Tanganyika stated that sending volunteers to participate in military or para-military operations in the territory of another State did not constitute the use of force and did not infringe the sovereign equality of States if the State in question denied its nationals the right of self-determination and if the volunteers assisted a people to fight for the recognition of their rights (A/C.6/SR.811, p. 4). Cuba (A/C.6/SR.820, p. 10) and Tunisia (A/C.6/SR.822, p. 12) took the position that wars of liberation should be excepted from the principle prohibiting the threat or use of force. India stated that it was for the General Assembly to decide whether colonies could also legally be permitted to use force for their liberation (A/C.6/SR.825, p. 3).

47. On the other hand, the representative of the United Kingdom declared that any doctrine tending to justify the use of force in a manner which was inconsistent with the Charter, for example under the pretext of "provocation", or "liberation", or any practice which made economic aid a means of political subservience, should be rejected as contrary to the Charter. The prohibition of the threat or use of force was in no way qualified by the consideration that operations involving the use of armed force might be categorized as "wars of liberation" (GAOR, XVIIth session, 761st meeting, paragraph 13; A/C.6/SR.805, p. 6).

48. That position was supported by the representative of Australia who stated that to wage, or to assist others in waging, a war of national liberation almost by definition involved conflict with Article 2 (4) of the Charter, inasmuch as the territorial integrity of the State concerned was precisely the object of attack in a war of liberation. The two references in the Charter to the self-determination of peoples (Article 1 (2) and Article 55) did not supply sufficient foundation for a legal argument that a war for the purpose of forcing a State to grant independence to the peoples living in part of its territory was permitted by Article 2 (4) (A/C.6/SR.817, p. 10).

49. The representative of Spain expressed apprehension that a broad interpretation of the Charter so as to justify wars of popular liberation could destroy its value completely (A/C.6/SR.813, p. 5).

5. The meaning of the phrase "territorial integrity or political independence"

50. Another question which gave rise to some discussion was the interpretation of the phrase "territorial integrity or political independence". The representatives of Ceylon, Cyprus and the United States observed that this qualifying phrase had been inserted at San Francisco in order to protect and help the weaker States and to give them an express gurantee of their territorial integrity and political independence.

51. The representative of Ceylon further observed that there was no obligation on Members of the United Nations to preserve the territorial integrity or political independence of other States until the Security Council had acted. That raised the important question of whether a State could send its armed forces into the territory of another State ostensibly in order to protect it from some allegedly

dangerous political ideology. The mental processes of both the aggressor and the victim in such cases were so difficult to fathom that, in the final reckoning, all that could be done was to rely on the willingness of the powerful nations to respect the spirit as well as the letter of the Article in question (A/C.6/SR.805, p. 11).

52. The representative of the United States noted that the phrase clearly was not designed to permit a State to use force against another State on the plea that it was not using force against the territorial integrity and political independence of that other State. If State A could penetrate the territory of State B and be heard to contend that its penetration was lawful under Article 2 (4) since it had not meant permanently to interfere with State B's territorial integrity and political independence, the value of Article 2 (4) would be in doubt. Yet the question was difficult, for it had been contended that action which was genuinely in self-defence could not, by definition, be directed against the territorial integrity and political independence of another State (A/C.6/SR.808, pp. 11-12).

53. The representative of Cyprus stated that it followed from the phrase that the sending of armed forces into the territory of another State, even if the alleged purpose of the operation was to protect the weak State against a supposed threat, was a violation of Article 2 of the Charter (A/C.6/SR.822, p. 4).

54. The representative of Guatemala said that it was particularly important to safeguard territorial integrity, which had two sides: respect for the territory already legitimately in the possession of a country, and the return of territory which rightfully belonged to it (GAOR, XVIIth session, 756th meeting, paragraph 34).

55. The representative of Austria stressed that, in the context of the obligation to respect the territorial integrity and political independence of States, underlying concepts such as pressure, subversion, and revolutionary propaganda directed against another State required clarification (GAOR, XVIIth session, 766th meeting, paragraph 5).

56. Nigeria considered that the question of nuclear explosions was a violation of the territorial integrity of a State which might be affected by such an explosion (A/5470, p. 33; A/C.6/SR.814, p. 18).

57. When discussing the relationship between the principle which forms the subject of the present Chapter and other principles, the representatives of Colombia, Japan and Pakistan thought that the obligation to respect the territorial integrity and political independence of States implied the acceptance of the principle of non-intervention. The representatives of Japan (GAOR, XVIIth session, 754th meeting, paragraph 2) and Pakistan (GAOR, XVIIth session, 761st meeting, paragraph 3) further considered that it also implied the recognition of the principle of self-determination. In the view of the representative of Chile, the principles of non-interference in the affairs of other States and the right of peoples to self-determination followed from the principle of respect for political independence (GAOR, XVIIth session, 770th meeting, paragraphs 19-24).

58. The representative of Iran observed that the right to political independence and territorial integrity gave practical form to the principle of sovereign equality of States and was supported by Article 2 (4) of the Charter. These provisions, together with the obligation not to intervene in matters essentially within the domestic jurisdiction of any State, were the constituent elements of collective security (GAOR, XVIIth session, 762nd meeting, paragraph 30).

59. In the view of the representative of Thailand the corrolary of the obligation to respect territorial integrity and political independence was that every State had the right to territorial integrity and independence (GAOR, XVIIth session, 763rd meeting, paragraph 13).

6. The meaning of the phrase "in their international relations"

60. A few States elaborated upon the interpretation which should be given to the phrase "in their international relations". According to the representative of Ceylon this phrase implied that a State could not use force against any other State, regardless of whether it was a Member of the United Nations or not (A/C.6/SR.805, p.10).

61. The representative of the United States said that, apparently, the prohibition of the threat or use of force applied to disputes between State and State, and a State accordingly could apply force in the event of a civil war and might put down a revolt which broke out within its territory. But the question raised by that phrase did not stop there, for there might evidently be a question about what was

a State's territory. A group or community might claim international personality or statehood and consequently might assert that any threat or use of force against it would be "international" and thus subject to Article 2 (4). That problem, in turn, was linked with the prevailing system of determination, under international law, of whether "international relations" existed between communities. Recognition of a State was not a centralized process. As long as that was the case, the application of Article 2 (4) might raise difficulties (A/C.6/SR.808, p. 11).

7. The meaning of the phrase "in any other manner inconsistent with the purposes of the United Nations"

62. The delegates of Ceylon and of the United States also commented upon the words "in any other manner inconsistent with the purposes of the United Nations". The representative of Ceylon explained that this phrase clearly made it obligatory for all Members of the United Nations to act in accordance with the terms of Article 1 of the Charter, but had sometimes been quoted in support of the alleged right of a State to defend itself by force against a threat to its security not amounting to an "armed attack" within the meaning of Article 51. He disagreed with that interpretation which he thought had given rise to serious abuses (A/C.6/SR.805, p. 11).

63. According to the representative of the United States the purposes stated in Article 1 (1) of the Charter were particularly pertinent in regard to the final phrase of Article 2 (4). That phrase emphasized the legality of force as an element of "effective collective measures" adopted in accordance with the Charter. Such effective collective measures were those which the Security Council might take under Chapter VII, particularly Article 42, those which the General Assembly might recommend under Articles 10 and 11, and those which regional agencies might take under Chapter VIII. Moreover, by the terms of Article 51, nothing in the Charter impaired the inherent right of individual or collective self-defence against armed attack (A/C.6/SR.808, p. 14).

8. The question of disarmament

64. The question of disarmament was another matter referred to at some length within the context of the interpretation of the principle under consideration

in this Chapter. The representatives of Bulgaria (A/C.6/SR.807, p. 11), Mongolia (A/C.6/SR.819, p. 2), Romania (A/C.6/SR.815, p. 3), the Soviet Union (A/C.6/SR.802, pp. 11-12) and Ukrainian SSR (A/C.6/SR.809, p. 9) stressed that States must promote general and complete disarmament, since that would be the most effective guarantee of the prohibition embodied in Article 2 (4) of the Charter. They supported the proposal of Czechoslovakia to that effect (see Part A of Chapter I, paragraph 6). The representative of Hungary shared their view, stating that the prohibition of the threat or use of force was inextricably linked with general and complete disarmament under strict international control, and one of the great merits of the Draft Declaration submitted by the delegation of Czechoslovakia was that it placed that principle as a sub-heading under the main theme of the outlawing of the threat or use of force (A/C.6/SR.806, p. 4).

65. The representative of Czechoslovakia, when introducing his Declaration at the seventeenth session, stated that the principle of general and complete disarmament, which had gradually developed from the initial conception of restriction of armaments embodied in Article 11 of the Charter, had become a permanent part of international law, as indicated by General Assembly resolution 1378 (XIV) and other documents expressing the affirmative will of States to regard general and complete disarmament under strict international controls as the most important question now confronting the world (GAOR, XVIIth session, 753rd meeting, paragraph 21). The representative of Poland took a similar view, saying that Article 26 of the Charter dated from the pre-atomic era; he had no doubt that it should be given a more extensive and up-to-date interpretation (GAOR, XVIIth session, 760th meeting, paragraph 20).

66. The representative of Yugoslavia also considered that there was a positive obligation under international law to strive actively towards general and complete disarmament, which was both an essential part of the Charter and an imperative requirement of the modern era. Conversely, the arms race was an aspect of the policy of force in international relations and must be regarded as contrary to the purposes and principles of the United Nations (GAOR, XVIIth session, 753rd meeting, paragraph 32). The positive nature of the principle of general and complete disarmament was further supported by the representatives of Ghana (A/C.6/SR.815, p. 14) and Mali (GAOR, XVIIth session, 764th meeting, paragraph 5; A/C.6/SR.812, p. 9).

67. Some representatives, however, expressed reservations to, or disagreement with, some of the views reproduced above. The representative of Malaysia noted that without properly controlled and effective disarmament, peaceful coexistence was only a dream; unhappily even the Charter gave only qualified approval to disarmament. The reference in Article 47 to "possible disarmament" must be read in conjunction with Article 45, which called on Members to "hold immediately available national air force contingents" (A/C.6/SR.807, p. 7).

68. The representative of Israel observed that if real disarmament was to be achieved, it must be accompanied by the modernization and universalization of international law, both as to its substance and as to its procedures. The peoples and the Governments of the world must be presented with fair, reliable and reasonable alternative methods to regulate their affairs and settle their disputes. In that way it should no longer be necessary to conceive of resort to force, whether nuclear or conventional, beyond the limits imposed by the Charter - namely, collective measures and action in exercise of the right of self-defence (GAOR, XVIIth session, 767th meeting, paragraph 15).

69. Some representatives observed that general and complete disarmament involved a difficult and complex political problem which, in spite of persistent efforts by both sides, had not yet been solved (Cambodia, GAOR, XVIIth session, 755th meeting, paragraph 4). This problem was still far from political settlement, which made it difficult to lay down principles of international law for general and complete disarmament (Tanganyika, GAOR, XVIIth session, 764th meeting, paragraph 1).

70. The representatives of Australia (A/C.6/SR.817, pp. 6-7), Italy (GAOR, XVIIth session, 760th meeting, paragraph 8) and the United Kingdom (A/C.6/SR.805, p. 7) said that they considered the achievement of general and complete disarmament subject to effective international control and verification as one of the most vital objectives of policy but that it did not follow that a principle of international law to that effect could be declared as existing. In particular, the representative of Australia explained that it was clear from Articles 11, 26 and 51 that the Charter treated both the general principle and the specific details of disarmament as a matter for recommendations to be considered by Governments. It seemed clear to the delegation of Australia that the Sixth Committee could not, at the present stage at least, put forward any meaningful rule as to the legal duty of

States to disarm. To interpret the political objective of general and complete disarmament under effective international control to mean that a legal duty to act in such a manner that an agreement on disarmament might be reached as speedily as possible was to disregard entirely the prerequisites for a legal rule. Such a duty would be wholly subjective in its application, would lack the precision necessary to prevent evasion, and would open the way to endless recriminations. Moreover, an agreement on general and complete disarmament would involve substantial changes in the peace-keeping system formally provided in the Charter. The difficulty that arose in stating a legal duty in relation to disarmament was not merely a question of drafting. Neither the Charter nor international convention nor the practice of States established any such legal duty. The attempt to create a binding rule by laying down a duty of that sort in the course of the Committee's study cut across the patterns established by the Charter for approaching the problem of disarmament (A/C.6/SR.817, pp. 6-7).

71. The representative of Iran declared that disarmament and similar problems, which were part of the political and technical aspect of collective security, fell outside the jurisdiction of the Sixth Committee (GAOR, XVIIth session, 762nd meeting, paragraph 30).

72. The representative of Poland took issue with those representatives who had argued that disarmament was not a principle of law. It was difficult, he said, to see how the problem could possibly be evaded in any study of Article 2 (4) of the Charter. Indeed, the signatories of the Charter had undertaken in Article 26 to formulate plans for the regulation of armaments, and the Member States had adopted several resolutions to that end. Moreover, the quantity and quality of modern armaments had created an entirely new situation which the law could not ignore (A/C.6/SR.811, p. 7).

9. First use of nuclear weapons

73. The questions of the first use of nuclear weapons and of nuclear weapons tests were the subject of some discussion within the context of the principle here concerned. The present section deals with first use of nuclear weapons and the section which immediately follows with the issue of nuclear weapons tests.

74. The representative of Czechoslovakia made a proposal that the General Assembly should endorse a principle which would prohibit the first use of nuclear weapons in an international conflict pending the conclusion of an Agreement on their prohibition. He said that in the present conditions aggressive war would endanger the very existence of mankind and that, in the legal consciousness of nations, the fact of being the first to use nuclear weapons was the gravest crime against mankind (GAOR, XVIIth session, 753rd meeting, paragraph 20).

75. The representative of Bulgaria noted that such a prohibition would be one of other measures acceptable in the present stage, until general and complete disarmament was reached, and that the observance of that principle could also be strengthened by educating public opinion through mass media of communication and through the schools (A/C.6/SR.807, p. 11). The representative of Romania also advocated the express outlawing of the use of nuclear, thermonuclear or other weapons of mass destruction in any declaration which might be drawn up (A/C.6/SR.815, p. 3).

10. The question of nuclear weapons tests

76. The representative of Yugoslavia stated that the arms race was an aspect of the policy of force in international relations and must be regarded as contrary to the purposes and principles of the United Nations. That was even more obviously true of nuclear weapons tests, the unlawfulness of which even in pre-Charter international law had been conclusively demonstrated. New developments in military technology had made urgent the need to refrain from any course that might lead to a devastating war (GAOR, XVIIth session, 753rd meeting, paragraph 32).

77. The representative of Cyprus said that his delegation had long considered that nuclear testing infringed such rules of positive international law as a State's sovereignty over its territory and particularly over its air space, recognized in 1919 by the Paris Convention relating to the regulation of Aerial Navigation,[1/] the law of nuisance, illustrated by the Trail Smelter Case[2/] between

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1/ League of Nations, Treaty Series, Vol.XI, 1922, No. 297.

2/ Reports of International Awards, Vol.III (United Nations publication, Sales No.49, V.2), pp. 1907-1982.

the United States and Canada; the principle of the freedom of the high seas, as stated in Article 2 of the Geneva Convention of 1958 on the High Seas[3] and in a resolution[4] adopted by the United Nations Conference on the Law of the Sea; the developing law of outer space, which, although declared res communis, the Great Powers were treating as their own bailiwick; and the fundamental right to life, affirmed in many national and international constitutional instruments (GAOR, XVIIth session, 768th meeting, paragraph 6).

78. As already mentioned in section 5 above, Nigeria considered that the question of nuclear explosions was a violation of the territorial integrity of a State which might be affected by such an explosion (A/5470, p. 33; A/C.6/SR.814, p. 18).

11. The question of war propaganda

79. As indicated in Part A of the present Chapter (see paragraph 6 above), the question of war propaganda was linked by the representative of Czechoslovakia with the principle forming the subject of this Chapter. He proposed the adoption of a principle to be embodied in a Declaration under which States would be required to refrain from engaging in war propaganda, and also to prevent its dissemination by persons or organizations residing on their territories. He said that the prohibition of war propaganda was confirmed by General Assembly resolution 95 (I), affirming the principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgement of the Tribunal and resolution 110 (II), condemning all forms of propaganda either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression (GAOR, XVIIth session, 753rd meeting, paragraph 22).

80. This proposal was supported by the representatives of Bulgaria (A/C.6/SR.807, p. 11); Cuba (A/C.6/SR.820, p. 10); Hungary (A/C.6/SR.806, p. 4); Romania (A/C.6/SR.815, p. 3); the Soviet Union (A/C.6/SR.802, p. 12) and the Ukrainian SSR (A/C.6/SR.809, p. 9). The representative of the Soviet Union stressed that if aggressive war was prohibited as a crime, it followed that the preparation of that extremely dangerous crime was also unlawful. The prohibition of war

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3/ United Nations Conference on the Law of the Sea, Official Records, Volume II: Plenary Meetings (United Nations publication, Sales No.: 58.V.4, Vol. II), Annexes pp. 135-139.

4/ Ibid., p. 143.

propaganda was also directly related to the idea of peaceful coexistence, since war propaganda was always directed towards inciting hatred among peoples and worsening relations among them. The Second World War had shown that war propaganda was an important weapon in the preparation of aggression. Consequently, the Charter of the Nürnberg Tribunal had declared that the preparation and planning of war constituted a crime against peace. The principle of prohibition of war propaganda was, he said, an established principle of international law (A/C.6/SR.802, p. 12).

81. The representative of Yugoslavia considered that the prohibition of the threat or use of force obviously covered not only traditional forms of pressure, but also, among others, war propaganda or propaganda directed against the political independence or territorial integrity of other States (GAOR, XVIIth session, 753rd meeting, paragraph 31). The representative of Peru considered war propaganda as immoral in all cases and not only in regard to nuclear war. However, national and racial hatred was irrelevant to the question of war propaganda (GAOR, XVIIth session, 765th meeting, paragraph 23).

82. On the other hand, the representative of Colombia said that it would be impossible to translate into legal terms some principles, such as that for instance dealing with war propaganda, which was a political principle (GAOR, XVIIth session, 761st meeting, paragraph 24). The representative of Cameroon also considered that the prohibition of war propaganda was not a legal principle (GAOR, XVIIth session, 767th meeting, paragraph 34).

83. The representative of the United States suggested that war propaganda was not now prohibited by international law and it seemed incorrect to him to say that States were under a legal duty to prohibit it (GAOR, XVIIth session, 764th meeting, paragraph 15). The representative of Australia likewise did not agree with the suggestion that the recommendation to Governments made by the General Assembly in resolution 110 (II), regarding propaganda inimical to peace and mutual understanding among nations, should be expressed as a legal prohibition. He said that such language was so manifestly imprecise and subjective as to cover almost anything stated or published in one State of which another State disapproved. But here, too, the difficulties seemed to go deeper than a question of drafting. States

whose policy was consciously based on, or whose constitutions provided for, the right of minorities to express dissenting opinions would reject any rule which suppressed that right (A/C.6/SR.817, p. 7).

12. Prohibition of the preparation of a war of aggression

84. In connexion with the principle here concerned, some reference was made to the prohibition of the preparation of a war of aggression. The representative of the Ivory Coast stated that aggression and the preparation of aggression were rightly considered war crimes. That idea had first found practical expression in the judgement of the Nürnberg Tribunal in 1946. His delegation, however, preferred judgements that were handed down before wars and helped to prevent them (GAOR, XVIIth session, 762nd meeting, paragraph 39). The representative of the Soviet Union also said that the principle of non-aggression had been developed in the Charters of the Nürnberg and the Tokyo International Military Tribunals, which had provided that not only aggressive war, but also the preparation of war, was prohibited by international law. Thus, the Charter of the Nürnberg Tribunal had declared in Article 6 (a) that the "planning, preparation, initiation or waging of a war of aggression"[1/] was a crime against peace (A/C.6/SR.802, p. 11).

13. The question of defining aggression

85. The question of defining aggression was also raised. The Government of Jamaica expressed the view that in considering the principle embodied in Article 2 (4) of the Charter, an intensified effort must again be made to arrive at an acceptable definition of "aggression". Admittedly it might not be possible to exhaustively define "aggression", but it should be possible to recognize the more frequent forms in which aggression has been manifesting itself in modern times (A/5470, p. 27).

86. The representative of the United Kingdom observed that the machinery provided in Chapters VI and VII, which was designedly flexible enough to permit the

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1/ The Charter and Judgement of the Nürnberg Tribunal, United Nations publication, Sales Nos.: 1949.V.7, p. 93.

Security Council to determine, on the facts laid before it, whether in any particular case there existed a dispute or situation likely to endanger the maintenance of international peace and security or a threat to the peace, breach of the peace, or act of aggression, constituted the framework within which allegations of violations of the prohibition on the threat or use of force could be investigated and determined. In other words, the process of interpretation and application of the principle prohibiting the threat or use of force was within the Charter system, conferred on the competent organs of the Organization and particularly on the Security Council. Against that background, the United Kingdom delegation wished to sound a note of caution about the desirability and even the possibility of stating a comprehensive definition of the prohibition of the threat or use of force. The notion was very similar in nature to the idea of aggression, for which the International Law Commission and the Sixth Committee had failed to produce a satisfactory definition. Any attempt to restate the purposes or principles of the Charter or to extend or supplement them should be undertaken only with the greatest caution (A/C.6/SR.805, p. 4).

87. The representative of Sweden considered that it would certainly be valuable in studying the principle of the prohibition of the threat or use of force, to take into account the work on defining aggression, and in particular, the report of the 1956 Special Committee on the Question of Defining Aggression,[1/] and also the Preparatory Study concerning a Draft Declaration on the Rights and Duties of States[2/] made by the Secretary-General in 1948 (A/C.6/SR.806, p. 14).

88. In the view of the representative of Peru the notion of aggression, embodied in the Charter, was not identical with threats to, and violations of, peace. The latter concepts were not clearly defined, and at a time when armaments included more and more weapons of mass destruction, it was imperative that threats, and their corollary self-defence, should be given urgent consideration (GACR, XVIIth session, 765th meeting, paragraph 22).

1/ Official Records of the General Assembly, Twelfth session, Suppl. No. 16.

2/ United Nations publication, Sales No.: 1949.V.4.

14. Participation in collective measures for the maintenance of international peace and security

89. Participation in collective measures for the maintenance of international peace and security was linked by several representatives with the principle reviewed in this Chapter. The representative of Czechoslovakia stated that the obligation to take measures for the maintenance of peace and international security was the fundamental legal principle of peaceful coexistence. Representing the active aspect of peaceful coexistence, it was fully expressed in the United Nations Charter, particularly in Article 1. Its validity had frequently been confirmed, for instance, in the Declaration contained in the final communiqué of the Bandung Conference of African and Asian States, and in General Assembly resolution 1236 (XII) on peaceful and neighbourly relations among States. The principle of collective security was undoubtedly one of the basic legal instruments of peaceful coexistence (GAOR, XVIIth session, 753rd meeting, paragraphs 19, 23).

90. The representative of the Soviet Union shared that view by saying that, under the United Nations Charter, it was the duty of States not to give assistance to aggressors and to participate in collective measures for the maintenance of international peace and security. In an interdependent world in which aggression against one State might lead to a world war, all States had an obligation to take steps to avoid a threat to international peace (A/C.6/SR.802, p. 11).

91. As already indicated in section 7 above, the representative of the United States said that the phrase "in any other manner inconsistent with the Purposes of the United Nations" emphasized the legality of force as an element of "effective collective measures" adopted in accordance with the Charter. Such effective collective measures were those which the Security Council might take under Chapter VII, particularly Article 42, those which the General Assembly might recommend under Articles 10 and 11, and those which regional agencies might take under Chapter VIII (A/C.6/SR.808, p. 12). The representative of Mexico deduced the principle of collective security and solidarity against aggression from the Preamble, Article 1 (1) and Chapter VII of the Charter, from Article 12 of the draft declaration on Rights and Duties of States prepared by the International

Law Commission, from articles 4a and c, 5f, 24 and 25 of the Charter of the Organization of American States and from paragraph 7 of the Declaration submitted by the representative of Czechoslovakia (see paragraph 6 above) (GAOR, XVIIth session, 758th meeting, paragraph 32).

15. Restraint from actions that might increase tensions

92. Restraint from actions that might increase tensions was a further matter referred to in the present context. The representatives of Romania (A/C.6/SR.815, p. 3) and the Soviet Union (A/C.6/SR.802, p. 11) stressed that States, regardless of differences in political, economic and social systems, must refrain from acts which might increase international tensions and create a situation which would endanger international peace and security.

93. The representative of Algeria took a similar position when he considered that Article 2 (4) necessarily imposed upon States the obligation not to worsen tension and not to increase the risk of war, for example, by failing to comply with United Nations resolutions or by increasing disproportionately their military power. States were under a duty to help improve international relations by decolonizing, upholding the law, dismantling bases abroad, denuclearizing particular zones and strengthening the means for the peaceful settlement of international disputes specified in Article 33 (A/C.6/SR.809, p. 13).

16. Prohibition of assistance to States resorting illegally to force

94. The prohibition of assistance to States resorting illegally to force was stated by some representatives to be another aspect related to the principle under consideration. The representative of Mexico in this respect indicated that, in order to show that there was a firm basis of agreement on which the task of codification and progressive development of international law regarding the principles before the Committee could be carried out, his delegation had made a comparative analysis of the principles concerning international law included in the Charter of the United Nations, the draft declaration on Rights and Duties of States prepared by the International Law Commission, the Charter of the

Organization of American States, the draft resolution and Declaration submitted by the Czechoslovak representative (A/C.6/L.505), and the nine-Power draft resolution (A/C.6/L.507 and Add.1 and 2) and had reached the conclusion that the following principles could be deduced from them: (1) The obligation to refrain from assisting a State against which the United Nations had taken preventive or enforcement measures (Article 2 (5) of the Charter and Article 10 of the International Law Commission's draft declaration on the Rights and Duties of States) ... (GAOR, XVIIth session, 758th meeting, paragraph 32).

95. The representative of the Soviet Union stated that it was the duty of States under the United Nations Charter not to give assistance to aggressors and to participate in collective measures for the maintenance of international peace and security (A/C.6/SR.802, p. 11).

17. Non-recognition of the effects of the breach of the principle

96. In the same context as that indicated in paragraph 94 above, the principle of non-recognition of territorial conquests achieved by force, or of special advantages obtained by force or by any other means of coercion, was deduced by the representative of Mexico from Article 11 of the draft declaration on Rights and Duties of States prepared by the International Law Commission, articles 5 e and f and 17 of the Charter of the Organization of American States and from the draft Declaration submitted by Czechoslovakia (GAOR, XVIIth session, 758th meeting, paragraph 32).

97. The representative of Ghana stated that any codification undertaken by the Assembly should provide that an act that constituted a breach of the principle of Article 2 (4) would be regarded as null and void ab initio and that any factual situation arising from that breach would not be recognized by other States (A/C.6/SR.815, p. 15).

18. Free access to the sea for land-locked countries

98. Some States raised the question of free access to the sea for land-locked countries in relation to the principle forming the subject of this Chapter.

In this connexion, the representative of Afghanistan said that the Charter did not fully cover all forms of the threat or use of force. For example, it contained no provision safeguarding the right of free access to the sea for land-locked countries, which now represented one-sixth of the nations of the world. An economic blockade would be just as dangerous to such countries as the threat or use of force (A/C.6/SR.804, p. 9).

99. The representative of Bolivia shared the view of the representative of Afghanistan that it was essential to have some provision safeguarding the right of free access to the sea for land-locked countries. That right had been formally recognized in article 3 of the 1958 Convention on the High Seas.1/ He also wished to point out that an economic blockade or a strike, which paralysed traffic in the transit countries was as dangerous for land-locked States as the threat or use of force, for it would have the effect of paralysing the trade and disorganizing the economy of those States (A/C.6/SR.814, p. 8).

100. The representative of the United States admitted that the matter of access to the sea was, of course, one of great importance, but he was not at all certain that it came within the scope of Article 2 (4) (A/C.6/SR.808, pp. 10-11).

1/ United Nations Conference on the Law of the Sea, Official Records, Vol. II, (United Nations publication, Sales No.: 58.V.4, Vol. II) Annexes, pp. 135-139.

CHAPTER II

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

A. Formal written proposals by Member States

101. In paragraph 6 of Chapter I of the present document reference is made to the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States (A/C.6/L.505) submitted by Czechoslovakia to the Sixth Committee at the seventeenth session of the General Assembly. One of the principles in that Declaration, to which the representative of Czechoslovakia again alluded at the eighteenth session (A/C.6/SR.802, p. 6), contained the following formulation of the principle forming the subject of this chapter:

"The principle of peaceful settlement of disputes

"Disputes between States and international situations of any origin and nature must be settled by peaceful means, in particular by direct negotiations, so that international peace and security, and justice are not endangered. States are free, when using other methods of settlement, to choose the most appropriate means for such a settlement on the basis of agreement and with regard to the nature of the dispute."

102. Also relevant to the principle is operative paragraph 2 of the draft resolution submitted to the Sixth Committee at the seventeenth session by Cameroon, Canada, Central African Republic, Chile, Colombia, Congo (Leopoldville), Dahomey, Denmark, Japan, Liberia, Nigeria, Pakistan, Sierra Leone and Tanganyika (A/C.6/L.507/Rev.1 and Rev.1/Add.1). In that paragraph, the full text of which appears in paragraph 7 of the present document, these States would have had the Assembly affirm, inter alia, that "the Charter is the fundamental statement of principles of international law governing friendly relations and co-operation among States, notably ... the obligation to settle disputes by peaceful means".

103. The draft resolution submitted at the seventeenth session (see paragraph 8 above) by Afghanistan, Algeria, Cambodia, Ceylon, Ethiopia, Ghana, India, Indonesia, Mali, Morocco, Somalia, Syria, United Arab Republic and Yugoslavia (A/C.6/L.509/Rev.1) contains, inter alia, the following principle to be reaffirmed by the General Assembly:

"II. States shall at all times settle their international disputes and differences solely by negotiations and other peaceful means in such a manner that international peace and security and justice are not endangered."

104. In written comments submitted between the seventeenth and eighteenth sessions the Netherlands put forward the following proposal:

"... the Netherlands Government deems it expedient to pay special attention to paragraph 3 (b) of resolution 1815 (XVII), viz. the principle of peaceful settlement of disputes, and wishes to elaborate on a concrete suggestion made last year. This suggestion, which the Netherlands Government now presents in the form of a proposal, concerns the possibility of setting up a permanent centre for international fact-finding.

"1. A study of international relations will reveal that there exist nowadays some thirty schemes for fact-finding, some of them set up within the framework of international organizations, others provided for by multilateral conventions. In the past, and particularly since the beginning of the present century, many fact-finding activities, either institutional or ad hoc, have been undertaken.

"2. Fact-finding has proved to fulfil an essential function in international relations, especially with regard to one or more of the following purposes:

"(a) to establish that parties to a treaty are complying with their obligations, particularly if such compliance is not manifestly apparent to all the parties so that mutual trust may be jeopardized;

"(b) to inspect the compliance by nationals of the parties with the objects of a treaty if such a police-function can effectively be exercised only by international co-operation;

"(c) to find out facts unknown or insufficiently known but essential as a basis for taking international action;

"(d) to verify facts which are contested between parties in an international dispute and so to provide the conditions for reaching a peaceful settlement;

"(e) to inquire into the factual aspects of complaints concerning the violation of internationally guaranteed rights of individuals.

"3. In suggesting that some of such fact-finding schemes may profitably be combined it is not intended to include and supersede all existing schemes in so far as they are specially adapted to the requirements of one particular organization or convention. The development of international courts also left the existence and the need of the institution of individualized arbitration unaffected, but an increasing number of international agreements in their

provisions for the settlement of disputes made use of the presence of the Permanent Court of International Justice and of its successor. It might therefore be conceived that in future cases where provision for fact-finding is contemplated use will be made of institutional arrangements already existing and experienced.

"4. It is suggested that any central body as here envisaged be strictly limited to fact-finding, in view of the hesitation States have shown of becoming subject to recommendations of international organs with wide terms of reference such as inquiry linked with conciliation.

"5. It would also be in keeping with a cautious approach, after the model of the optional clause in the statute of the International Court of Justice, to leave room for voluntary acceptance of the services of the fact-finding body. In addition to this the centre should be at the disposal of existing or future intergovernmental organizations and of international tribunals.

"6. On the other hand, facts do not always speak for themselves. It is for an international authority of recognized standing to formulate, as statements of fact of the highest attainable reliability, such information as has to be provided by the use of various methods and by the service of experts.

"7. Once the principle of a fact-finding centre for general purposes is accepted it might appear not too difficult to agree on the manner of composition of a body which would meet the requirements of objectivity and effectiveness and on its relationship with the United Nations.

"8. There are different ways to study the desirability and practicability of a fact-finding centre as suggested. A first step may be to request the Secretary-General to prepare a study of all relevant aspects of the problem under consideration and to invite Member States to submit their views before the next session" (A/5470/Add.1, pp. 2-3).

105. In keeping with the foregoing proposal of the Netherlands, a draft resolution concerning the question of methods of fact-finding was submitted to the Sixth Committee at the eighteenth session by Canada, Cyprus, Jamaica, Liberia, Mexico, Netherlands, Pakistan and Sweden (A/C.6/L.540 and Add.1 and 2). This draft resolution, inter alia, "taking into account that, with regard to methods of fact-finding in international relations, a considerable practice is available to be studied for the purpose of the progressive development of such methods" expressed the belief "that such a study might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of the parties to any dispute to

seek other peaceful means of settlement of their own choice". The resolution was adopted by the General Assembly as its resolution 1967 (XVIII), the full text of which appears in annex A to the present document.

B. Other comments, statements and suggestions by Member States

106. As in the case of the principle considered in Chapter I, the principle relating to peaceful settlement of disputes was the subject of a great variety of views of both a general and specific character, apart from the formal proposals just outlined. These are summarized in the remainder of this chapter under the following headings: general views on the principle; negotiation; inquiry and the proposal to set up an international fact-finding centre; mediation and conciliation; arbitration; judicial settlement; regional arrangements; the role of the United Nations; preparation of a formal instrument on the pacific settlement of disputes; and the concept of "justice" in Article 2 (3) of the Charter.

1. General views on the principle

107. In the general views advanced on the principle of pacific settlement of disputes various Member States drew attention to a number of questions, including the relationship between this principle and others under consideration by the Sixth Committee, the need to review and improve the machinery for pacific settlement and ensure its impartiality, and the desirability of taking steps to further recourse by States to such settlement.

108. When discussing the relationship between pacific settlement and other principles of international law, the representative of Japan advanced the view that the principle represented an active obligation incumbent upon every sovereign State and emanating from respect for the political independence and sovereignty of other States. By its very nature the peaceful settlement of disputes postulated respect for obligations arising from treaties and other sources of international law; but the concept was no mere expedient to justify the status quo, for the Charter provided that, while all disputes should be settled by peaceful means, justice should not be endangered (GAOR, XVIIth session, 754th meeting, paragraph 2). The representative of Colombia considered that the peaceful settlement of disputes was the foundation of disarmament, prohibition of war propaganda, prohibition of resort to force, and other principles (ibid., 770th meeting, paragraph 19).

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109. In written comments the Government of Israel reiterated what had been stressed by its representatives in the past, that the necessity for amplification of the provisions of the Charter regarding the pacific settlement of international disputes must be considered in the light of developments in the sphere of disarmament. The two problems were linked in the following way. On the one hand, the prohibition of the use of force and the reduction of armaments were designed to maintain a general peaceful state of affairs and prevent the danger of the outbreak of war. On the other hand, they did not in themselves lead to the settlement of those disputes the existence of which, as all experience showed, was liable to provoke an outbreak of violence (A/5470, p. 22).

110. Many Member States considered that the machinery for implementing the obligation to settle disputes by peaceful means needed review, development or clarification, or that the problem of expanding the scope and application of the principle should be studied or made more specific. This view was expressed by the representatives of Afghanistan (A/C.6/SR.804, p. 9), Argentina (A/C.6/SR.825, p. 19), Austria (GAOR, XVIIth session, 766th meeting, paragraph 5), Canada (A/5470, pp. 11-12), Czechoslovakia (A/C.6/SR.802, p. 6), India (A/C.6/SR.825, p. 4), Iran (GAOR, XVIIth session, 762nd meeting, paragraph 30), Israel (ibid., 767th meeting, paragraphs 21, 22), Jamaica (A/5470, pp. 28-29), Japan (GAOR, XVIIth session, 754th meeting, paragraph 4), Libya (A/C.6/SR.817, p. 2), Netherlands (GAOR, XVIIth session, 758th meeting, paragraph 39), Pakistan (A/C.6/SR.816, p. 5), Sweden (A/5470/Add.2, p. 6, A/C.6/SR.824, p. 8), Thailand (A/C.6/SR.825, p. 15), Tunisia (A/C.6/SR.822, p. 12), United Kingdom (A/C.6/SR.816, p. 10) and the United States (A/C.6/SR.808, pp. 8-9). Elaborations upon this view are indicated in the remaining paragraphs of this section, these elaborations being grouped, as far as possible, so as to reflect the general trends of opinion and thus without regard as to whether they were made at the seventeenth or eighteenth sessions of the General Assembly, or in writing between the sessions.

111. The representative of the Netherlands stated that the Sixth Committee should concentrate on developing rules and procedures of international law dealing with both the prevention and with the solution of international disputes. He thought that the machinery for the settlement of legal disputes had made little progress in the last few decades, that the Sixth Committee should study the possible means of

improving that state of affairs and that it should also consider the general aspects of the problem of peaceful change of existing legal relationships (GAOR, XVIIth session, 758th meeting, paragraph 39). The representative of Iran expressed the view that the obligation to settle international disputes by peaceful means remained in its regulation far behind the regulation of the prohibition of resort to the threat or use of force. The provisions of Chapter VI of the Charter, which had often been called vague and inconsistent, in many cases did not give States Members of the United Nations, especially those of small and medium size, the means of ensuring recognition and respect of their rights (GAOR, XVIIth session, 762nd meeting, paragraph 30).

112. The representative of Libya was of the opinion that the principle of pacific settlement badly needed clarification in order to bring about the ways in which States could be prevailed upon to settle their disputes by peaceful means, particularly when one of the States involved in a dispute was much larger or stronger than the other State, and in order to lay bare the various means used to apply secret pressure to a weak State in a dispute (A/C.6/SR.817, p. 2).

113. The representative of Austria said the Committee would have to find methods of assuring perfect objectivity and impartiality in the settlement of disputes which could be best achieved by the acceptance of an independent authority empowered to settle disputes (GAOR, XVIIth session, 766th meeting, paragraph 5). The representative of India thought that the whole gamut of procedures for peaceful settlement should be reviewed and made absolutely impartial and effective. Disputes might never be eliminated in international relations and it was urgent to seek to establish effective machinery for their settlement (A/C.6/SR.825, p. 4). The Government of Canada considered it to be rewarding to concentrate the studies enjoined by resolution 1815 (XVII) on improving and making more readily usable the various means provided in the Charter for the effective application of the principle of pacific settlement, to examine carefully the provisions of Article 33 and to study intensively the role of the International Court of Justice, including in particular the part that could be played by the compulsory jurisdiction clause of the Court's statute. The Canadian Government recognized the need to further the development of all means of peaceful settlement (A/5470, pp. 11-12). A similar view was expressed by the Government of Sweden (A/5470, p. 6) and by the representative

of the United Kingdom (A/C.6/SR.816, p. 17). The representative of the United Kingdom further suggested that the Committee should study all the methods of settlement set out in Article 33 of the Charter. Paragraph 3 of Article 2 must be considered in relation to other provisions of the Charter, particularly Chapter VI, entitled "Pacific Settlement of Disputes", and Chapter XIV which instituted as "the principal judicial organ of the United Nations" the International Court of Justice and made the Statute of the Court an integral part of the Charter. The representative of the United Kingdom also noted that Article 33 did not give preference to any one of the means listed in it (ibid., pp. 13-14).

114. In the view of the representative of Israel it was high time that competent political organs re-examined the various procedures mentioned in Article 33 of the Charter and integrated them more clearly into the structure of the United Nations, supplementing in that way the declarations of principle already contained in Articles 1, 2 and 33 of the Charter. A discussion of the principle should not be limited to its purely procedural aspect, nor to judicial methods and still less to the compulsory jurisdiction, for pacific procedures could be political, judicial or a combination of both. General acceptance must be won for the idea that recourse to such procedures was not an inimical act (GAOR, XVIIth session, 767th meeting, paragraph 21).

115. According to the representative of Japan, Article 1 (1), Article 2 (3) and Article 33 (1) of the Charter made it clear that the rule of law was a most important element in the peaceful settlement of international disputes and that the principle would therefore be greatly strengthened when the rule of law really prevailed throughout the world. He considered the non-judicial means of settlement were bound to be more or less influenced by political and other non-legal factors and advocated the strengthening of the role of arbitration and especially of the judicial settlement through the International Court of Justice (A/C.6/SR.821, pp. 2-3).

116. The representative of Morocco suggested that an investigation be carried out to determine why the existing institutions for the peaceful settlement of disputes were not used more often; the delegation of Morocco supported the view that the staff of such institutions should better reflect the various social and political systems and geographical regions of the world. In codifying the principle of the

peaceful settlement of disputes, it should be made clear that that principle must be based on the idea of justice; and in selecting the means of peaceful settlement to be used, due regard should be had to the nature of the dispute (A/C.6/SR.820, p. 16).

117. The representative of the United States considered it desirable to give particular attention to the existing procedures and agencies for the pacific settlement of disputes, thus shedding light on the institutions which already existed and the practices which States had so far followed. Additional means could also be suggested, as the representative of the Netherlands had done (A/C.6/SR.808, pp. 8-9). The representative of the United States further stressed that absolute respect for the legal obligation of the Members of the Organization to refrain from recourse to violence and the use of force and to settle their disputes by peaceful means was the first condition for the establishment of a peaceful world (A/C.6/SR.814, p. 13). The representative of Pakistan believed that the procedures of pacific settlement should be improved. In the view of his delegation this would not entail revision of the Charter. It was mainly through international practice and the conclusion of conventions that the meaning of Article 33 of the Charter must be made clear. He further distinguished between two types of disputes. On the one hand, there were disputes between the militarily most powerful States, which were so inextricably bound up with ideological conflicts that no precise heads of dispute could be stated. There was no way to settle such disputes save a continuous dialogue between the parties. On the other hand, there were disputes which were geographically limited in scope and whose historical origin could readily be traced. In most disputes of that kind one of the parties enjoyed a position of undue advantage and sought, by more or less devious means, to evade a genuine settlement. International peace and security might not be visibly imperilled, but justice was violated and the injured party could not obtain satisfaction. Refusal to distinguish between those two types of disputes resulted in tolerance of stalemates and thus made all disputes practically insoluble. To remedy that state of affairs, the methods of judicial settlement and arbitration should be resorted to where negotiation had failed. He also stressed that no progress could be made in strengthening peace unless States were compelled to abide by the treaties they had concluded and, broadly speaking, all the international agreements to which they were

parties. All treaties and agreements must be faithfully upheld and, if a change of conditions should, in equity, necessitate an alteration of the terms of the treaty or agreement, that change must be ascertained and its effect determined by an impartial authority, arbitral or judicial (A/C.6/SR.816, pp. 5-6).

118. The representative of Italy made a distinction between political and legal disputes, and disputes between States and between a State and an international organization. He said that in disputes of a political nature, United Nations organs had a major role to play and their practice could be a source for the progressive development of international law. In addition, a thorough study should be made of the traditional means listed in Article 33 of the Charter (A/C.6/SR.821, p. 7).

119. The Government of Jamaica stated that the principle of pacific settlement would be generally enhanced if a clearly defined procedure be laid down with regard to the operation of Article 33 of the Charter. It also suggested the various stages which might be followed in achieving pacific settlement. If negotiation failed, the dispute should be within a specified time referred to the next appropriate machinery which would be determined by the very nature of the dispute or if necessary by "inquiry". Fullest possible use should be made of the machinery for pacific settlement before the matter was referred to the Security Council. The movement of the dispute from one stage to another should, as far as possible, be made within a specific time. The Government of Jamaica further advocated a wider use of the International Court of Justice, although it did not suggest that States should, to the exclusion of all considerations, submit to the compulsory jurisdiction of the Court, which could possibly be a subject of special deliberations among Member States (A/5470, pp. 28-29).

120. The representative of Ghana said that settlement of disputes by peaceful means was possible only if the States concerned were willing to co-operate in good faith. If they sought a solution by arbitration, they should be prepared to accept the findings of the arbitral body concerned, especially as that body was of their own choice. After discussing judicial settlement, he recalled that some of the cases which had come before the Security Council had been occasioned by difficulties with respect to the principle of peaceful settlement. In some cases the parties to the dispute had failed to fulfil the obligation imposed upon them by Article 33 (1) of the Charter, or had denied that the dispute endangered the maintenance of

international peace and security, so that the Council had been debarred from considering the substance of the dispute. In other cases the Council had adopted resolutions envisaging specific procedures. In stating the principle of peaceful settlement of disputes, the Committee should concentrate on rules which would prevent the parties to the dispute from taking action likely to aggravate the issue. It should include all the procedures advocated by relevant international instruments and, in particular, investigation and good offices which were included in the Charter of the Organization of American States. It should also refer to the spirit of understanding, and should stress that sovereign equality was fundamental, and that the parties were free to choose the means for the peaceful settlement of their dispute (A/C.6/SR.815, pp. 15-16).

121. The representative of Nigeria was of the opinion that the provisions in the United Nations Charter for the pacific settlement of international disputes were adequate. What was lacking was the will to apply them. It might therefore be advisable to find out why the existing machinery was not fully used. Perhaps a more equitable representation, taking into account the different social and political systems as well as geographical distribution, was required in the competent organs. It was essential that the States concerned should be free to choose what they considered the most appropriate means according to the circumstances and nature of the dispute, without prejudice to any obligation resulting from special arrangements (A/C.6/SR.814, p. 18).

122. In the view of the representative of Malaysia the Committee must concentrate on positive and practical considerations. If States could be persuaded to accept arbitration more frequently as a substitute for war, to place more reliance in the International Court of Justice, and to believe that peaceful solutions required more moral fibre than recourse to arms and that negotiation, mediation and conciliation were not a sign of weakness or a derogation from sovereignty, then the United Nations, by its moral authority alone, would be able to convince them that friendly relations offered a better, more wholesome, and less destructive course than war or aggression (A/C.6/SR.807, p. 7).

123. The representative of the United Arab Republic thought that any progress towards disarmament and any expansion of international law would require a further definition of procedures for the peaceful settlement of disputes (A/C.6/SR.811, p. 12).

124. The Government of Czechoslovakia stated in its written comments that, in discussing and formulating the principle enunciated under Article 2 (3) of the Charter, it was necessary to pay attention to the basic and most wide-spread method of settling disputes - direct negotiation between the parties concerned. Furthermore, it was necessary to give full expression to the rule that the parties to the dispute are entitled to choose, on the basis of mutual agreement and with regard to the nature of the dispute, such means for its solution as can best secure the fulfilment of their principal obligation - to settle the dispute by peaceful means (A/5470, p. 18). In a statement at the eighteenth session of the General Assembly the representative of Czechoslovakia further declared that there was no doubt that the principle of the peaceful settlement of disputes was an established peremptory norm of international law. The international community had at its disposal a wide range of ways and means of solving disputes between States, but international law and practice laid special emphasis on the desirability of direct negotiations between States, which was the fundamental method of solving disputes and should therefore be considered as a means which could not be renounced unilaterally by any State. Article 33 of the Charter, however, gave States the right to agree on whatever peaceful method of settling a dispute they saw fit, and that right had to be recognized, both because it was a question of the sovereignty of States and because, after all, the parties to a dispute were best qualified to decide what means should be used to settle it. The Czechoslovak delegation considered that it was the duty of all States and of the United Nations to develop and perfect all existing means of settling international disputes, and it felt that the Sixth Committee could best express its views on that question by taking for its own the words of paragraph 2 of the Czechoslovak draft Declaration (A/C.6/L.505) submitted at the seventeenth session (see paragraph 101 above).

125. The representative of the Soviet Union, speaking of the choice of means of pacific settlement, pointed out that such choice was left by international law to the discretion of the States concerned (A/C.6/SR.802, p. 13). The representative of Bulgaria, while stressing the special importance of direct negotiation, said that no other peaceful method, whether listed in Article 33 of the Charter or not, should be rejected if it met the requirement that the parties had adopted it "of their own choice" (A/C.6/SR.807, p. 12). The representative of Iraq observed that

general international law did not oblige States to adopt certain methods of settlement of disputes in preference to others, and Article 33 of the Charter confirmed that position. He suggested that the study of the principle should cover the various methods of settlement, and should lead to the establishment of rules which would guarantee the effective functioning of those methods in accordance with the principles of sovereign equality and non-intervention (A/C.6/SR.808, p. 5).

126. The representative of Yugoslavia emphasized that it was essential to provide that the means chosen for the peaceful settlement of a dispute should be compatible with other principles of coexistence, such as sovereign equality, and devoid of any element depriving it of its peaceful character, such as any form of pressure. It should also be made clear that disputes should be settled in their early stages, before they assumed exaggerated proportions (A/C.6/SR.804, p. 5).

127. The representative of Algeria considered that, except where States were already bound by special arrangements for that purpose, they should be entirely free to select one of the means specified in Article 33 of the Charter. Moreover, negotiations must always be conducted on the basis of the sovereign equality of States if lasting solutions were to be found (A/C.6/SR.809, pp. 13-14).

128. The representative of Indonesia interpreted Article 2 (3) of the Charter to mean that there could be no true peace or security without justice. Article 33 of the Charter listed the various forms of pacific settlement. It placed negotiation at the head of the list, and judicial settlement only last but one. It recognized the right of the parties to a dispute to select the means of settlement of their own choice, according to the nature of the dispute and the circumstances of the case. It was indeed preferable to leave the choice to the parties, except where they had expressly undertaken by special agreement to adopt a particular means of settlement (A/C.6/SR.809, p. 6).

129. The representative of Belgium believed that the solution of disputes could be sought by all the means mentioned in international law, without general preference being given to direct negotiation over other means. He concluded that both de lege lata and de lege ferenda the parties to a dispute should in each case seek the procedure most appropriate for its settlement (A/C.6/SR.819, p. 5).

130. The representative of Sweden hoped that what had been said regarding the freedom of States to choose the most appropriate means for settling their disputes

did not indicate opposition to the prior conclusion of agreements under which certain methods of settlement were automatically available. If a dispute arose between two States, they always remained perfectly free to agree upon any method of settlement they considered appropriate, regardless of any agreement they might have reached in that connexion before the dispute. Such prior agreements never limited the freedom of the parties in any specific case. Their purpose was to provide methods of settlement for cases where the parties did not agree upon an ad hoc procedure. The Charter was but one of many useful agreements that established machinery in advance for the settlement of disputes. Some of those agreements, unlike the Charter, were limited to disputes between two States or groups of States or to specific kinds of disputes. An important category of such agreements provided for settlement through judicial means, and one of the principal agreements in that category was the Statute of the International Court of Justice together with the optional clause on the submission of disputes. His delegation urged wider adherence to that clause (A/C.6/SR.824, p. 8).

131. The representative of the Ukrainian SSR stated that the means of settlement provided in Article 33 of the Charter were frequently diverted from their proper aim by certain actions likely to give rise to conflicts. He therefore submitted that the principle of peaceful settlement of disputes should be laid down in terms that would guarantee due respect for it, as provided in the Czechoslovak draft resolution (A/C.6/L.505, see paragraph 101 above), (A/C.6/SR.809, p. 9).

2. Negotiation

132. Negotiation was given a prominent place among the means of pacific settlement of disputes by the representatives of a number of States. These representatives adduced a variety of arguments in favour of the special significance they attached to negotiation, and some of them defined the spirit in which they believed a negotiation should be conducted. In these respects the following points of view were advanced:

(a) Direct negotiations were a basic means of solving disputes peacefully (Bulgaria, A/C.6/SR.807, p. 12; Byelorussian SSR, A/C.6/SR.820, p. 2; Cuba, A/C.6/SR.820, p. 11; Czechoslovakia, GAOR, XVIIth session, 753rd meeting, paragraph 19; Mongolia, A/C.6/SR.819, p. 2);

(b) While judicial settlement had not often been resorted to, increasing stress had been laid on negotiations as a means of settling disputes (Soviet Union, GAOR, XVIIth session, 753rd meeting, paragraph 33);

(c) Disputes should be tackled in their early stages, while they could still be dealt with by negotiation or by any other peaceful means (Soviet Union, ibid.) and before they assumed exaggerated proportions (Yugoslavia, A/C.6/SR.804, p. 5);

(d) States were more inclined to resort to diplomatic rather than to judicial means of settling disputes involving their major interests (Yugoslavia, A/C.6/SR.804, p. 5);

(e) Article 33 of the Charter placed negotiation at the head of the list of the various forms of pacific settlement, and should be pursued in a spirit of understanding, without coercion or pressure and in accordance with the principle of sovereign equality of States (Indonesia, A/C.6/SR.809, p. 7); direct negotiation between the parties did the most to strengthen the principle of sovereign equality (Cuba, A/C.6/SR.820, p. 11);

(f) The proven non-juridical method of direct negotiation worked successfully in practice, for it gave each of the parties to a dispute the opportunity to appreciate the weight which the other party attached to a given point of difference, and, provided that the negotiations took place in a spirit of give and take, it was usually easy to reach a compromise (Tanganyika, A/C.6/SR.811, p. 2);

(g) In urgent cases the parties to a dispute should first resort to direct negotiation (Cambodia, A/C.6/SR.812, p. 3);

(h) The principle of reciprocity was implicit in direct, free and friendly negotiations and that fact enabled States to reach fully satisfactory agreements which made relations between them more firm and more fruitful (Bolivia, A/C.6/SR.814, p. 8);

(i) Negotiation was not only the most effective means for the settlement of disputes, it was also a means of developing new legal rules for incorporation in future bilateral and multilateral treaties (Romania, A/C.6/SR.815, p. 4);

(j) The systematic rejection of negotiation by any of the parties implied a clear lack of respect for the other parties, and in most cases was a prelude to acts of intervention (Cuba, A/C.6/SR.820, p. 11).

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133. A number of other representatives did not share the view that special importance be attached to negotiations. They stressed, in particular, that:

(a) Negotiation was often useful and appropriate, but not always expedient, particularly between powerful States and small countries, which might be induced to negotiate under outside pressure (Colombia, GAOR, XVIIth session, 770th meeting, paragraph 26). It is almost inevitable that the relative strength of the States would have an influence upon the outcome of the negotiations - often to the detriment of small and weak States (Pakistan, A/C.6/SR.816, p. 5; Sweden, A/5470/Add.2, p. 7);

(b) All disputes were at the outset the subject of bilateral discussion, but to say that they should be settled "in particular" by direct negotiations was a restrictive conception of the settlement of disputes and a limitation on the scope of Article 33 of the Charter (France, A/C.6/SR.810, p. 6). A proposal, such as that contained in the Czechoslovak draft declaration, (see paragraph 101 above) would narrow the range of methods of pacific settlement from those set forth in Article 33 of the Charter to a single method of negotiation (United States, A/C.6/SR.814, p. 16). Article 33 did not give preference to any one of the means listed in it (United Kingdom, A/C.6/SR.816, p. 14);

(c) The Czechoslovak proposal (see paragraph 101 above) provided no solution for a situation as to what mode of settlement would be employed if negotiations ended in failure or were protracted by the party that enjoyed a position of undue advantage. It would leave the parties no choice but to engage in further negotiations with a view to agreement on another mode of settlement, and it did not indicate what was to happen if those negotiations also failed (Pakistan, A/C.6/SR.816, p. 5). In connexion with the Czechoslovak proposal the question arose as to how disputes would be settled if for any reason the parties could not enter into negotiations, or the negotiations were unsuccessful (Israel, GAOR, XVIIth session, 767th meeting, paragraph 21);

(d) Negotiations were the most commonly used means, but they were not the only or even necessarily the most effective way of settling a dispute. It

often happened that, direct negotiations having broken down, the parties had recourse to arbitration or to judicial settlement by submitting their case to the International Court of Justice (United Kingdom, A/C.6/SR.816, pp. 14-15). Negotiations as the most appropriate method in relations between sovereign States was the most frequent practice; however, if the parties hardened their positions, that particular means obviously had limitations (Cyprus, A/C.6/SR.824, p. 11).

133. In regard to the modalities for negotiation, the representative of the Soviet Union thought that it might be timely to define somewhat more precisely the legal obligation to seek settlements by negotiation, and the conditions under which negotiations should be conducted. Negotiations must obviously take place on a footing of complete equality and be kept free from any of the factors constituting a policy of force (GAOR, XVIIth session, 753rd meeting, paragraph 33). The representative of Yugoslavia considered that international jurists should establish a more clearly defined legal framework for the settlement of disputes by diplomatic means (A/C.6/SR.804, p. 5). The Government of Sweden observed, however, that to draw up rules of procedure for negotiations to remedy their disadvantages - arising out of the relative strength of States which has an influence upon the outcome of negotiations - would hardly seem practicable (A/5470/Add.2, p. 7).

3. Inquiry and the proposal to set up an international fact-finding centre

134. Inquiry, as one of the means for the pacific settlement of disputes, was the subject of some specific comment, particularly at the eighteenth session of the General Assembly, within the context of the proposal by the Netherlands regarding the possible establishment of an international fact-finding centre and the draft resolution submitted on the question of the methods of fact-finding which contemplated a study of the desirability or feasibility for such a centre (see paragraphs 104 and 105 above). The idea of such a study was recommended for serious consideration or supported inter alia by the representatives of Argentina (A/C.6/SR.825, p. 19), Austria (A/C.6/SR.818, p. 11), Canada (A/C.6/SR.815, p. 7),

Cyprus (A/C.6/SR.822, p. 5), Finland (A/C.6/SR.822, p. 16), France (A/C.6/SR.810, p. 7 and A/C.6/SR.832, p. 5), Italy (A/C.6/SR.816, p. 13), Philippines (A/C.6/SR.823, p. 4), Sweden (A/C.6/SR.806, p. 13), Thailand (A/C.6/SR.825, p. 15), Turkey (A/C.6/SR.820, p. 19) and the United States (A/C.6/SR.808, p. 9 and A/C.6/SR.814, p. 17).

135. States supporting the Netherlands proposal and the draft resolution adduced a number of arguments in favour of their position, and certain of them described their understanding of the form and nature of any fact-finding body which might be established. These arguments and views may be summarized as follows:

(a) "Inquiry" was expressly mentioned in Article 33 of the Charter as one of the means of promoting the peaceful settlement of disputes (Bolivia, A/C.6/SR.833, p. 6; A/C.6/SR.814, p. 9) and the establishment of an international fact-finding body was connected with the procedure of inquiry provided for in Article 33 (Jamaica, A/C.6/SR.832, p. 3);

(b) The study of the desirability or feasibility of establishing an international fact-finding centre was merely a question of supplementing existing arrangements, without prejudice to the right of the parties to any dispute to seek other peaceful means of their choice (Bolivia, A/C.6/SR.833, p. 6). The fact-finding procedure in international law needed perfecting (Jamaica, A/C.6/SR.832, p. 3);

(c) It could often happen that a difference could be more easily eliminated once the facts had been clearly established. Many international agreements embodied provisions enabling specific organs to carry out inspections or investigations (United Kingdom, A/C.6/SR.816, p. 15);

(d) The establishment of a permanent international fact-finding body might be helpful in improving and developing suitable means of resolving disputes arising from conflicts of political interests especially where one party was dissatisfied with the status quo and made demands which could not be met without a change in the existing legal situation (Finland, A/C.6/SR.822, p. 16);

(e) The nature of any impartial fact-finding body would be auxiliary and optional (Netherlands, A/C.6/SR.831, p. 2); members of the fact-finding body

might well be chosen ad hoc, with the consent of the parties to each individual dispute, from a panel similar to that constituted by the Permanent Court of Arbitration (Mexico, A/C.6/SR.834, p. 3);

(f) Fact-finding responsibilities should be assumed either by an existing organ or by a special international body established for that purpose (Netherlands, A/C.6/SR.831, p. 3);

(g) The General Assembly had express authority to create a body for fact-finding as its subsidiary organ under Article 22 of the Charter. Under Article 34, such a body could legitimately be used by the Security Council for the purpose of investigating a dispute, and, under Article 50 of the Statute of the International Court of Justice, it could be entrusted by the Court with the task of carrying out an inquiry or giving an expert opinion. Moreover, there was nothing in the Charter to preclude the General Assembly from convening a conference of Member States for the purpose of establishing it outside the United Nations (Netherlands, A/C.6/SR.834, p. 3; A/PV.1281, p. 23);

(h) Neither the Security Council nor the General Assembly was in the slightest threatened by the establishment of a fact-finding body, let alone by the study recommended in the draft resolution (see paragraph 105) (Jamaica, A/C.6/SR.832, p. 3). Nothing in the draft resolution could be construed as encroaching on the authority of the Security Council under Article 34 of the Charter (Mexico, A/C.6/SR.834, p. 3). The body would have no other task than pure fact-finding as a subsidiary to either the Security Council or the General Assembly, or to any other body or State that might invoke its assistance (Netherlands, A/PV.1281, p. 23).

136. When the General Assembly was itself considering in plenary meeting the draft resolution on the question of methods of fact-finding recommended by the Sixth Committee, several representatives, including those of the United States (A/PV.1281, p. 21) and the Netherlands (A/PV.1281, p. 23), stressed, in support of the resolution, that it would not commit the Assembly to establishing fact-finding responsibilities in any particular organization and that the sole purpose of the resolution was a study of the subject, the result of which must be reported back and judged by Member States.

137. Some representatives expressed the view that the Netherlands proposal and the draft resolution concerning it should be considered in another context, while others advanced various arguments why they were unable to support the proposal or the resolution. These views are summarized in the remaining paragraphs of this section.

138. The representative of Algeria suggested that the question of the establishment of a centre for international fact-finding might be studied in conjunction with the general problem of strengthening the means of peaceful settlement of disputes between States and might include the question of a more frequent recourse to the International Court of Justice and that of conventions which had remained without effect. That general problem might be included, in his view, as a separate item in the agenda of the General Assembly's nineteenth session (A/C.6/SR.809, p. 15). The representative of Ghana, who was not in a position to support the draft resolution, said that its co-sponsors would have been best advised to propose the item for inscription in the agenda of the next session of the Assembly, for separate consideration (A/PV.1281, p. 27).

139. The representative of Tunisia thought that the Netherlands proposal should form part of a wider set of measures for encouraging the use of peaceful means, for example, the establishment of a permanent commission of conciliation and inquiry, which would also make it easier to apply the means of settlement specified in Article 33 (1) of the Charter (A/C.6/SR.822, p. 12). The representative of Tanganyika said that the idea of a fact-finding body should be encouraged but that he had never considered the establishment of a permanent fact-finding centre (A/C.6/SR.832, p. 12).

140. The representatives who expressed reservations with regard to the Netherlands proposal and the draft resolution gave the following reasons:

(a) The proposal was outside the scope of the Sixth Committee's discussion (Hungary, A/C.6/SR.806, p. 5). The subject of fact-finding, though related to the subject before the General Assembly, was not within the wording of the agenda item under consideration (Ghana, A/PV.1281, p. 26);

(b) The draft resolution might be interpreted to mean that the Sixth Committee attached particular importance to inquiry, whereas that means of settlement was no more important than others such as arbitration or conciliation (Iraq, A/C.6/SR.831, p. 6). In the peaceful settlement of disputes, fact-finding did not play a part which would justify singling it out (Indonesia, A/C.6/SR.833, pp. 5-6);

(c) It was likely to be very difficult to decide on the composition of a fact-finding organ in advance. The disputes which would be brought to such an organ could involve very different sets of facts and it was therefore virtually impossible to select the experts to serve on it in advance. Fact-finding committees should remain ad hoc bodies (Iraq, A/C.6/SR.831, p. 5). Special fact-finding missions were more appropriate than an international centre (Indonesia, A/C.6/SR.833, p. 5). The establishment of a centre would be premature, for it could not be expected that its membership would be based on the principle of parity (Cameroon, A/C.6/SR.834, p. 9). It was likely that the proposed body would be composed in such a manner that it would be incompetent to deal with specific cases or would distort and misinterpret the position of one of the parties to a dispute, and would thus be useless as an instrument of peaceful settlement. There was a strong reason to believe that lack of objectivity and impartiality would render such an organ unworkable at the international level (Cuba, A/C.6/SR.834, p. 6);

(d) The body would serve no purpose, for experience had shown that committees of inquiry were ineffective in ascertaining the facts of disputes involving great Powers and were never able to act quickly enough in cases involving smaller countries (Cameroon, A/C.6/SR.834, p. 9);

(e) Such a fact-finding body might encroach on the functions of the Security Council under Article 34 of the Charter (Cameroon, A/C.6/SR.834, p. 9; Cuba, A/C.6/SR.834, p. 6). A fact-finding centre might claim to have a monopoly in settling international conflicts; it would be inconsistent with the basic provisions of the Charter. Ascertaining the facts in the case of disputes between States should not be carried out by a body to be created outside the context of the United Nations. The functions of such a body would be used to side-step the competence of such important bodies as the Security Council, which has the responsibility for the maintenance of international peace and security (Soviet Union, A/PV.1281, pp. 16-17).

4. Mediation and conciliation

141. Mediation and conciliation, while not the subjects of as wide a discussion as negotiation and inquiry and the wider use of the International Court of Justice, were alluded to by some Member States in the debate in the Sixth Committee at the eighteenth session of the General Assembly. The representative of Cyprus considered inquiry, mediation and conciliation as useful instruments for arriving at pacific solutions (A/C.6/SR.824, p. 11). The representatives of Belgium (A/C.6/SR.819, p. 5) and of Italy (A/C.6/SR.821, p. 7) suggested that a thorough study of the role and procedure of conciliation in present-day international relations would be extremely useful.

142. The representative of the United Kingdom explained that mediation was an action by a third party undertaken in a more or less informal manner to help the parties to reach an agreement. That means of settlement had been provided for in The Hague Conventions of 1899 and 1907 and found a place in numerous bilateral and regional treaties. Conciliation was very closely linked with mediation, the main distinction being that the approach was less personal and entailed reference to a commission. Although provision was made in numerous bilateral and regional treaties for conciliation commissions, the value of that method of settling inter-State disputes was somewhat questionable. In the view of the United Kingdom delegation experience indicated that conciliation commissions were very rarely used, and that even when they were, they did not always prove successful. It might well be that the existence of the United Nations as a forum for the settlement of disputes downgraded the value of the traditional methods of mediation and conciliation (A/C.6/SR.816, p. 16).

5. Arbitration

143. Arbitration, as a further means of pacific settlement, was alluded to at the seventeenth session of the General Assembly, in written comments submitted between the sessions, and at the eighteenth session. The representative of Ireland recalled that hitherto States had been extremely cautious in accepting the obligation to settle disputes by arbitration or adjudication, because they

were reluctant to allow outside bodies to decide matters which they regarded as vital. He said that if peace was to be maintained through the rule of law, States would perforce have to surrender a measure of sovereignty and accept some form of arbitration (GAOR, XVIIth session, 766th meeting, paragraph 31).

144. The United Kingdom Government similarly believed that greater use could and should be made of the facilities for arbitration which could be made available by the Permanent Court of Arbitration. This Court had been in existence since 1902 but its machinery had been very little used. For cases which may not be wholly suitable for judicial settlement by the International Court of Justice, the more flexible machinery of the Permanent Court of Arbitration could be utilized, either to enable the parties to constitute an arbitral tribunal or to provide facilities for an arbitral tribunal or conciliation commission already appointed by special agreement between the parties (A/5470, p. 44).

145. Great importance was attached by the Government of Pakistan to the question of arbitral procedure and commercial arbitration (A/5470/Add.2, p. 2). The representatives of Japan (A/C.6/SR.821, p. 3) and Italy (A/AC.6/SR.821, p. 7) also shared the view that greater use should be made of arbitral procedures and of arbitral bodies, such as the Permanent Court of Arbitration. The representative of Sweden emphasized that arbitration tribunals had done much to develop international law by their awards and might sometimes offer a more convenient method of settlement than the International Court of Justice. States which for some reasons were still unwilling to submit disputes to the International Court might enter into prior agreements on arbitration by tribunals, whose composition they would determine bilaterally (A/C.6/SR.824, p. 9).

146. The representative of Tanganyika found great wisdom in the regional arbitration procedure provided for by Article 52 of the Charter as it meant that the arbitrators had first-hand knowledge of the causes of a dispute without being involved themselves so that their competence and impartiality were assured (A/C.6/SR.811, p. 2).

6. Judicial Settlement

147. Judicial settlement was the subject of a wide range of comment, both oral and written, at all stages of consideration of the principle of pacific settlement of disputes. On the part of States favouring judicial settlement in some or all of its aspects this comment included appeals for more States to accept the

compulsory jurisdiction of the International Court of Justice, analyses of why the fullest use had not been made of the Court and proposal for steps which might be taken to improve the climate for judicial settlement of disputes. Some States, however, expressed a number of reservations about attaching special importance to judicial settlement and, in particular, to the concept of compulsory jurisdiction.

148. The Government of the United Kingdom drew attention to statistics which manifested a marked decline in recent years in the use of judicial procedures. The trend was not, however, irreversible and the United Kingdom Government was encouraged to hope that the study of the principles of peaceful settlement of disputes by the Sixth Committee would result in recommendations designed to stimulate increased and more effective acceptance of the compulsory jurisdiction of the International Court of Justice and to promote greater use of judicial and arbitral procedures in general. In particular, it was of the opinion that the United Nations should draw attention once again to the provisions of the Statute of the Court and should call upon all Member States to give serious consideration to the possibility of making declarations of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute; and that it should equally urge those Member States which have made declarations to re-examine those declarations with a view to cutting down and, if possible, removing certain of the reservations to which their declarations are made subject (A/5470, p. 44; A/C.6/SR.816, p. 18). The latter suggestion was also supported by the Governments of France (A/C.6/SR.810, pp. 7-8) and Pakistan (A/5470/Add.2, p. 2; A/C.6/SR.816, p. 6).

149. In the view of the Government of Sweden one object which appeared to enjoy very strong support, would be to find ways of persuading States to a wider and less restricted adherence to the optional clause of the Statute of the International Court of Justice. Such adherences would constitute modest steps towards the legal regulation of relations between States. The optional clause, it must be remembered, was but a poor substitute for the general and compulsory jurisdiction that many would like to see conferred upon an international court. It would seem then that that clause, at least, deserved to be utilized to the full and in the manner contemplated by its authors. It would further appear

desirable to examine whether and under what conditions States which have so far remained negative to the use of the Court, could be induced to take a more progressive attitude (A/5470/Add.2, p. 6). Several other representatives also suggested that the United Nations might consider studying how all Member States could be brought to use the International Court of Justice more widely (Denmark GAOR, XVIIth session, 756th meeting, paragraph 23) and the part that could be played by the compulsory jurisdiction clause of the Court's Statute in furthering the application of the rule of law to an ever-widening area in the affairs of States (Canada, GAOR, XVIIth session, 753rd meeting, paragraph 5; A/5470, p. 12; Jamaica, A/5470, p. 29; and Pakistan, A/5470/Add.2, p. 2). The representative of Cyprus said that, if the rule of law among nations was to acquire real meaning, the Court's jurisdiction should be universal and its decisions enforceable (A/C.6/SR.824, p. 11).

150. The conviction that all States should be prepared in due course to accept the jurisdiction of the International Court of Justice, subject, in some instances, to certain qualifications, or to have a wider recourse to it was further expressed by a number of other delegates, including those of Bolivia (A/C.6/SR.814, p. 9), China (A/C.6/SR.816, p. 5), Cyprus (A/C.6/SR.824, p. 12), Finland (GAOR, XVIIth session, 765th meeting, paragraph 32), Madagascar (ibid., 765th meeting, paragraph 13), Pakistan (ibid., 761st meeting, paragraph 3; A/C.6/SR.816, p. 6), Tanganyika (ibid., 764th meeting, paragraph 2; A/C.6/SR.811, p. 2), Turkey (A/C.6/SR.820, pp. 19-20) and the United States (A/C.6/SR.814, p. 17). The representative of Finland qualified his statement by saying that certain disputes between States did not lend themselves to a purely legal solution, while the representative of Tanganyika favoured wider recourse to the Court when differences between States could not be solved by non-juridical methods.

151. The representative of Japan stated the following reasons why fullest use had not been made of the International Court of Justice: (a) the jurisdiction of the International Court of Justice was in practice narrow because it was entirely dependent on the consent of States: (b) States were generally reluctant to accept the compulsory jurisdiction of the Court by making declarations under Article 36, paragraph 2, of the Statute; (c) the declarations made by a number of States under Article 36, paragraph 2, of the Statute of the Court were robbed of much of their value by the accompanying reservations;

(d) Only legal disputes were to be referred to the Court and, as a result, all non-legal disputes escaped its jurisdiction; there was no compulsion to carry out the Court's decisions, for they were not really binding and depended entirely on the will of the parties for their execution. For all those reasons, the International Court of Justice had not been able to play its full part, and the rule of law had been greatly hampered. It was therefore a matter of great importance to eliminate the defects to which the Japanese delegation had drawn attention (A/C.6/SR.821, pp.3-4).

152. To the end just mentioned and in order to strengthen the rule of law, the representative of Japan proposed that steps should be taken: (a) to consider the possibility of eliminating the veto system in the Security Council; (b) to encourage the inclusion in future treaties of provisions conferring binding force on the conciliatory decisions of non-judicial organs of the United Nations; (c) to review the jurisdiction of existing organs of judicial settlement with a view to making it compulsory; (d) to encourage the inclusion in future treaties of provisions concerning judicial settlement; (e) to use the influence of the United Nations and the specialized agencies to promote the inclusion of provisions concerning judicial settlement in treaties which they help to draft; (f) to give full and genuine binding force to the aforementioned provisions concerning judicial settlement; (g) to undertake studies with a view to preparing a number of model provisions concerning judicial settlement, so that the parties concerned might choose between them; (h) to encourage States to accept the compulsory jurisdiction of the International Court of Justice; (i) to examine the possibility of making acceptance of the Court's compulsory jurisdiction a factor in deciding its composition, albeit with the utmost care to avoid any damage to its prestige; (j) to endeavour to reduce existing reservations concerning the compulsory jurisdiction of the Court; (k) to prepare a list of permissible reservations concerning the compulsory jurisdiction of the Court, so that the parties concerned might choose between them; (l) to extend the jurisdiction of the International Court of Justice to non-legal disputes and, to that end, to review the decisions ex aequo et bono taken under Article 38, paragraph 2, of the Statute of the Court; (m) to encourage United Nations organs and specialized agencies to make greater use of the International Court of Justice for advisory opinions; (n) to examine the possibility of giving genuine binding force to the

decisions of non-judicial United Nations organs and of the International Court (A/C.6/SR.821, pp. 4-5).

153. States favouring the judicial settlement of disputes, and in most cases a wider adherence to the compulsory jurisdiction of the International Court of Justice, also advanced the following arguments in support of their position:

(a) compulsory proceedings were indispensable for the existence of the universal rule of law (Denmark, GAOR, XVIIth session, 756th meeting, paragraph 23). The acceptance of the compulsory jurisdiction clause of the Statute of the International Court of Justice by a majority of States would be an advance in the development of international law (Canada, GAOR, XVIIth session, 753rd meeting, paragraph 5; France A/C.6/SR.810, p. 7; Iran, GAOR, XVIIth session, 762nd meeting, paragraph 31; Norway, A/C.6/SR.818, p. 9, and Sweden, GAOR, XVIIth session, 759th meeting, paragraph 22);

(b) the balanced composition of the International Court of Justice, its sound procedure and great legal knowledge could be a powerful force in preserving peace and developing the idea of the equality of nations (Ivory Coast, GAOR, XVIIth session, 762nd meeting, paragraph 39). The Statute included very elaborate rules concerning the election of judges, their qualifications, their disqualification in certain circumstances, the sources of law which they should apply, and the possibility of revision of judgments based on erroneous facts (Norway, A/C.6/SR.818, p. 8);

(c) the impartiality of members of the Court had never been questioned (France, A/C.6/SR.81[illegible], p. 8). There had been cases in which judges had taken a position contrary to the contentions of their own Governments (Norway, A/C.6/SR.818, p. 9). An individual judge could not altogether escape the influence of his own legal background but the familiarity with one national legal system or another might be even desirable. The wide experience of international legal relations gained by the judges and the fact that they represented all legal systems and geographical regions were sufficient guarantees that their judgements would bear an international stamp (Sweden, A/C.6/SR.824, p. 9);

(d) the Court, as the judicial arm of the United Nations, needed an opportunity to play a larger and more dynamic role (Canada, GAOR, XVIIth session, 753rd meeting, paragraph 5);

(e) the Court should become the constitutional interpreter of the United Nations

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Charter and of the constitutions of the specialized agencies through increased resort to the Court's advisory competence (United States, A/C.6/SR.814, p. 17);
(f) of the various means available for peaceful settlement of disputes, settlement by an impartial authority, particularly by judicial settlement, provides the surest guarantee of the sovereign equality of States (Canada, A/5470, p. 12). The operation of international judicial and arbitral machinery, designed to settle disputes between States impartially according to universally accepted principles of law was a prerequisite for an international community based on the rule of law and on the sovereign equality of States (Norway, A/C.6/SR.818, p. 9). The judicial settlement of disputes, especially for smaller States, eliminated the danger, always present in direct negotiation, that the strength of the other party would exert undue influence. Nowhere was the juridical principle of equality of States better respected than in an international tribunal (Sweden, A/C.6/SR.824, p. 9);
(g) judicial settlement, which consisted in the application of legal principles, could be more easily accepted by smaller and weaker States without loss of prestige than negotiated settlement (Sweden, GAOR, XVIIth session, 759th meeting, paragraph 22);
(h) with some exceptions, a whole category of disputes - differences which were exclusively or essentially political and disputes which affected the vital interests of States - would escape judicial settlement and even arbitration, until the relations among nations had been profoundly transformed. There was, however, a whole category of disputes involving very diverse economic interests, international disputes involving difficult points of law which were often a cause of tension among States, and, generally, those listed in article 36 of the Statute of the International Court of Justice, which could be subjected to judicial settlement (France, A/C.6/SR.810, p. 7). Disputes about such subjects as international rivers, fishing rights, compensation for nationalization of foreign-owned property or the interpretation of treaty provisions fell prima facie into the category of disputes suitable for judicial settlement or arbitration (United Kingdom, A/C.6/SR.816, p. 18). Wider recourse to the Court might be urged not for cases where States disagreed upon what international law on the matter should be, but rather upon what was international law on the matter (Sweden, A/C.6/SR.806, p. 13);

(i) the so-called distinction between legal and political disputes, or rather between justiciable and non-justiciable disputes was not a legal principle but rather a reason given by States to justify their reluctance to submit international disputes to adjudication by a third party (United Kingdom, A/C.6/SR.816, p. 17). Not only purely technical disputes but also those with political aspects could frequently be settled by arbitration or judicial settlement. In many cases it would turn out that the political aspects had been overrated and that the fundamental questions involved were really legal (Norway, A/C.6/SR.818, p. 8). An effort was made in judicial settlement to exclude political and non-legal factors so far as possible, thereby ensuring the impartiality of decisions. A distinction between legal and political disputes was harmful to the rule of law (Japan, A/C.6/SR.821, pp. 3-4).

154. Apart from compulsory jurisdiction, reference was also made to the advisory jurisdiction of the International Court of Justice. The representative of Liberia appealed to all Members to accept all advisory opinions of the Court, for obedience to law should be the guiding standard in efforts to apply the principles of international law concerning friendly relations and co-operation among States. In that sense the law included the United Nations Charter, the advisory opinions and judgements of the International Court, and all general multilateral treaty provisions not contrary to the Charter (GAOR, XVIIth session, 762nd meeting, paragraph 23).

155. As already mentioned in paragraph 147 above, certain States did not wish to attach particular importance to judicial settlement and, in particular, compulsory forms of such settlement. The representative of Yugoslavia said that States were now more inclined to resort to diplomatic than judicial means of settling disputes involving their major interests. That fact should encourage international jurists to establish a more clearly defined legal framework for the settlement of disputes by diplomatic means, and a political climate which would encourage States to place greater reliance on judicial settlements (A/C.6/SR.804, p. 5).

156. The representatives who did not favour the compulsory jurisdiction of the International Court of Justice, or believed that important obstacles stood in its way, stressed, in particular, the following reasons:

(a) Some representatives viewed the compulsory jurisdiction of the International

Court of Justice as a first step towards a super State. However the notion of such a State had been rejected when the Charter of the United Nations had been adopted and the Charter enshrined the principle of the sovereigh equality of States. That principle was the very basis of contemporary international law (Tunisia, GAOR, XVIIth session, 765th meeting, paragraph 9);

(b) many States were reluctant to take their disputes before the Court because the judges of the Court came mainly from one of the two great ideological blocs in the world and were consciously or unconsciously influenced by the ideology of that bloc and by the legal notions of the society which had fashioned their mental attitudes; and because international problems of major importance almost invariably contained political implications which made an appraisal of them on strictly legal grounds impossible, so that an appeal to the law in such cases only tended to bring the Court into disrepute by mixing it up with politics. In many cases an international Court could not be of service in the settlement of international disputes and could not be a proper substitute for direct negotiations between the States concerned (Ceylon, A/C.6/SR.805, p. 12; A/C.6/SR.812, p. 11). It would indeed be difficult, even in purely legal disputes, to ask States to undertake in advance to have recourse to a judicial settlement. Certain rules of international law were still too uncertain, and the international judicial system was not yet sufficiently representative of the main legal systems and the main forms of civilization (Iraq, A/C.6/SR.808, p. 5);

(c) the International Court of Justice should pay due regard to the sovereignty of States in exercising its functions, or else the very bases of international law would be destroyed in the attempt to preserve the rule of law. It was also to be hoped that, in future, the composition of the Court would be more representative of the range of independent nations now existing in the world (Ceylon, A/C.6/SR.805, p. 12). Allegations that the Court was comprised principally of western jurists and that it was a western Court were not unfounded (Ghana, A/C.6/SR.815, p. 15). The question of the composition of the International Court of Justice had some bearing on the reluctance of States to submit disputes to the Court for judicial settlement. There was still an impression among Governments that political considerations arising from a particular judge's country of origin affected the position he adopted, even though there had been clear cases in which a judge had concurred in a judgement adverse to the arguments presented by his own

Government. Greater confidence placed in the International Court could more easily be achieved if there were no room for doubt that a given decision had been reached impartially and without reference to political or other extra-legal considerations (Cyprus, A/C.6/SR.824, p. 12);

(d) the acceptance of the compulsory jurisdiction of the International Court of Justice would drastically reduce the scope of Article 33 of the Charter, which, while not exhaustive, left the parties free to choose any of a variety of means of settlement, including judicial settlement. Acceptance of the Court's compulsory jurisdiction would compel the parties to have only one recourse, namely judicial settlement by the Court, and would be tantamount to amending the Charter. However, greater use could be made of decisions by the International Court of Justice ex aequo et bono (India, A/C.6/SR.825, p. 4);

(e) generally speaking, the disputes whose continuance was likely to endanger international peace and security were not those which could be settled by purely legal means (Indonesia, A/C.6/SR.809, pp. 6-7). Within the international sphere, courts could not properly assist the cause of peace by solving conflicts of political importance and by assuming functions which were essentially of a legislative nature (Cyprus, A/C.6/SR.824, p. 11);

(f) the Court was bound by its Statute to apply the law of "civilized" nations (Indonesia, A/C.6/SR.809, p. 7);

(g) there should be no authoritarian tribunals in international law. In theory such tribunals would contradict the very nature of international law; in practice they might complicate matters by creating disagreements over procedure (Bulgaria, A/C.6/SR.807, p. 12);

(h) the fact that many States had made reservations with respect to the Court's compulsory jurisdiction seemed to detract from the usefulness of that procedure (Cuba, A/C.6/SR.820, p. 12);

(i) the reluctance of States to submit disputes to the International Court of Justice might also be explained by their inability to predict the Court's decision with any reasonable degree of certainty (Cyprus, A/C.6/SR.824, p. 12);

(j) another factor which discouraged the recourse to the Court was the absence of specific means of enforcing the Court's decision (Cyprus, A/C.6/SR.824, p. 12);

(k) the General Assembly rejected at its XVIIth session the insertion of a compulsory jurisdiction clause in the convention on Consent to Marriage, Minimum

Age for Marriage and Registration of Marriages; such a clause would have been incompatible with contemporary international law (Tunisia, GAOR, XVIIth session, 765th meeting, paragraph 9).

7. Regional arrangements

157. The role of regional arrangements in the pacific settlement of disputes was the subject of some discussion at the eighteenth session of the General Assembly. The representative of the United States considered that greater use should be made of the existing machinery for the pacific settlement of disputes, including the regional arrangements and institutions, such as the Organization of American States and the Organization of African Unity (A/C.6/SR.814, p. 17). The representative of Italy said that he saw useful provisions on arbitration in some regional arrangements and suggested the study of the practice of the Organization of American States and of European organizations (A/C.6/SR.821, p. 7). As already mentioned in paragraph 146 above, the representative of Tanganyika also found great wisdom in the regional arbitration procedure provided for in Article 52 of the Charter (A/C.6/SR.811, p. 2).

158. The representative of Mexico recalled that Article 52 (2) of the United Nations Charter required Member States that were parties to regional arrangements or agencies to make every effort to achieve the pacific settlement of local disputes by local means. A regional agreement for collective self-defence which did not include a regional arrangement for the pacific settlement of local disputes was entirely legitimate, but it was not a regional agency in the sense of Chapter VIII of the Charter. Therefore the American nations, at the Conference of Bogota in 1948, had adopted the American Treaty of Pacific Settlement, which provided for the final settlement of all controversies (A/C.6/SR.806, pp. 9-10).

159. The representative of Cuba disputed a statement made by the representative of the United States in the Sixth Committee at the eighteenth session (A/C.6/SR.814, p. 14) and earlier advanced in Security Council debates on the Guatemalan question and Cuban complaints, that article 20 of the Charter of the Organization of American States imposed an obligation on the American States to submit international disputes that might arise between them to the peaceful procedures set forth in the Charter of the OAS before referring them to the Security Council. In this respect the representative of Cuba recalled the

provisions of Articles 33, 34 (1) and 103 of the United Nations Charter and Articles 20 and 102 of the Charter of the OAS and came to the conclusion that the parties to a dispute were fully entitled to choose between resort to the regional organization and resort to the United Nations. A Member State should not await the action of the regional organization and had the right of appealing at any time to the Security Council. Otherwise it would be unable to exercise its full rights as a Member of the United Nations (A/C.6/SR.820, pp. 12-13).

8. The role of the United Nations

160. In addition to the role of regional organizations, attention was also paid at the eighteenth session to the role of the United Nations itself in the pacific settlement of disputes. The representative of the United States recalled the provisions of Articles 1 (1), 10, 14, 34, 36-38, 52 (2) and 81 of the Charter and said that it was only when the States parties to a dispute had exhausted the other means available to them for solving it that they should appeal to the United Nations. The United States representative further recalled the various roles the United Nations had played in pacific settlement in the past and said on the basis of it that, while the instrument produced by the framers of the Charter was by no means perfect, it did provide the juridical and constitutional basis on which productive diplomatic action could be taken. She suggested that the office of the Secretary-General could be put to even greater use, than had been the case in the past, in connexion with border and related disputes, particularly those involving controversy concerning factual conditions along national borders (A/C.6/SR.814, pp. 15-16).

161. The representative of the United Kingdom noted that Article 33 of the Charter repeated in more specific terms the obligations to seek a solution to disputes between States by peaceful means. It was thus an application of the principle laid down in Article 1 (1) and Article 2 (3) of the Charter. The obligation to seek solutions by the means enumerated in Article 33 existed independently of any action by the Security Council or any other organ of the United Nations, although under paragraph 2 of the same Article the Security Council should, when it deemed necessary, call upon the parties to settle their dispute by such means, and although the parties could, of course, bring the dispute to the attention of the Security

Council under Article 35. The intention was, however, that the parties should themselves "first of all" have tried to reach a settlement of the dispute by one or more of the means listed in Article 33. The explanation given at the San Francisco Conference of the purpose of the words "first of all", was that the parties would first make an effort to settle their disputes by peaceful means, and that the Security Council should and must intervene in any dispute which threatened world peace (A/C.6/SR.816, p. 14).

162. The representative of Cyprus also elaborated on the role of the United Nations in the pacific settlement of disputes. He thought that, apart from the judicial organ of the United Nations, the Security Council, the General Assembly and the Secretary-General could each play a vital part in the peaceful settlement of disputes, as had been recognized in General Assembly resolution 1301 (XIII). The Security Council's functions in that regard had remained largely unfulfilled owing to the operation of power politics and of the veto. But the experience of the General Assembly had been more rewarding: on the basis of a dynamic interpretation of Articles 10 and 14 of the Charter, the Assembly had helped to achieve peaceful solutions in cases where the Security Council had been paralysed by the veto. Furthermore, the Secretary-General, either in person or through special representatives or fact-finding teams, had been of incalculable assistance in ascertaining facts, clarifying positions and moderating disputes of an explosive nature. States which might mistrust the motivations of the political bodies of the United Nations and might hesitate to bring a dispute before the International Court could confidently ask the Secretary-General to assist them, particularly in cases involving the application of the Universal Declaration of Human Rights and the recent United Nations Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII)). Moreover, in the view of the delegation of Cyprus, the Secretary-General was empowered under the Charter to recommend the peaceful settlement of disputes precisely in order not to have to invoke his power under Article 99 to bring matters likely to threaten peace to the attention of the Security Council (A/C.6/SR.824, p. 13).

163. According to the view put forward by the Government of Brazil, one of the aspects of the problem of the peaceful solution of controversies that could be explored is that relating to the creation of a process under the auspices of the

United Nations for the consideration of pragmatic and balanced solutions for conflicting economic interests which frequently are at the root of controversies. Isolating these elements during the initial phases of the controversies and seeking to reconcile opposing interests in accordance with the principles and the very philosophy of the United Nations in the field of international economic co-operation might avert excessive politicizing of the controversy or situation and facilitate its solution. It would be a method that would combine some conciliation and some mediation because its end result would be a specific recommendation and because, although it might eventually be handled through a subsidiary organ of the United Nations, it should be free of formalism and also free of publicity, at least in the initial phase (A/5470, p. 6).

164. The representative of Thailand recalled the suggestion made by the Foreign Minister of Thailand at the sixteenth session, and reiterated more recently in the General Assembly, for the establishment of a "service-for-peace committee" within the United Nations, but not necessarily as an organ of the United Nations. The Committee's task would be to devise ways of preventing world problems from becoming a threat to peace or from resulting in international conflict. The Committee would make recommendations directly to the parties concerned and, where appropriate, might serve as an intermediary between them. It would not supplant the Secretary-General in the exercise of his peace-making functions under the Charter; instead, it would supplement those functions, intervening openly in cases which did not require discreet negotiations or quiet diplomacy, but were already a matter of general interest and knowledge (A/C.6/SR.825, p. 15).

9. Proposals to draft an instrument on the pacific settlement of disputes

165. In its written comments, the Government of Israel expressed the view that a constructive approach to the principle of pacific settlement of international disputes should have as its objective the elaboration of a formal instrument which, within the framework of the Charter, and taking into consideration the discussions relating to the problem of disarmament, would supplement the existing machinery and, by making available to States a series of fully integrated methods for the pacific settlement of disputes, would give form and substance to the general exhortation

contained in Article 33 of the Charter, and facilitate the implementation by States of their obligations to bring about by peaceful means the adjustment or settlement of their disputes which might lead to a breach of the peace (A/5470, p. 23).

166. At the eighteenth session of the General Assembly the representative of Colombia also expressed the belief that it was necessary to draft a universal treaty on the pacific settlement of disputes, which would codify the customary rules and formulate such new rules as were needed to strengthen international law and order. He suggested that the Committee should try to lay the foundations for a universal statute of peace, as a logical sequel to the prohibition of the use of force against the territorial integrity or political independence of any State. Such a statute would provide an opportunity to improve the machinery of conciliation and to act on such suggestions as that put forward by the Netherlands representative regarding the establishment of a specialized fact-finding centre. It was not by the reiteration of theoretical principles that international law could be developed, but by the creation and improvement of institutions capable of applying it. It was therefore necessary to extend the compulsory jurisdiction of the International Court of Justice and to improve and speed up arbitration procedure. The statute might embody many of the rules which had been formulated, since the entry into force of the Charter, to strengthen international security - for example, some of the recommendations and resolutions of the General Assembly (A/C.6/SR.804, p. 14).

167. The representative of Mexico considered that the principle that Members should settle their international disputes by peaceful means, stated in Article 2 (3) of the Charter, also required adequate technical machinery for its effective application. When a dispute arose, the parties should know which of the means enumerated in Article 33 of the Charter would be used; consequently they must have previously agreed on that point in an ad hoc legal instrument. If that were not done, the dispute would be exacerbated while the means of settlement were being determined. The Mexican delegation had therefore consistently contended that any real peace system necessarily required a treaty on the peaceful settlement of disputes. Its position was based on the long experience of the inter-American regional community (A/C.6/SR.806, p. 9).

168. These views were supported by the representatives of Canada (A/C.6/SR.815, p. 7) and Sweden (A/C.6/SR.806, p. 13). The representative of Argentina also stressed

the need for the examination and, if necessary, revision of the existing international conventions on the peaceful settlement of disputes in order to ensure that they conformed to present circumstances (A/C.6/SR.825, p. 19).

169. The representative of the United States thought that the Colombian representative's suggestion (see paragraph 166 above) merited the Committee's attention. Nevertheless, she doubted the desirability of creating further machinery for the pacific settlement of disputes, since an abundance of such machinery already existed, and greater use should be made of it (A/C.6/SR.814, p. 17).

10. The Notion of "Justice" in Article 2 (3) of the Charter

170. The notion of "justice" in Article 2 (3) of the Charter was the subject of specific comment by some Member States within the context of the pacific settlement of disputes. The representative of Turkey recalled that the word "justice" had been inserted at the San Francisco Conference because, in the light of experience of unjust settlements, it had felt that it was not sufficient to assure that peace and security were not endangered.[1/] Only the concept of justice, which included the ways of negotiation, conciliation, arbitration and judicial settlement, would guide nations in their efforts to bring about mutual friendly relations and co-operation (GACR, XVIIth session, 757th meeting, paragraph 6).

171. The representative of Thailand observed that Article 2 (3) of the Charter emphasized that in the settlement of disputes, justice should not be endangered. The fact remained, however, that in practice the means provided in Article 33 of the Charter were not always used in that spirit, particularly when the dispute was between a great Power or a colonial Power and a small African or Asian State. The settlement usually favoured the great Power while the small State was subjected to pressure of all kinds, including the threat or use of force and economic reprisals. This was why a peaceful settlement could only be said to have achieved its purpose if it was guided by justice, harmony and respect for the sovereign equality of States (GACR, XVIIth session, 763rd meeting, paragraph 17).

172. The representative of Indonesia interpreting Article 2 (3) of the Charter, pointed out the spirit of understanding, the lack of coercion or pressure, and compliance with the principle of sovereign equality of States as essential requirements of justice, particularly in disputes between a strong and a weak State (A/C.6/SR.809, p. 7).

1/ United Nations Conference on International Organization, I/1/34.

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CHAPTER III

The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

A. Formal written proposals by Member States

173. Certain of the paragraphs contained in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States (A/C.6/L.505), submitted by Czechoslovakia to the Sixth Committee at the seventeenth session (see Chapter I, paragraph 6, and Chapter II, paragraph 101 above), are relevant to the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter. In this connexion, at the eighteenth session of the General Assembly, the representative of Czechoslovak referred (A/C.6/SR.802, p. 7) in particular to the following paragraphs of the Declaration:

> "The respect for the independence of State
>
> "The State is independent in the exercise of its internal and external affairs, in particular in selecting its social, economic and constitutional systems.
>
> "The principle of non-intervention
>
> "The States shall be obliged to avoid any direct or indirect interference with internal or external affairs of other State and any other impairment of its rights. No State has the right to impose on other State or nation one or another social or constitutional system.
>
> "The principle of territorial inviolability
>
> "The territory of a State is inviolable. It cannot be the object of an attack, seizure or occupation or of any other measure directly or indirectly violating the territorial sovereignty of the State. Other States shall be liable to refrain from any acts, attempts and manifestations aimed at a violation of its territorial integrity and inviolability."

174. The draft resolution submitted at the seventeenth session (see paragraphs 8 and 103 above) by Afghanistan, Algeria, Cambodia, Ceylon, Ethiopia, Ghana, India, Indonesia, Mali, Morocco, Somalia, Syria, United Arab Republic and Yugoslavia

(A/C.6/L.509/Rev.1) also refers to non-intervention by stating, in one of the principles it sets forth, that "all States shall refrain from intervention or interference in any form in the internal affairs of other States". The full text of the principle from which this is taken is given in paragraph 220 below.

175. In written comments submitted between the seventeenth and eighteenth sessions of the General Assembly the Government of Poland (A/5470, p. 36) stated that experience had shown that the principle of the domestic jurisdiction of a State under Article 2 (7) of the Charter of the United Nations had been repeatedly utilized in the interest of the States possessing colonies and to the disadvantage of the peoples liberating themselves from colonial rule. In connexion with this, the Government declared that the principle here concerned should be laid down in the following way:

> "States shall have the duty not to intervene in matters which are within the domestic jurisdiction of any other State in accordance with the Charter. This principle shall not remain in conflict with the resolution of the General Assembly relating to the matters of decolonization, and, particularly, with the Declaration on the granting of independence to colonial countries and peoples, of 14 December 1950 (resolution 1514 (XV))."

B. Other comments, statements and suggestions by Member States

176. The duty of non-intervention was not the subject of as wide or varied a discussion as the principles considered in Chapters I and II of the present document. However, apart from certain general views put forward on the principle, some detailed comment was advanced on the question of what matters are essentially within the domestic jurisdiction of a State, the meaning of the term "intervention" or "interference", and the scope and application of Article 2 (7) of the Charter. In the remainder of this Chapter, therefore, the comments and views submitted are summarized under the headings just indicated.

1. General views on the principle

177. In their general views on the principle of non-intervention, many Member States expressed their adherence to the principle and advocated its reaffirmation and strengthening. Certain Member States suggested that studies be undertaken of various elements either comprising the principle or corollaries to it, such as a suggested duty of States to refrain from interfering in civil strife in other States. Attention was also paid to the elaboration, possible re-statement, and application in practice of the principle.

178. Among States expressing their adherence to the principle of non-intervention were Finland (A/C.6/SR.822, p. 15), Guatemala (GAOR, XVIIth session, 756th meeting, para. 33), Mongolia (A/C.6/SR.819, p. 3), Nigeria (A/5470, p. 33), the Ukrainian SSR (A/C.6/SR.809), and the USSR (A/C.6/SR.802, p.13). Cyprus stated that the principle of non-intervention by one State in the affairs of another derived directly from the principle enumerated in Article 2 (4) of the Charter and that intervention had also been condemned by international law before the adoption of the Charter (A/C.6/SR.822, p. 4). The representative of Czechoslovakia declared that the principle of non-intervention was an integral part of general international law and was binding upon all States without exception. It was both explicitly and implicitly expressed in the United Nations Charter and embodied in a number of other important documents, such as the Declaration of the Bandung Conference, the Charter of the Organization of American States, the Charter of the Organization of African Unity, etc. In discussing this principle, due regard must be taken to other international treaties (bilateral and multilateral), to the resolutions of the United Nations General Assembly and other documents of international law which define the individual aspects of the principle (A/5470, pp. 18-19).

179. Iraq also stated that the principle of non-intervention by one State in the affairs of another was an incontestable principle of positive international law which, though not expressly mentioned in the Charter, followed directly from several of the principles which were explictly stated in that instrument, such as, for instance, the sovereign equality of States (GACR, XVIIth session, 777th meeting, paragraph 40). The representative of the United Arab Republic said

that the principle had been part of internaticnal law since the nineteenth century (A/C.6/SR.811, p. 12).

180. As indicated in more detail in the remaining sections of the present chapter, Brazil (A/5470, p. 6), Ceylon (A/C.6/SR.805, p. 13), Jamaica (A/5470, pp. 29-30), and the United States (A/C.6/SR.825, p. 6) were among the States generally suggesting that the Sixth Committee study certain aspects of the principle of non-intervention and the corollaries thereto. Italy expressed the view that it would be appropriate to study the possible forms of intervention: intervention by a single State, collective intervention, and intervention by an international organization. It was also necessary to see what limits were to be set to the possibility of intervening or to the obligation not to intervene, and to study the question of self-defence. It would also be useful to study the question of sanctions against intervention (A/C.6/SR.821, p. 8). A similar view on the last point was expressed by the representative of Morocco, who believed that a study of such sanctions should be made with a view to ensuring greater respect for the principle of non-intervention (A/C.6/SR.820, p. 17). Like the representative of Italy, the representative of Sweden considered that a number of preliminary studies should be made in order to determine, for example, what matters were covered by Conventions and what forms the legitimate concern of a State or an international organization could take. Before detailed legal rules on non-intervention could be worked out, it would be necessary to make a careful study with a view to systemizing past practice with respect to the principle. Since the principles selected for study constituted corner-stones of the Charter, the methods applied to clarifying and developing them should be at least as thorough as those used with respect to less crucial questions examined by the International Law Commission (A/C.6/SR.806, pp. 14-15).

181. The representative of Pakistan was of the view that an attempt to set precise and immutable bounds to the principle of non-intervention would obviously serve no useful purpose (A/C.6/SR.816, p. 3).

182. On the other hand, the representative of Mexico believed that it might be worth considering whether the Members of the United Nations should not legally

proclaim the principle of non-intervention in their relations among themselves, in the form used by the Organization of American States. Such a stipulation might be necessary in view of an apparent lacuna in Article 2 (4) of the Charter; from the wording of that paragraph, it might be contended that the use of force was permitted when not directed against the territorial integrity or political independence of any State. His delegation did not support that contention; it agreed with Judge Krylov who had stated in his dissenting opinion in the Corfu Channel case that the Charter prohibited unilateral military action by its Members.[1/] Nevertheless, to close a possible loophole it might be useful to prohibit such acts explicitly, as had been done in the Bogotá Treaty. In his statement welcoming President Tito of Yugoslavia to Mexico, the President of the United Mexican States had drawn attention to that gap in the United Nations Charter, and had suggested that all States should conclude an agreement under the auspices of the United Nations establishing the principle of non-intervention in their relations with one another and including the necessary safeguards for its effective application (A/C.6/SR.806, p. 11).

183. The representative of Algeria considered that, on the basis of the Charter of the Organization of American States, the Charter of the Organization of African Unity and other multilateral and bilateral treaties, the Committee might work out the principle of non-intervention in the light of international practice over a long period. It should also anticipate the cases in which the meaning of the principle had been distorted by States into a pretext for opposing the implementation of the Universal Declaration of Human Rights or the Declaration on the granting of independence to colonial countries and peoples (A/C.6/SR.809, p. 14).

184. As regards the application of the principle of non-intervention, the representative of Czechoslovakia said that it was essential that it be applied in international law in such a way as to contribute to world peace and security as much as possible while not weakening the principles of peaceful coexistence or the provisions of international law designed to help those countries under colonial rule (A/C.6/SR.802).

1/ Corfu Channel Case, Judgment of 9 April 1949 ICJ Reports 1949, pp. 76-77.

185. The representative of Colombia, speaking of the Declaration submitted to the Sixth Committee at its seventeenth session by Czechoslovakia, expressed the view that there was an inconsistency between the paragraph in that Declaration providing that States should avoid any interference with the internal or external affairs of other States (see paragraph 173 above) and another paragraph[1/] which imposed upon States the duty of facilitating the attainment of the right of nations to self-determination. This was a flagrant contraction as it was not possible to assist or facilitate an uprising in a country while refraining from interference. He also thought that any formulation concerning non-intervention was incomplete if it did not consider the international political parties which helped to force a country to adopt a given system (GAOR, XVIIth session, 770th meeting, paragraph 17).

186. The Government of Sierra Leone stated that there should be no interference in the internal affairs of other countries, but this should not prejudice the duty of one country to protest in any appropriate way against internal conditions in another which are inhuman or which violate the principles of the United Nations Charter (A/5470, p. 40).

2. The question of what matters are essentially within the domestic jurisdiction of a State

187. In discussing or commenting on the question of what matters are essentially within the domestic jurisdiction of a State some reference was made to the subjects which, in traditional international law, were normally considered as coming within that jurisdiction. Remarks were made on the effect of international commitments with respect to matters coming within domestic jurisdiction, and views expressed

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1/ This paragraph provides as follows: "Every nation has the right to self-determination and an independent regulation of its constitutional conditions, including the establishment of an independent sovereign State, to a free choice of its economic and social system and social and cultural development as well as sovereignty over its natural resources. States are liable to pay full respect to the right of nations to self-determination and facilitate its attainment".

on some subjects in which it was stated that claims of domestic jurisdiction could not be validly upheld. These matters are all summarized in the remaining paragraphs of this section.

188. The representative of Ceylon stated that in classical international law, the rights reserved to the State included the right to establish its own internal political system, the right to enact legislation, the right to determine freely who were its nationals, the civil rights of those nationals and those of aliens residing in its territory, and, if it deemed necessary, the right to discriminate between the two groups, and the right to exercise full authority over aliens. The State was also fully empowered to use its natural resources as it deemed fit and to reclaim them if subjected to exploitation by private persons, to exercise its sovereign rights over the whole extent of its territory, free from obligations towards other States of the international community, and to conclude treaties with other States. However, those rights were subject to the international obligations recognized by the international community and should be examined in that light (A/C.6/SR.805, p. 13).

189. The Government of Jamaica was of the view that encroachment on the area of domestic jurisdiction of a State could only be justified if it were done in pursuance of or in keeping with some rule of international law. For example, the changing factors affecting the international society may necessitate an extension of United Nations activities to embrace matters formerly within the domestic jurisdiction of a State. In this connexion another State, acting in compliance with a request by the United Nations, might not be held to be intervening in the domestic jurisdiction of the other State concerned (A/5470, p. 29).

190. The representative of Bulgaria deemed it necessary to consider what would happen if a question generally regarded as a matter of a domestic law became the subject of an international agreement and said that, in considering the problem, the rule stated in Article 15 (8) of the Covenant of the League of Nations should

be borne in mind.[1] An especially important point in that connexion was that a State should not be permitted, under cover of the principle of non-intervention, to avoid obligations arising from other principles of international law which had the character of jus cogens. Thus, the principle of non-intervention could not be invoked with respect to massacres, genocide, a policy of extermination, apartheid or various other colonialist or neo-colonialist practices which could not be tolerated by the international community. The problem was not to decide whether or not intervention was legitimate in a particular case, but to define correctly the fields of application of the various principles in international law and to safeguard the general requirement of good faith in relations among States (A/C.6/SR.807 pp. 11-12).

191. The representative of the United States recalled the Advisory Opinion of the Permanent Court of International Justice concerning the Nationality Decrees issued in Tunis and Morocco (French Zones),[2] which recognized the fact that the international character of a question was a consequence of the acceptance of international obligations concerning it. In particular the Court had recognized that, in a matter not in principle regulated by international law, the right of a State to use its discretion might nevertheless be restricted by obligations undertaken towards other States and in such cases jurisdiction was limited by rules of international law; Article 15 (8) of the Covenant then ceased to apply and the dispute as to whether a State had or had not the right to take certain measures became a dispute of an international character (A/C.6/SR.825, pp. 10-11).

1/ Article 15 (8) of the Covenant provides as follows: "If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

2/ PCIJ, Series B, No. 4, (1923), p. 23.

192. Sweden considered that it might be queried whether any matter which is the object of rules of customary international law, or of treaties, might be said to be legally outside all concern and action of the United Nations or of States. The more closely the international community was integrated the more the area of exclusive concern of individual States was limited and the more closely-knit the international legal framework, the wider the area of legitimate international concern. States jealously guarded the area of exclusive jurisdiction but the area of international concern was so elastic that almost any matter could be shown to come within it (A/5470/Add.2, p. 7; A/C.6/SR.806, p. 14). The representative of Finland thought, however, that there would always be certain matters which by their nature would lie exclusively within the domestic jurisdiction of States and that their scope should be clearly defined in order to avert friction (A/C.6/SR.822, p. 15).

193. The representative of Italy observed that a civil war, for example, was a domestic affair; it was the intervention of another State which made it an international matter (A/C.6/SR.821, p. 6).

194. In addition to, as well as in elaboration of some of the matters already mentioned above, views were expressed to the effect that a claim of domestic jurisdiction could not be validly advanced in respect of:

(a) A threat to the peace and security of the world (Nigeria, GAOR, XVIIth session, 757th meeting, p. 1). Since Members of the United Nations had assumed the obligations provided for in Article 2 (3), (4), and (5) of the Charter, matters relating to those provisions could accordingly not lie essentially within the domestic jurisdiction of States. The fact that any dispute likely to endanger the maintenance of international peace and security could not lie essentially within the domestic jurisdiction had been repeatedly confirmed in the practice of the United Nations. Obviously, the question of whether or not a matter was likely to endanger peace and security must be decided in good faith (United States, A/C.6/SR.825, p. 11);

(b) Apartheid and the oppression of Africans in Central and South Africa (Nigeria, GAOR, XVIIth session, 757th meeting, p. 1) or humanitarian matters when allegations of oppression and denial of the rights of self-determination were received by the Secretary-General of the United Nations (Tanganyika, A/C.6/SR.811, p. 3);

(c) Human rights (Cyprus, A/C.6/SR.822, p. 5; Finland, A/C.6/SR.822, p. 15, and Sweden, A/C.6/SR.806, p. 14).

(d) The interpretation of the terms of a treaty, as stated by the International Court of Justice in the Peace Treaties Case[1/] (United States, A/C.6/SR.825, p. 10).

3. Meaning of the term "intervention" or "interference"

195. Many Member States, in the course of discussion and comment, expressed views concerning the meaning of the term "intervention" or "interference". While doubts were expressed by some States about the possibility of arriving at a general definition, others put forward their versions of such a definition. In other instances the States concerned indicated those specific matters which they considered to constitute examples of unlawful intervention or interference. Some comment was also made with respect to what was stated to be the right of intervention, as previously existing in international law and as effected by the Charter.

196. As regards the possibility of a general definition of "intervention" or "interference", the representative of Mexico observed that it would not be an easy task, since intervention, like life itself, was so fluid and changeable that it would always escape the confines of any definition. The long fruitless effort to define aggression contained a valuable lesson: there were phenomena which it was better not to define. The public and the jurists were always able to identify intervention when a particular instance arose (A/C.6/SR.806, p. 10). The representative of the United States thought that what constituted intervention in domestic affairs was largely a matter of degree. The attempt to prohibit all acts by States, the consequence of which affected the domestic life of other States, would be a practical impossibility. The Sixth Committee's task, in his view, was rather to determine, in view of the interdependence of States, those actions which were permissible and those which were not (A/C.6/SR.825, p. 5). The representative of Iraq, however, said that it should be possible to agree on a criterion for detecting intervention, for determining where legitimate diplomatic

1/ ICJ Reports 1950, pp. 65, 70-71.

action ended and unlawful intervention began. All that was needed for that purpose was a little more goodwill on the part of States (A/C.6/SR.831, p. 4).

197. A number of States offered definitions of the term "intervention" or "interference". The representative of Chile declared that intervention had been defined as intervention by one State in the internal or external affairs of another State in order to force the latter to do as the former wished. It was no more or less than an usurpation of power. The principle of non-intervention prohibited intervention by a State in the internal or external affairs of another State even at the request of an established Government (A/C.6/SR.804, p. 13).

198. Some other representatives indicated their general support for the substantive elements of a definition along the foregoing lines, including the representatives of Bolivia, Bulgaria (A/C.6/SR.807, p. 11), Iraq, Morocco and Syria. Bolivia also stressed that the American States considered that sovereignty could not be delegated and that independence was absolute (A/C.6/SR.814, p. 9). Iraq considered that there was intervention on the part of a State as soon as it encroached upon the jurisdicition of another State, in either internal or external affairs (A/C.6/SR.808, p. 5). Morocco believed it was necessary to stress the prohibition of every form of subversive activity (A/C.6/SR.820, p. 17), while Syria referred to the prohibition of both direct and indirect interference (A/C.6/SR.812, p. 6).

199. The representative of Cuba stated that intervention could take many shapes but in all of them it represented a direct attack on the sovereign equality of the members of the international community and that intervention could be accurately defined as the intention, express or not, of a State or group of States to replace the power of decision of another State or States with their own and consequently that it could occur both in the internal affairs and the external affairs of the latter State or States. On the internal plane, the sovereignty, or power of decision, of a State covered the right to choose the political, economic and social systems considered best for the country, the right to exercise permanent sovereignty over the natural resources of the country, and the right to assert those principles through the national legislative and judicial organs. On the international plane, it covered the right to enter into international agreements, the right to establish diplomatic relations with any country, and so forth (A/C.6/SR.820, p. 13).

200. The specific examples of "unlawful intervention" or "interference" which were advanced were as follows:

(a) Armed attacks (Ceylon, A/C.6/SR.805, p. 14) and armed intervention, which were covered by the principle prohibiting the use of force (Italy, A/C.6/SR.821, p. 7).

(b) Organization of hostile expeditions against a neighbouring State (United Kingdom, A/C.6/SR.822, p. 17).

(c) Seizures, occupation and other similar violations of territorial integrity (Ceylon, A/C.6/SR.805, p. 14).

(d) Establishment of military or other bases in other States (Ceylon, ibid.).

(e) Attempts to impose a particular constitutional or political system on another State (Ceylon, ibid.,; Nigeria A/C.6/SR.814, p. 19; USSR, A/C.6/SR.802, p. 14).

(f) Interference in civil strife in other States (Ceylon, A/C.6/SR.805, pp. 13-14; Brazil, A/5470, p. 6).

(g) Interference in the external relations of another State (Ceylon, A/C.6/SR.805, p. 14).

(h) Fomenting, inciting or assisting subversive activities directed against another State (Brazil, A/5470, p. 6; Ceylon, A/C.6/SR.805, p. 14; Morocco, A/C.6/SR.820, p. 17; Philippines, A/C.6/SR.823, p. 3, and Thailand, A/C.6/SR.825, p. 15). In other formulations of the same example Jamaica referred to subversive activities organized or assisted by or on behalf of an external power (A/5470, p. 30), Nigeria to any attempt to mobilize public opinion and to encourage subversive activities (A/C.6/SR.814, p. 19), and the United States to clandestine activities carried out by one State within the territory of other States for the purpose of overthrowing their governments or even radically altering their political or economic structure (A/C.6/SR.825, p. 6). Guatemala stated, in connexion with this example, that there was an obligation not to support or direct international parties or groups either directly or indirectly, and that their use for purposes of intervention in the internal politics of other countries should be banned (G.OR, XVIIth session, 756th meeting, paragraph 35).

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(i) Military support for rebellions (Philippines, A/C.6/SR.823, p. 3), and moral and financial support to revolutionary elements as well as encouragement to such elements to continue their activities against the national government (Indonesia, A/C.6/SR.809, p. 6).

(j) Economic sabotage, economic and political pressure (Philippines, A/C.6/SR.823, p. 3). In related formulations of this example, Cambodia referred to economic colonialism which prevented the States subjected to it from following a policy dictated by their own wishes and interests (A/C.6/SR.812, p. 3). Ceylon spoke of intervention in economic and social matters where the nationals of States exerted pressure on their Governments to intervene to protect their own private commercial or industrial interests in another State, or where private foreign companies, assisted by their Governments, conspired with opposition parties in a clandestine effort to bring down Governments which did not suit them and where such companies blocked the peaceful self-determination of peoples. He also referred to the use of aid as a weapon of pressure and intervention (A/C.6/SR.805, p. 14). Cuba gave, as an example, economic means, such as the closing of markets, the establishment of embargoes on imports from or exports to the country subjected to intervention, and pressure on third States to prevent their ships or aircraft from calling at that country's ports (A/C.6/SR.820, p. 13). Italy referred to financial intervention, when financial control had been exercised in order to secure payment of international loans, frequent in the past, which might possibly reappear in connexion with certain forms of assistance to developing countries (A/C.6/SR.821, p. 8). Thailand considered that economic aid used for political effect rather than for purely economic purposes was also intervention (A/C.6/SR.825; p. 15).

(k) Ideological intervention, which was in fact a violation of a community's sacred right to live in accordance with its own tradition and its own ideas of internal harmony (Venezuela, A/C.6/SR.820, p. 4). In this connexion the Philippines referred to adverse propaganda (A/C.6/SR.823, p. 3). The representative of the United Kingdom thought that where the activity of a foreign State or of private persons was confined simply to the making of

hostile propaganda the legal position was uncertain. He considered, nevertheless, that all subversive activities of that nauure, whether conducted by a foreign Government or with the approval of that Government, were prima facie inconsistent with the principle of non-intervention (A/C.6/SR.822, p. 17).

(l) Refusal to recognize the new Government of another State and subjection of the latter to economic and financial pressure until it was obliged to resign or be overthrown (Indonesia, A/C.6/SR.809, p. 6). The United Kingdom delegation did not share this view regarding non-recognition. Intervention might take many forms but in principle it involved a positive act of interference. There might be a case for the argument that an act of premature recognition could in certain circumstances constitute intervention; but it was doubtful, to say the least, whether an omission to accord recognition could ever amount to intervention (A/C.6/SR.822, pp. 18-19).

(m) Special privileges for the nationals of a State resident in another State, as had been done under treaty in the case concerning the rights of United States nationals in Morocco (Ceylon, A/C.6/SR.805, p. 14).

(n) Political assassination (Nigeria, A/C.6/SR.814, p. 19, recalling article III, paragraph 5, of the Charter of the Organization of African Unity).

(o) Attempts to prevent nations from exercising their right to self-determination and their right to development along lines of their own choice, such attempts being a direct threat to international peace (Yugoslavia, A/C.6/SR.804, p. 6).

201. With respect to the limits within which intervention was, or was not permitted, the representative of Cyprus stated that the concept of intervention had undergone considerable changes of late and had been so restricted by international agreements and by practice that it had virtually disappeared as a legal doctrine. He recalled the judgement of the International Court of Justice in the Corfu Channel Case[1/] that it could only regard the alleged right of intervention as the manifestation of a policy of force such as had given rise to most serious abuse and could not, whatever the present defects in international organizations, find a place in international law (GAOR, XVIIth session, 768th meeting, paragraph 10).

1/ Corfu Channel Case, Judgement of April 9th 1949: I.C.J. Reports 1949, p. 4.

202. The representative of Thailand observed that the principle of non-intervention suffered many exceptions. International law had recognized many forms of lawful interventions, such as diplomatic intervention, and even in some cases armed intervention to protect the lives and property of nationals living in a foreign country. A form of a "lawful" intervention had enabled the stronger nations to impose their will on the weaker nations. With the Charter the situation had been somewhat modified: the distinction between lawful and unlawful intervention had been re-affirmed and the opportunities for unlawful intervention restricted. States had often intervened by such means as pressure, propaganda and infiltration. Intervention of that type was clearly ruled out by the Charter. Private overseas corporations not infrequently could interfere in the internal affairs of less developed countries. This could be removed if the industrialized countries and corporations displayed good faith (GAOR, XVIIth session, 763rd meeting, paragraphs 14-15, 21).

203. The representative of the United States thought that many acts by States had consequences in the internal affairs of other States, such as their economic policies, but they could not, merely by virtue of their consequential relationship, be considered intervention. They were generally recognized as lying within the discretion of the State taking them, unless it had voluntarily accorded them an international character by the conclusion of a treaty or unless those policies fell within the area in which customary international law had recognized the obligation of States to protect the persons or property of foreign nationals. A second aspect was the interest which the complainant State asserted to have been injured and the extent to which it bore an international character. A third aspect was the mode of intervention and the extent to which the means by which one State acted to produce a certain effect within another State was appropriate to the issue in question. For instance, international practice recognized many areas where appropriate diplomatic communications might be exchanged regarding subjects which could not properly be dealt with by the threat or use of force (A/C.6/SR.825, p. 6).

204. In the view of the representative of the United Kingdom the State which was the object of subversive activities of the nature sometimes termed "indirect aggression" could request the assistance of other States for the purpose of repelling it and any State had the right to respond to such a request. In such

circumstances armed assistance was lawful if given at the request or with the consent of the State concerned. Nevertheless the United Kingdom Government considered that, if civil war broke out in a State and the insurgents did not receive outside help or support, it was unlawful for a foreign State to intervene, even on the invitation of the regime in power, to assist in maintaining law and order. The United Kingdom representative further stated that the duty of States not to intervene in matters within the domestic jurisdiction of other States in no way prejudiced the right of a Government to afford protection to the contractual and commercial rights of its nationals abroad within the limits of international law and normal diplomatic practice (A/C.6/SR.822, p. 18).

205. The representative of Cyprus noted that if a State party to a treaty considered that another party had not discharged its commitments, it was not entitled to intervene in a dictatorial way, but had the possibility of submitting the question to the United Nations (A/C.6/SR.822, p. 4).

4. The scope and application of Article 2 (7) of the Charter

206. In connexion with the scope and application of Article 2 (7) of the Charter, a number of questions were referred to in debate in the Sixth Committee and in written comment. Attention was directed to the question of the differences in the principle of non-intervention as it applied in relations between States and in relations between States and the United Nations. Some elaborations of Article 2 (7) were also offered, and consideration given of the issue of the body competent to decide whether or not a particular matter fell within the terms of Article 2 (7).

207. On the first of the questions indicated in the previous paragraph, the representative of China was of the view that the principle of non-intervention by a State in matters within the domestic jurisdiction of another State, a corollary of the principle of the sovereign equality of States, was distinguished only in appearance from the restrictive provision of Article 2 (7) of the Charter, which had been invoked on many occasions in the Security Council and in the General Assembly in connexion with disputes being considered by those bodies. China had always taken a liberal view of the question and felt that if a conflict of interests among several nations gave rise to a dispute, the United Nations had the right to

intervene with a view to settling the dispute. When the facts of the dispute were not clear, the question of competence should not prevent the United Nations from considering the question in order to clarify it (A/C.6/SR.818, pp. 3-4).

208. The representative of Yugoslavia considered that the principle of non-interference by one State in the domestic affairs of another State was quite distinct from the domestic jurisdiction clause in Article 2 (7) of the Charter (A/C.6/SR.804, p. 6); the representative of the United Arab Republic said that the former principle had much wider scope (A/C.6/SR.811, p. 12). The United Kingdom representative agreeing with that distinction, said that the Sixth Committee was required to examine the former principle and not the latter (A/C.6/SR.822, p. 17).

209. The representative of the United States stressed that intervention by States was to be distinguished from intervention by the United Nations and that Article 2 (7) of the Charter, which placed a limitation on intervention by the United Nations, did not regulate the actions of States, which were governed by other provisions, notably Article 2 (4). He also stressed that as far as intervention by the United Nations was concerned, the authors of the Charter had been clear that Article 2 (7) should not be read as applying directly to the United Nations principles of international law concerning non-intervention by States (A/C.6/SR.825, pp. 5-7).

210. The representative of Cuba considered it unfortunate that the Charter of the United Nations was not so clear on the subject of non-intervention as articles 15 and 16 of the Charter of the Organization of American States, but thought that the United Nations Charter's apparent lack of clarity was easier to understand if the question was asked: how could any State possibly maintain that what was expressly forbidden to the United Nations itself in Article 2 (7) of the Charter could be permissible for an individual State (A/C.6/SR.820, p. 13)?

211. The representative of Cyprus thought that the principle of non-intervention, a restriction imposed by international law in order to protect the independence of States and preserve peace, was not applicable to collective measures taken by a world organization in the exercise of its peace-keeping functions in the common interest. A very clear distinction should therefore be drawn between the concept of the absolute sovereignty of States in relation to each other, and that of the limited sovereignty of States in relation to the United Nations. In fact, the

principle of sovereignty as set forth in the Charter was not incompatible with the obligations deriving from membership of the United Nations. A State which accepted the obligations arising from the establishment of a world order could not be considered to detract from its sovereignty (A/C.6/SR.822, p. 5).

212. The representative of Mexico did not believe that it was possible to clarify the words of Article 2 (7) of the Charter, since there was no agreement on whether that paragraph dealt with intervention as dictatorial interference or with any activity of the United Nations related in any way to what the Member States considered as being "essentially" within their domestic jurisdiction. Nobody knew the precise meaning of that adverb, and it was not clear whether the determination of the reserved area was the exclusive prerogative of the State concerned or was also a matter for the Organization. The responsibility had been more clearly allocated in Article 15 (8) of the Covenant of the League. The doubts concerning the meaning of Article 2 (7) would be, in his view, eliminated only by the revision of the Charter (A/C.6/SR.806, p. 11).

213. As regards an elaboration of Article 2 (7) of the Charter, and the issue of the body competent to decide whether or not a particular matter fell within the terms of Article 2 (7) of the Charter, the following points of view were advanced. The representative of Tunisia stated that a study of the practice followed by United Nations organs prompted a number of questions. For example, whether the inclusion of an item in the agenda of the General Assembly, the issue of a recommendation to a State by the General Assembly, the examination of the domestic policy of a State by a commission of enquiry set up under Article 34 of the Charter, or the adoption by the Security Council of a resolution offering its good offices to the parties to a dispute or inviting them to settle the dispute, could be deemed to constitute intervention in the domestic affair of a State (A/C.6/SR.822, pp. 12-13).

214. The representative of the United States observed that Article 2 (7) could not limit the competence of a United Nations organ to discuss any question within its jurisdiction under the relevant Articles of the Charter although the contrary proposition had been argued. As to the inclusion of certain items in the agenda, at one extreme, it was clear that mere discussion did not constitute

intervention, while at the other extreme, Article 2 (7) itself stipulated that its provisions were not to prejudice the application of enforcement measures under Chapter VII. Hence the area of permissible non-intervention by the United Nations lay somewhere in between. The problems in that area were complex and did not admit of easy answers, he said. For example, if the term "intervention" carried an imperative connotation from its use in inter-State relations, did it follow that a mere recommendation by a United Nations organ, which normally lacked such an imperative connotation, did not constitute intervention? Did a recommendatory resolution directed specifically to a State and calling upon it to take measures in a sphere essentially within its domestic jurisdiction constitute intervention? The conclusion must be that the question of whether action by a United Nations organ had the imperative element important to the notion of "intervention" could only be answered by reference to the language of the relevant resolution and to the attendant circumstances. There could be no simple answer to the complex question of the relationship of the Organization to its Member States in diverse political situations, but not only the Security Council could be guilty of intervention. Since those were its views, it was clear that his delegation would not agree that the question of whether a recommendation constituted intervention depended on whether it was addressed to all Members of the Organization or merely to one or a few of them. The number of States to which a recommendation was addressed depended on the scope of the situation under consideration. Where only one or a few were involved, there would be no logical or legal point in casting a resolution in general rather than in specific form (A/C.6/SR.825, pp. 8-10).

215. As to the procedures by which Article 2 (7) had been and should be implemented by the United Nations organs, the representative of the United States noted that the organs of the United Nations had followed a less formal course. The determination of competence had frequently been made by the organ involved, in the terms of substantive action. In adopting a resolution after objections based on Article 2 (7) had been raised, organs of the United Nations had implicitly rejected those objections. On other occasions, the organ concerned had either rejected motions based on Article 2 (7) that it lacked competence or had positively affirmed its competence. In his delegation's view that less formal procedure was

not in principle objectionable. He recalled the statement of Committee 2 of Commission VI of the San Francisco Conference[1] that in the course of day-to-day operations each of the various organs of the Organization would inevitably interpret such parts of the Charter as were applicable to its particular functions, that process being inherent in the functions of any body which operated under an instrument defining its functions and powers; if there was a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter it would always be open to the General Assembly or the Security Council to ask the International Court of Justice for an advisory opinion on the matter (A/C.6/SR.825, pp. 12-13).

216. The representative of Ceylon observed that in cases of intervention by one State in the affairs of another, the State claiming such interference could be permitted to decide; however, when the United Nations wished to intervene, it seemed absurd to allow the State concerned to make the decision. The absence of a clear-cut interpretation of that aspect of Article 2 (7) of the Charter had caused difficulties in the process of decolonization (A/C.6/SR.805, p. 13).

217. The Government of Jamaica stated that there was the problem of who should determine what is domestic jurisdiction, which in some cases was a difficult problem. It suggested that it would be helpful if an international decision in the form of a rule of international law could be made in respect of the known instances where the concept of domestic jurisdiction has been hotly contested (A/5470, p. 29).

1/ UNCIO, Documents IV/2/42 (2).

CHAPTER IV

The principle of sovereign equality of States

A. Formal written proposals by Member States

218. In the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States (A/C.6/L.505) submitted by Czechoslovakia to the Sixth Committee at the seventeenth session of the General Assembly (see Chapter I, paragraph 6, Chapter II, paragraph 101 and Chapter III, paragraph 173 above), reference is made to the principle of sovereign equality. At the eighteenth session the representative of Czechoslovakia proposed (A/C.6/SR.802, p. 8) that the principle be formulated in the following terms taken from the Declaration:

> "The principle of State sovereignty
>
> "The State is sovereign and its authority on its territory is supreme and, in relation to all other States, independent and equal. The sovereignty of a State emanates from the inalienable right of every nation to determine freely its own destiny and its social and constitutional systems.
>
> "The principle of sovereign equality
>
> "Relations among States must rest upon the basis of sovereign equality. States have equal rights and obligations as subjects of international law and no reasons of political, economic, geographical or other nature can limit the capacity of the State to act and assume obligations as an equal member of the international community.
>
> "The right of State to participate in international relations
>
> "The interests of the maintenance of peace and the promotion of friendship among nations call for respect of the right of every State to participate on the basis of equality in international relations, in particular the right to participate in the solution of international situations and enter international organizations and open multilateral treaties the objectives and sphere of action of which are subjects of legitimate interest of such State. Other States must refrain from any act which would hamper the exercise of this right."

219. At the seventeenth session Bolivia submitted an amendment (A/C.6/L.511) to the second of the principles quoted in the preceding paragraph (i.e. the principle of sovereign equality), which would have provided that a phrase should be added to the

effect that no reasons could limit the capability of the State "to develop to the full the possibilities offered by its natural resources" (A/5356, para.6).

220. Also relevant to the principle of sovereign equality is operative paragraph 1 of the draft resolution (see Chapter I, paragraph 7 and Chapter II, paragraph 102 above) submitted to the Sixth Committee at the seventeenth session by Cameroon, Canada, Central African Republic, Chile, Colombia, Congo (Leopoldville), Dahomey, Denmark, Japan, Liberia, Nigeria, Pakistan, Sierra Leone and Tanganyika (A/C.6/L.507/Rev.1 and Rev.1/Add.1). Pursuant to that paragraph these States would have had the Assembly affirm that:

> "....the rule of law is essential for the achievement of the purposes of the United Nations, particularly the development of friendly relations and co-operation among States based on respect for the principles, set forth in the Charter, of equal rights and self-determination of peoples and of the sovereign equality of all Member States."

221. The draft resolution submitted at the seventeenth session (see Chapter I, paragraph 8, Chapter II, paragraph 103, and Chapter III, paragraph 174 above) by Afghanistan, Algeria, Cambodia, Ceylon, Ethiopia, Ghana, India, Indonesia, Mali, Morocco, Somalia, Syria, United Arab Republic and Yugoslavia (A/C.6/L.509/Rev.1) contains inter alia the following principle to be reaffirmed by the General Assembly:

> "V. All States shall have the right to sovereign equality which shall include the free exercise of their legal powers, such as the choice of their own form of government, the free disposal of their natural resources, and participation on a footing of complete equality in the community of nations, and all States shall refrain from intervention or interference in any form in the internal affairs of other States."

222. In written comments submitted between the seventeenth and eighteenth sessions of the General Assembly (see Chapter III, paragraph 175 above) the Government of Poland (A/5470, p. 36) stated that the principle of sovereign equality required a more concrete elaboration upon its contents in the light of rights and duties of States as subjects of international law. It therefore proposed that the principle be worded as follows:

"Participation in international community and relations among States shall be based upon the principle of sovereign equality. States, a subject of international law, have equal rights and duties and, therefore, no political, economic, geographical considerations or other reasons shall limit the capacities of a State for full activity, and free participation in international turnover, including international conferences, mutilateral agreements and international organizations."

B. Other comments, statements and suggestions by Member States

223. The principle of sovereign equality was the subject of the least comment or elaboration of all the four principles contained in the present document. However, in addition to general views on the principle, the relevant records reveal discussion or comment on subjects such as the equal rights and duties of States; the right of States to choose their social, political and economic system; the right of States to participate in the solution of international problems and in formulating and amending the rules of international law; the right of States to exploit their natural wealth and resources; unequal treaties; the meaning of "sovereignty" and the "primacy of international law"; and rules on voting in regard to international decisions. The above matters are considered under their relevant headings in the remainder of this Chapter.

1. General views on the principle

224. In their general views on the principle of sovereign equality, Member States stressed its importance and certain of them analysed the various components of the principle. Reference was also made to related principles.

225. The representative of Algeria stated that respect for the principle of equality and genuine co-operation was the only possible foundation for friendly relations among States (GAOR, XVIIth session, 761st meeting, paragraph 19). The representative of the USSR likewise believed that the principle of sovereign equality was an essential element of peaceful co-existence (A/C.6/SR.802, pp. 14-15).

226. The representative of Finland said that the principle derived from the idea of the State as a legal person, a sovereign entity and a subject of international law (GAOR, XVIIth session, 765th meeting, paragraph 30). The representative of the Byelorussian SSR also stated that equality derived from sovereignty

(A/C.6/SR.820, p. 3), while the representative of the United Arab Republic considered the principle as a combination of the concept of juridical equality and the concept of sovereignty (GAOR, XVIIth session, 768th meeting, paragraph 24).

227. The Government of Canada was of the view that, taken together, the two words "sovereign equality" convey a meaning of justice, democracy and order for the sake of both the individual and common good, that is, of the very essence of the United Nations conception (A/5470, p. 9). The representative of Sweden stressed that sovereign equality was both a political and a legal principle (GAOR, XVIIth session, 759th meeting, paragraph 19; A/5470/Add.2, pp. 7-8; A/C.6/SR.824, p. 7). In the view of the representative of Yugoslavia the principle should be construed as signifying the right of all States, irrespective of their size and form of government, their economic and social systems or their level of development, to political and economic equality in the community of nations (A/C.6/SR.804, p. 6).

228. The representative of the United Kingdom considered that the principle could be analysed in different ways; for example, it might be said that equality consisted of the possession by all States of equal fundamental rights of Statehood, some "active" - such as the right to conclude treaties, the right to exercise jurisdiction within their own territory - and others "passive", such as the right to respect for their territorial sovereignty and political independence. Nevertheless, juridical equality would be meaningless unless it entailed, as a logical consequence, the duty to respect the rights of other States and to carry out obligations owed to other States. In the view of the United Kingdom Government, one of the points which the Sixth Committee should consider in its study of sovereign equality was the relationship between the legal notion of sovereign equality and the factual disparities which undoubtedly existed between States (A/C.6/SR.822, p. 10).

229. Several States recalled with approval the elements of sovereign equality accepted by the San Francisco Conference in 1945,[1/] namely that: (a) States are juridically equal, (b) each State enjoys the rights inherent in full sovereignty, (c) the personality of the State is respected, as well as its territorial integrity and political independence, (d) the State should, under international order, comply faithfully with its international duties and obligations (Argentina, A/C.6/SR.825, p. 19); Bolivia, A/C.6/SR.814, p. 9; China, A/C.6/SR.818, p. 3, and the United Kingdom, A/5470, p. 45).

1/ UNCIO, Documents, Vol. VI, p. 457.

230. In another elaboration upon the components of the principle of sovereign equality the Government of Canada declared that it explicitly and implicitly summed up the other principles in Article 2 of the Charter (A/5470, p. 10). This view was supported by the representative of the United Kingdom (A/C.6/SR.822, p. 20). Further explaining its position, the Government of Canada stated that Article 2 of the Charter can be said to be a codification of the fundamental notion of sovereign equality on which, in turn, the whole United Nations system is predicated. The Canadian Government stated that Member States could hardly enjoy a status of sovereign equality if others did not fulfil their solemn obligations in good faith. Each failure to do so would inevitably diminish the rights of others. Again, juridical equality could have little practical meaning if powerful States were free to advance their interests by resorting to threats or the use of force rather than by recourse to the rule of law through peaceful procedures. Certainly sovereign equality would be meaningless if the territorial integrity and the political independence of Member States - which are indispensable aspects of national "personality" - were not held to be inviolate. Nor would the status be of real significance if the United Nations either singly or in concert were entitled to intervene in the essentially domestic affairs of Member States. Without such an exception, the central objective of effective collective security would be quite out of the reach of the Organization. The Canadian Government further explained that although Article 2 represented a codification of "sovereign equality", the Charter as a whole must also be taken into account in assessing the full value of that fundamental principle. The Charter sought in many ways to recognize the need and inevitability of peaceful change. To this end it stressed the necessity of co-operative action to advance human rights and social and economic well-being for all peoples. To this end, also, it offered in place of the right to resort to threat or the use of force, a variety of methods for the peaceful settlement of international disputes (A/5470, pp. 10-11).

231. A number of Member States, in their analyses of the principle forming the subject of this Chapter, related it to other principles. Many of these found a close link between equality, independence and sovereignty and the self-determination of peoples, decolonization and the equality of nations and races (India, A/C.6/SR.825, p. 4; Iraq, GAOR, XVIIth session, 767th meeting, paragraph 29;

Mongolia, A/C.6/SR.819, p. 3; Romania, A/C.6/SR.815, p. 5; Tunisia, GAOR, XVIIth session, 754th meeting, paragraph 29; Ukrainian SSR, ibid., 757th meeting, paragraph 21 and the United Arab Republic, ibid., 768th meeting, paragraph 24 and A/C.6/SR.811, p. 12).

232. It was further said that the principle of sovereign equality acquired a special meaning in the context of economic development; that the spirit of solidarity, from which the principle derived, should prompt the adoption of measures of economic aid innocent of political motives (Tunisia, A/C.6/SR.822, p. 13) and that the developing countries were entitled to the full and unconditional assistance of the international community in making up for time they had lost through no fault of their own (Yugoslavia, GAOR, XVIIth session, 753rd meeting, paragraph 36, A/C.6/SR.804, p. 6).

233. It was also stressed that the principle of equal sovereignty of States and non-intervention must be strengthened by removing from international law all pretexts for interference based on the pseudo-humanitarian motives of "civilizing the pagan" (Ethiopia, GAOR, XVIIth session, 766th meeting, paragraph 61) and that a refusal to accept the logical consequences of the principle was the reason for much of the resistance to the progressive development of international law. Certain States still clung to the old order of international relations, based on the domination of some States by others, and resisted its replacement by the new order, which was based on the co-operation of all the countries of the world (Panama, A/C.6/SR.824, p. 3).

234. Brazil stated that certain consequences of the sovereign equality of States should be explored as to their practical effects. Although this equality was a juridical, not a de facto concept, it would be logical that it should in fact produce certain consequences. The least that could be affirmed was that the principle requires that it be presumed that international agreements and resolutions of international organisms cannot be interpreted in a manner contrary to it. It could further be admitted that the principle of equality implies, in certain cases, unequal treatment for sovereign States, when required to compensate for the inadequacies of the weaker or less developed States. There was thus a tendency to achieve an approximate balance of interests and to preserve the very essence of the notion of sovereign equality (A/5470, pp. 6-7).

235. Italy expressed the view that, in considering the principle of sovereign equality, a related subject for study was equality of treatment in, for example, the economic and commercial field, where the "most-favoured nation" clause raised some pertinent problems (A/C.6/SR.821, p. 8).

2. Equal rights and duties of States

236. The equal rights and duties of States, as a consequence of the principle of sovereign equality, was referred to in various formulations by Member States commenting upon these rights and duties. Reference was also made to the effect of the doctrine of equal rights and duties in law upon inequalities which might exist in fact. The applicability of the doctrine as between United Nations Members was commented upon, and reference made to it with respect to Chapter XI of the Charter concerning Non-Self-Governing Territories.

237. As regards various formulations, it was said that all States have equal rights and duties (Sweden, A/5470/Add.2, p. 8), irrespective of their differing social and economic systems and the level of their development (Czechoslovakia, A/5470, p. 19 and USSR, A/C.6/SR.802, p. 15), and also have equal capacity for the exercise of such rights and duties (Chile, A/C.6/SR.804, p. 11 and Venezuela, A/C.6/SR.820, p. 4). The view was also advanced that States are equal before the law and are equally protected by it (Algeria, A/C.6/SR.809, p. 14 and Mali, A/C.6/SR.812, p. 10), and that, in the era of peaceful coexistence, States have equal duties and equal rights in their capacity as subjects of international law and as equal members of the international community (Syria, A/C.6/SR.812, p. 6).

238. The Government of Sweden considered that, although under customary international law all States had equal rights and obligations, in matters regulated by treaty nothing prevented an individual State from claiming less than equality (A/5470, Add.2, p. 8).

239. With respect to inequalities which existed in fact the delegate of Guatemala said that mention had to be made of the danger to peace represented by the political inequalities which placed certain countries in a privileged position in relation to others. Those countries could employ such a position for purposes of domination and direct action against the Governments and peoples of other nations (GAOR, XVIIth session, 756th meeting, paragraph 33). Mexico (A/C.6/SR.806, p. 12) and

Nigeria (GAOR, XVIIth session, 757th meeting, paragraph 2) understood the principle of sovereign equality not as equality of power, which was a fiction, but rather as legal equality, equality in law and before the law, applicable to all States great or small. Mexico further stated that no State, however powerful, could claim special treatment or exemption under that principle. Moreover, Article 2 (1) of the Charter had its counterpart in Article 6 of the Charter of the Organization of American States. The latter provision somewhat amplified the statement in the Charter by stating that States not only had equal rights, but an equal capacity to exercise them.

240. As regards equality of rights and duties within the United Nations, the delegate of Finland said that all States Members of the Organization were entitled to equal protection for their rights (A/C.6/SR.822, p. 14). The delegate of the United States declared that the principle of sovereign equality was applicable to the mutual legal relationship of Members within the United Nations where a Member had acted in its capacity as a Member and where all the consequences of the United Nations membership were equally apportioned among all the Members (A/C.6/SR.825, p. 22).

241. The delegate of Iran stressed the practical form given to the principle of sovereign equality in Article 2 (2) of the Charter. The first of the rights resulting from membership and inherent in the States' very existence was considered by him as the right to territorial integrity and political independence. In this respect his delegation categorically refused to regard Non-Self-Governing Territories, in the sense of Chapter XI of the Charter, as integral parts of any State whatsoever (GAOR, XVIIth session, 762nd meeting, paragraph 28). This view was also shared by the representative of India who recalled that the Charter recognized that sovereignty was vested in the peoples of Non-Self-Governing Territories. The claim of domestic jurisdiction and arguments that these territories are not sovereign, invoked by the colonial Powers, should not be used to perpetuate colonial domination over these territories or situations in these territories which threatened peace and security, such as apartheid in South Africa (A/C.6/SR.825, p. 4).

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3. The right of States to choose their social, political and economic system

242. Certain representatives referred to a right of States, in exercise of the principle of sovereign equality, to choose their social, political, and economic system. It was argued that States are sovereign over their own territory and have therefore the right to choose their own political or constitutional status and the economic and social system which suits them best, develop in their own manner and follow their own customs freely without interference by any other State. They also have the right to adopt the policy of their choice in internal and external matters, as long as this policy is not a threat to world peace. Views of this nature were expressed by Cambodia (A/C.6/SR.812, p. 3), Cameroon (GAOR, XVIIth session, 767th meeting, paragraph 36), Cuba (A/C.6/SR.820, p. 14), Ghana (A/C.6/SR.815, p. 17), Hungary (A/C.6/SR.806, p. 6), Mexico (GAOR, XVIIth session, 758th meeting, paragraph 32j), Sierra Leone (ibid., 756th meeting, paragraph 5), Syria (A/C.6/SR.812, pp. 6-7), the Ukrainian SSR (A/C.6/SR.809, p. 6), and Yugoslavia (A/C.6/SR.804, p. 6). Mexico stated in that connexion that the right of every State to develop its own culture, political and economic life freely without outside interference is derived from Article 2 (1) of the Charter, article 1 of the draft declaration on Rights and Duties of States prepared by the International Law Commission, articles 5b, 9 and 13 of the Charter of the Organization of American States; and paragraph 14 of the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States submitted to the Sixth Committee by Czechoslovakia (A/C.6/L.505). In the same connexion, the representative of Ghana also referred to article III, principle I, and article V of the Charter of the Organization of African Unity and principle 3 of the Bandung Declaration.

243. The representative of Cuba emphasized that a theoretical statement of the principles which should govern peaceful coexistence among States independently of their internal systems, the choice of which had been reserved to each State as an attribute of sovereignty, was permitted by political conditions when the Charter had been signed, but that the practical application of them in the years following the Second World War was another matter (A/C.6/SR.820, pp. 6-7).

4. The right of States to participate in the solution of international problems and in formulating and amending the rules of international law

244. A number of Member States declared that, as part of the principle of sovereign equality, all States had the right to participate on an equal footing in international life (Romania, A/C.6/SR.815, p. 5 and Yugoslavia, A/C.6/SR.804, p. 6), without being subjected to pressure or coercion from any other State (Cuba, A/C.6/SR.820, p. 14). Reference was also made to a right of every State to participate in the solution of international problems (Chile, A/C.6/SR.804, p. 12), and in all matters of concern to the international community, and especially in the organization of international public services in which States have a duty to co-operate (Peru, GAOR, XVIIth session, 765th meeting, paragraph 25) subject to the imposition of sanctions under the United Nations Charter (Ghana, A/C.6/SR.815, p. 18).

245. Certain representatives applied the foregoing right to equal participation in international organizations, international conferences and multilateral treaties. The representative of Czechoslovakia stated that in discussing and formulating the principle of sovereign equality of States proclaimed under Article 2 (1) of the Charter, it was above all necessary to take into account that the equality of States emanates from the sovereignty of States as subjects of international law, that all States, irrespective of their differing social and economic systems, have equal rights to participate in international relations and that sovereign equality must apply in all fields of relations between States, including the sphere of international treaties (A/5470, p. 19). In the same connexion the Government of Poland remarked that it was most unfortunate that not all States as sovereign subjects of international law enjoyed equal rights. An eloquent proof of this was the fact that the rights in the sphere of such an essential manifestation of sovereignty as in the free participation in international turnover, had been employed to practically exclude some States from participation in international conferences (A/5470, p. 36). Similar views were expressed by the representatives of Hungary (A/C.6/SR.806, p. 6) and the USSR (A/C.6/SR.802, p. 15), the representative of the latter declaring that no reasons of a political, economic, geographical and other nature could limit the capability of a State to act and assume obligations as an equal member of the international community.

246. The representative of Belgium, however, expressed doubts concerning certain of the views set out in the previous paragraph, if they meant that every State should enjoy the right to join any international organization in which it had a legitimate interest and itself decide on its admission. The existence of any international organization surely implied certain fundamental rules which were its justification and which any Member State must respect if it was to be admitted to take part in its work (A/C.6/SR.824, pp. 6-7).

247. Finally, certain representatives said that all States should participate on equal terms in formulating and amending the rules of international law. The representatives of Bulgaria (A/C.6/SR.807, p. 10) and Chile (A/C.6/SR.804, p. 12) declared that, to be truly universal, international law must meet the needs of all States, including new States, and its universality could be best assured in the process of formulating the law. The representative of the USSR remarked that the rules of international law could be established only on the basis of the sovereign will of the members of the international community founded on mutual respect for their sovereign equality (A/C.6/SR.802, p. 14).

5. The right of States to exploit their natural wealth and resources

248. A number of States expressly declared that an element of the principle of sovereign equality was the right of States to exploit their natural wealth and resources. This view was expressly supported by Afghanistan (A/C.6/SR.812, p. 15), Bulgaria (A/C.6/SR.807, p. 10), Ceylon (A/C.6/SR.805, pp. 13-16, and A/C.6/SR.812, p. 11), Ghana (A/C.6/SR.815, p. 17), Iraq (A/C.6/SR.812, pp. 13-14), Morocco (A/C.6/SR.820, p. 17), Poland (A/C.6/SR.811, p. 7), Syria (A/C.6/SR.812, p. 7), Tanganyika (A/C.6/SR.811, p. 3), and the USSR (A/C.6/SR.812, p. 13). In elaboration of this right it was said that nowadays there could be no political independence without economic independence (Afghanistan, A/C.6/SR.812, p. 15, and Morocco, A/C.6/SR.820, p. 17), the economic having superseded the political factor (Poland, GAOR, XVIIth session, 760th meeting, paragraph 19). It was also stated that the right to exploit natural wealth and resources had been recognized by the General Assembly in its resolutions 626 (VII) and 1803 (XVII) concerning permanent sovereignty over natural resources, and that all States could be expected to take an ever-increasing part in the acquisition, distribution and exchange of all forms of wealth (Bulgaria, A/C.6/SR.807, p. 10).

249. Several States expressed the opinion that the right of States to exploit their natural wealth and resources included the right to suspend or terminate any agreement concerning natural resources, subject only to the obligation in law to provide compensation (Ghana, A/C.6/SR.815, p. 19 and Tanganyika, A/C.6/SR.811, p. 3). A number of representatives stated that the right of nationalization was an inalienable right of sovereign States and that the question of compensation came within the national jurisdiction of the State (Afghanistan, A/C.6/SR.812, p. 15; Ceylon, A/C.6/SR.812, p. 11; Iraq, A/C.6/SR.812, pp. 13-14 and the USSR, A/C.6/SR.812, p. 13). The representative of the United States said that his Government did not question the right of a sovereign nation to nationalize property, provided that it did so in accordance with international law, that there was no treaty or contractual obligations to the contrary and provided that prompt, adequate and effective compensation was paid in accordance with international law (A/C.6/SR.805, p. 17 and A/C.6/SR.812, p. 14).

6. Unequal treaties

250. The question of unequal treaties was the subject of some discussion within the context of the principle of sovereign equality of States. Certain representatives considered that international treaties should be concluded only on equal terms laying down equal rights and duties (Mongolia, A/C.6/SR.819, p. 3; Romania, A/C.6/SR.815, p. 5). The representative of Iraq stated that all vestiges of inequality should be abolished. The new States had yet to be liberated from certain servitudes such as unequal treaties, unfair concessions, de facto privileges and the existence of military bases. He suggested seeking a remedy to unequal situations imposed before independence in the fundamental principle of the sovereign equality of States by interpreting the latter in a manner more consistent with the purposes of the Charter. The study of the principle of sovereign equality might lead to the preparation of a body of rules condemning all situations, de facto or de jure, which were incompatible with that principle even when they had been forced upon those States before their accession to independence (A/C.6/SR.808, p. 4).

251. The representative of Panama said that any peaceful settlement based on the application of unequal treaties concluded under pressure was to be condemned as a

threat to friendly relations and co-operation among States (A/C.6/SR.824, p. 4) and the representative of the Ukrainian SSR declared that leonine treaties were the legal expression of unequal political and economic relations and were opposed to the Charter (A/C.6/SR.809, p. 10).

252. The representative of Cyprus suggested that the analogy drawn with private law in cases of the invalidation of contracts concluded under duress should apply to international agreements concluded when two or more parties were in an unequal bargaining position (A/C.6/SR.824, p. 14). The representatives of Cuba (A/C.6/SR.820, p. 14) and Mongolia (A/C.6/SR.819, p. 3) observed that unequal treaties, which were in contradiction to the principle of sovereign equality, should be deemed or declared null and void.

253. The Government of Sweden took the opposite view when it stated that to proclaim all such treaties invalid, would seem to be a dangerous doctrine and one which had no foundation in present international law. It was especially dangerous to leave it to either contracting party to judge whether or not a treaty was of the invalid type. Such a doctrine might severely undermine the respect for and reliance upon the rule that treaties must be observed - pacta sunt servanda - and might place much of present-day international co-operation on shaky ground. The Swedish Government also observed that under present international law it was, of course, always open to a State party to a treaty which it considers unjust and unfair to seek the consent of the other party to a revision. If negotiations to that end prove unsuccessful, an appeal to the United Nations could be made (A/5470/Add.2, pp. 8-9).

7. The meaning of "sovereignty" and the "primacy of international Law"

254. Some differences of emphasis emerged in the relevant discussions and comment on the principle of sovereign equality concerning the significance of the term "sovereignty" and its relation to the postulate relating to the "primacy of international Law". Some Member States laid particular emphasis on the concept of sovereignty, while others stressed certain limitations stated to be imposed by modern international law. The various views advanced are summarized in the remaining paragraphs of this section.

255. Czechoslovakia said that respect for State sovereignty was one of the principal requisites for the maintenance of world peace and that attempts to violate it were the main obstacle to world peace (General Assembly, Official Records, Seventeenth Session, 753rd meeting, paragraph 24). The representative of Mexico was of the view that sovereignty was the raison d'être of international law and the international legal order. The international legal order was actually a collaboration between equals and not, like the domestic legal order, a subordination between unequals. The disappearance of sovereignty would thus mean the end of international law (A/C.6/SR.806, p. 12). Furthermore, a consequence of sovereignty was the principle that States had the right, within the limits of their own territory, to exercise jurisdiction equally over all inhabitants, whether nationals or aliens (General Assembly, Official Records, Seventeenth Session, 758th meeting, paragraph 32 (i)). The representative of Panama stated that his country was bound to support any declaration of principles reaffirming and clarifying the concept of State sovereignty, since in the Charter it was mentioned too briefly and succinctly (General Assembly, Official Records, Seventeenth Session, 760th meeting, paragraph 13). The representative of the Ukrainian SSR was of the view that State sovereignty was the corner-stone of the whole structure of international law (General Assembly, Official Records, Seventeenth Session, 757th meeting, paragraph 20).

256. Certain States, while emphasizing the primary importance of the concept of sovereignty, referred to some limitations upon it. The representative of Bulgaria pointed out that the documents of the San Francisco Conference indicated that the Charter rejected the idea of absolute sovereignty. Commission I of the Conference had inserted the requirement that a State should fulfil its international obligations[1/] (A/C.6/SR.807, p. 10). It was further stated by the USSR that the authority of the State within its own territory was supreme and independent of other States. This did not mean, however, that a State in its domestic affairs could act arbitrarily without regard to the generally accepted rules of international law or to the international obligations that it had voluntarily assumed. Attempts by powerful States to impose

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1/ UNCIO, Commission I, Vol. 6, p. 248.

their will on small or weak States were gross violations of the principle of sovereignty and the principle of peaceful coexistence (A/C.6/SR.802, pp. 14-15).

257. A suggestion was made that the conditions required for a State to be sovereign should be defined. The representative of Colombia stated that those conditions had been laid down in the Convention on the Rights and Duties of States[1/] signed at Montevideo in 1933. Article 1 of the Convention stipulated that the State as a person of international law should possess the following qualifications: (a) permanent population, (b) a defined territory, and (c) Government and (d) capacity to enter into relations with other States (General Assembly, Official Records, Seventeenth Session, 770th meeting, paragraph 16).

258. Certain other States observed that the concept of State sovereignty had undergone some changes and was tending to lose some of its obsoleteness (Belgium, A/C.6/SR.824, p. 6; Finland, GACR, XVIIIth session, 765th meeting, paragraph 30; A/C.6/SR.822, pp. 14-15; Netherlands, General Assembly, Official Records, Seventeenth Session, 777th meeting, paragraph 14, and Peru. In this respect the representatives of Belgium (General Assembly, Official Records, Seventeenth Session, 766th meeting, paragraph 46) and of Finland drew attention to the effects of the growth of international and regional organizations. The representative of Finland also stated that the newly independent countries attached special importance to a restrictive interpretation of Article 2 (7) of the Charter. But in general there was a trend towards a correlative approach to the Articles of the Charter on sovereignty and the provisions relating to human rights. He suggested that it was vital to define accurately the relationship between State sovereignty and the international legal order established by international law in view of the assertion sometimes made that sovereignty placed States above the law. This assertion conflicted with the international order established by international law (A/C.6/SR.822, pp. 14-15). The Netherlands stressed that it was important to give proper place to the great innovations that the Charter had brought into international law, namely the concepts of an organized world community and of international protection and support of human rights (General Assembly, Official Records, Seventeenth Session, 777th meeting, paragraph 14).

1/ League of Nations, Treaty Series, Vol. CLXV, 1936, No. 3802.

259. The representative of Denmark considered that national sovereignty must not prevent the United Nations from developing into an international body which would settle disputes and safeguard peace and be provided with means of ensuring by force the observance of the rule of law in relations among States (General Assembly, Official Records, Seventeenth Session, 756th meeting, paragraph 21). The representative of Italy stated that while sovereignty was one of the attributes of States, there could be no international law unless States submitted to the authority of international instruments (General Assembly, Official Records, Seventeenth Session, 760th meeting, paragraph 9). In the view of the representative of the United Kingdom the doctrine of sovereignty must rest on the basis of the primacy of international law. Otherwise a powerful State could disregard its obligations (General Assembly, Official Records, Seventeenth Session, 761st meeting, paragraph 12).

260. The representatives of Sweden (A/5470/Add.2, p. 8) and of the United Kingdom (A/C.6/SR.822, p. 20) were also of the opinion that a State might by treaty or other arrangements undertake obligations qualifying or even surrendering a measure of its sovereignty and that such an act was an exercise of full sovereignty and could not be considered as derogating from it. The representatives of Ceylon (A/C.6/SR.805, p. 16) and Cyprus (A/C.6/SR.824, p. 13) observed, however, that there must be limits to that exercise lest a State surrender the substance of its sovereignty to another State. Furthermore, a State could not contract out of its sovereignty and independence while still purporting to be a sovereign and independent State.

8. Rules on voting in regard to international decisions

261. Within the context of the principle of sovereign equality some remarks were made with respect to rules on voting in international organizations and conferences in regard to international decisions. The Government of Jamaica considered that there was need for the continued "progressive" departure from the unanimity rule in regard to international decisions, particularly those of a generally wide international significance. International law would tend to develop along more progressive lines if rules could be agreed upon whereby States would be considered bound by international decisions of great significance, provided these decisions are approved by the vast majority of States and their non-acceptance would create inconvenience for international society. There was little difference between this

position and that in which, irrespective of a State's consent, it is considered bound by existing principles of customary international law of a general nature (A/5470, p. 30).

262. The Government of Sweden stated in this respect that, while the principle "one man one vote" was fundamental and precious, there was no corresponding rule enjoining States forming an international organization by treaty, to provide for equality in voting strength of members, regardless of their size or relative importance to the purpose of the organization. As was well known, under the Charter of the United Nations the great Powers were given a special status which was not accorded to other States. Under many other treaties and constituent instruments formulae of weighted voting were accepted by States. This was undoubtedly practical in many fields and often no regulation would have been attained, but for such arrangements (A/5470/Add.2, p. 8). Sharing this view, and that of the representative of Italy (A/C.6/SR.821, p. 9) to the effect that it was necessary to be realistic and to recognize that, in practice, the economic position of a State was not without importance, the representative of Belgium observed that, in dealing with equality as a principle, one must not allow the positive aspects to blind one to the existence of restrictions (A/C.6/SR.824, pp. 5-6). He further observed that the Charter of the Organization of African Unity provided that all resolutions should be determined by a two-thirds majority and that that provision directly effected the scope of national sovereignty (A/C.6/SR.807, p. 4).

263. The representative of Ceylon noted that, although there might be an equality before the law, in practice all States were not equally capable of securing respect for their rights. He mentioned that even the Charter sanctioned that difference by empowering the Assembly, representing all Members, only to make recommendations while affording the great Powers the so-called right of veto in the Security Council. Thus, the principle of sovereign equality operated mainly to limit the powers of the United Nations rather than safeguard the rights of the weaker States (A/C.6/SR.805, pp. 16-17). The delegate of Colombia also emphasized that it was necessary to acknowledge that the two exceptions to the sovereign equality of States in Articles 23 and 27 of the Charter constitute inequality among States, that that inequality was recognized in the Charter, and that all the Members of the United Nations had accepted it (GAOR, XVIIth session, 770th meeting, paragraph 16).

264. The representative of the United States stressed, however, that the United Nations Charter contained provisions for many distinctions between Members in respect of such things as the right of veto in the Security Council, the amount of money a State had to pay as its dues to the Organization, and so forth, but that the essential features of membership, such as the right to participate fully in the activities of the United Nations and to vote, were, generally speaking, alike for all (A/C.6/SR.825, p. 22).

ANNEX A

General Assembly resolution 1815 (XVII)

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

The General Assembly,

Recalling that the Charter records the determination of the peoples of the United Nations to practise tolerance and live together in peace with one another as good neighbours,

Convinced of the paramount importance of the Charter in the progressive development of international law and in the promotion of the rule of law among nations,

Taking into account that the great political, economic, social and scientific changes that have occurred in the world since the adoption of the Charter have further emphasized the vital importance of the purposes and principles of the United Nations and their application to present-day conditions,

Recognizing the urgency and importance of maintaining and strengthening international peace founded upon freedom, equality and social justice, and therefore of developing peaceful and neighbourly relations among States, irrespective of their differences or the relative stages or nature of their political, economic and social development,

Considering that the conditions prevailing in the world today give increased importance to the fulfilment by States of their duty to co-operate actively with one another and to the role of international law and its faithful observance in relations among nations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation is an impediment to the promotion of world peace and co-operation,

Mindful of the close relationship between the progressive development of international law and the establishment of conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained through the promotion of international co-operation in economic, social and related fields and through the realization of human rights and fundamental freedoms,

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, that disputes be settled by peaceful means in accordance with the Charter, that the arms race be eliminated and general and complete disarmament achieved under effective international control,

Conscious of the significance of the emergence of many new States and of the contribution which they are in a position to make to the progressive development and codification of international law,

Recalling its authority to consider the general principles of co-operation in the maintenance of international peace and security and to make recommendations for the purpose of encouraging the progressive development of international law and its codification,

1. Recognizes the paramount importance, in the progressive development of international law and in the promotion of the rule of law among nations, of the principles of international law concerning friendly relations and co-operation among States and the duties deriving therefrom, embodied in the Charter of the United Nations which is the fundamental statement of those principles, notably:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

(d) The duty of States to co-operate with one another in accordance with the Charter;

(e) The principle of equal rights and self-determination of peoples;

(f) The principle of sovereign equality of States;

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;

2. Resolves to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application;

3. Decides accordingly to place the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" on the provisional agenda of its eighteenth session in order to study:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

(d) The principle of sovereign equality of States; and to decide what other principles are to be given further consideration at subsequent sessions and the order of their priority;

4. Invites Member States to submit in writing to the Secretary-General, before 1 July 1963, any views or suggestions that they may have on this item, and particularly on the subjects enumerated in paragraph 3 above, and requests the Secretary-General to communicate these comments to Member States before the beginning of the eighteenth session.

1196th plenary meeting
18 December 1962

General Assembly resolution 1966 (XVIII)

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

The General Assembly,

Bearing in mind Article 13, paragraph 1 a, of the Charter of the United Nations,

Recalling its resolutions 1505 (XV) of 12 December 1960, 1686 (XVI) of 18 December 1961 and 1815 (XVII) of 18 December 1962, which affirm the importance of encouraging the progressive development of international law and its codificatic and making it a more effective means of furthering the purposes and principles set forth in Articles 1 and 2 of the Charter,

Having decided in paragraph 2 of resolution 1815 (XVII) to undertake pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application, and accordingly to study at the eighteenth session the four principles enumerated in paragraph 3 thereof,

1. Decides to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States - composed of Member States to be appointed by the President of the General Assembly, taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented - which would draw up a report containing, for the purpose of the progressive development and codification of the four principles so as to secure their more effective application, the conclusions of its study and its recommendations, taking into account in particular:

(a) The practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations;

(b) The comments submitted by Governments on this subject in accordance with paragraph 4 of resolution 1815 (XVII);

(c) The views and suggestions advanced by the representatives of Member States during the seventeenth and eighteenth sessions of the General Assembly;

2. Recommends the Governments of the States designated members of the Special Committee, in view of the general importance and the technical aspect of the item, to appoint jurists as their representatives on the Special Committee;

3. Requests the Special Committee to start its work as soon as possible and to submit its report to the General Assembly at its nineteenth session;

4. Requests the Secretary-General to co-operate with the Special Committee in its work, and to provide all the services and facilities necessary for its meetings, including:

(a) A systematic summary of the comments, statements, proposals and suggestions of Member States on this item;

(b) A systematic summary of the practice of the United Nations and of views expressed in the United Nations by Member States in respect of the four principles;

(c) Such other material as he deems relevant;

5. Decides to place an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" on the provisional agenda of its nineteenth session in order to consider the report of the Special Committee and to study, in accordance with operative paragraphs 2 and 3 (d) of resolution 1815 (XVII), the following principles:

(a) The duty of States to co-operate with one another in accordance with the Charter;

(b) The principle of equal rights and self-determination of peoples;

(c) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;

6. Invites Member States to submit in writing to the Secretary-General, before 1 July 1964, any views or suggestions they may have regarding the principles enumerated in paragraph 5 above, and further urges those Member States which have not already done so to submit by that date their views in accordance with paragraph 4 of resolution 1815 (XVII);

7. Requests the Secretary-General to communicate to Member States, before the beginning of the nineteenth session, the comments requested in paragraph 6 above.

1281st plenary meeting
16 December 1963

General Assembly resolution 1967 (XVIII)

Question of methods of fact-finding

The General Assembly,

Recalling that in its resolution 1815 (XVII) of 18 December 1962 the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered is mentioned as one of the principles to be studied at the eighteenth session of the General Assembly,

Recognizing the need to promote further development and strengthening of various means of settling disputes as described in Article 33 of the Charter of the United Nations,

Considering that, in Article 33 of the Charter, inquiry is mentioned as one of the peaceful means by which the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution,

Considering further that inquiry, investigation and other methods of fact-finding are also referred to in other instruments of a general or regional nature,

Believing that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions,

Taking into account that, with regard to methods of fact-finding in international relations, a considerable practice is available to be studied for the purpose of the progressive development of such methods,

Believing that such a study might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek other peaceful means of settlement of their own choice,

1. Invites Member States to submit in writing to the Secretary-General, before 1 June 1964, any views they may have on this subject and requests the Secretary-General to communicate these comments to Member States before the beginning of the nineteenth session;

2. Requests the Secretary-General to study the relevant aspects of the problem under consideration and to report on the results of such study to the General Assembly at its nineteenth session and to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States established under Assembly resolution 1966 (XVIII) of 16 December 1963;

3. Requests the Special Committee to include in its deliberations the subject-matter mentioned in the last preambular paragraph of the present resolution.

1281st plenary meeting
16 December 1963
