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CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY
RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER
OF THE UNITED NATIONS

Report of the Special Committee on Principles of International Law
concerning Friendly Relations and Co-operation among States*

Rapporteur: Mr. Hans Blix (Sweden)

* Item 81 (a) of the provisional agenda.

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ANNEX - Membership of the Special Committee

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CHAPTER I
INTRODUCTION

1. The Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States, established pursuant to General Assembly resolution 1966 (XVIII) of 16 December 1963, hereby submits its report to the General Assembly. This report is organized as follows: the introduction describes the establishment, terms of reference and organization of the session of the Special Committee; chapter II summarizes general remarks made in the Committee concerning the four principles of international law referred to it by the General Assembly in its resolution 1966 (XVIII) and concerning the task of the Committee; chapters III, IV, V and VI deal separately with the four principles setting out, in each case, first the written proposals and amendments submitted to the Committee, secondly an account of the debate in the Committee and thirdly the decisions of the Committee on each principle; chapter VII deals in the same manner with the question of methods of fact-finding, referred to the Special Committee by the General Assembly in its resolution 1967 (XVIII) of 16 December 1963.

A. Tribute to the President, Government and people of Mexico

2. At the outset of its report, the Special Committee wishes to place on record its deep gratitude to the President, Government and people of Mexico through whose most generous hospitality the Special Committee was enabled to hold its session in Mexico City. In this respect, at the conclusion of its work, the Committee adopted by acclamation the following resolution (A/AC.119/L.35):

"The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,

"Having completed its deliberations in Mexico City,

"Expresses its profound appreciation to the President, the Federal Government, and the people of Mexico for their gracious invitation to meet in Mexico City and for the generous hospitality and notable participation in the Committee's work, which has contributed so fully to the accomplishment of the task of the Special Committee."

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B. Establishment and composition of the Special Committee

3. 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 included by the General Assembly in the agenda of its seventeenth and eighteenth sessions. General Assembly consideration of this item at these sessions resulted in the adoption, inter alia, of resolutions 1815 (XVII) of 18 December 1962, and 1966 (XVIII) and 1967 (XVIII) of 16 December 1963. By paragraph 1 of its resolution 1966 (XVIII), the General Assembly decided:

"... 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 ...".

The President of the General Assembly, pursuant to the above provision, appointed the following Member States to serve on the Special Committee (A/5689):

Afghanistan, Argentina, Australia, Cameroon, Canada, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia. Before the convening of the session of the Special Committee, Afghanistan informed the Secretary-General that, for unavoidable reasons, it was compelled to resign from membership in the Committee. The President of the General Assembly thereupon appointed Burma to replace Afghanistan in order to complete the membership of the Special Committee (A/5727). By letter of 2 September 1964, Cameroon informed the Secretary-General that it would be unable to participate in the session of the Special Committee.

4. In paragraph 2 of its resolution 1966 (XVIII), the General Assembly recommended 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". The list of representatives to the Special Committee, appointed in the light of this provision, is contained in annex I to the present report.

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C. Terms of reference of the Special Committee

5. At the seventeenth session of the General Assembly, the Assembly resolved, by operative paragraph 2 of its 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 ...".

It decided, accordingly, in operative paragraph 3 of the same resolution, to study four such principles at its eighteenth session, namely:

"(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; and

"(d) The principle of sovereign equality of States."

These principles were referred to the Special Committee by the General Assembly, resolution 1966 (XVIII) providing, in operative paragraph 1, that the Committee 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 eighteen sessions of the General Assembly."

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6. To assist the Committee in its task, the General Assembly requested the Secretary-General, in operative paragraph 4 of resolution 1966 (XVIII), to furnish it with certain documentation. In compliance with this request the Secretary-General provided the Committee, inter alia, with:

- (a) A 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 (A/AC.119/L.1 and Corr.1).
- (b) A summary of the practice of the United Nations and of views expressed in the United Nations by Member States in respect of four of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/AC.119/L.2 and Corr.1).

The Committee also had available to it the comments from Governments on the four principles concerned (A/5725 and Add.1-6), the relevant records of the Sixth Committee and the General Assembly at the sixteenth,^{1/} seventeenth,^{2/} and eighteenth^{3/} sessions of the Assembly,^{1/} and selected background documentation prepared by the Secretariat (A/C.6/L.537/Rev.1 and Corr.1).

7. In addition to the mandate conferred on the Special Committee by resolution 1966 (XVIII), the General Assembly also requested it, by resolution 1967 (XVIII), to include in its deliberations the question of methods of fact-finding. This resolution reads, in part, as follows:

- 1/ Official Records of the General Assembly, Sixteenth Session, Annexes, agenda item 70; ibid., Sixth Committee, 713th to 730th meetings; ibid., Plenary Meetings, 1081st meeting.
- 2/ Ibid., Seventeenth Session, Annexes, agenda item 75; ibid., Sixth Committee, 753rd to 774th and 777th meetings; ibid., Plenary Meetings, 1196th meeting.
- 3/ Ibid., Eighteenth Session, Annexes, agenda item 71; ibid., Sixth Committee, 802nd to 825th, 829th and 831st to 834th meetings, ibid., Plenary Meetings, 1281st meeting.

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"The General Assembly,

"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,

...

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

8. Comments submitted by Governments, pursuant to operative paragraph 1 of the above resolution were placed before the Special Committee in documents A/5725 and Add.1-6, and a report of the Secretary-General on methods of fact-finding, requested in operative paragraph 2 of the same resolution, was made available to the Committee in document A/5694.

D. Organization of the session of the Special Committee

9. After the conclusion of the eighteenth regular session of the General Assembly, the Government of Mexico, as already mentioned in paragraph 2 above, extended to the Special Committee, through the Secretary-General, an invitation to hold its session in Mexico City. After informal consultations between the Secretary-General and the States members of the Special Committee, it was decided to accept this invitation and, in consultation with the host State, a five-week session of the Committee was determined upon, to take place between 27 August and 1 October 1964.

10. The Committee held forty-three meetings in the course of its session. At its first meeting, on 27 September 1964, it elected the following officers:

Chairman: Mr. A. García Robles (Mexico)

First Vice-Chairman: Mr. Vratislav Pěchota (Czechoslovakia)

Second Vice-Chairman: Mr. K. Krishna Rao (India)

Rapporteur: Mr. Hans Blix (Sweden).

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The Secretary-General of the United Nations was represented by Mr. C.A. Stavropoulos, Under-Secretary, Legal Counsel. Mr. C.A. Baguinian, Acting Director of the Codification Division of the Office of Legal Affairs, served as Secretary.

11. At its second meeting, on 28 August 1964, the Special Committee agreed on a tentative plan of work (A/AC.119/4) designed to allow for the consideration, in the time available to it, of all four principles of international law before it, as well as the question of methods of fact-finding. Under this plan of work the Committee agreed to adopt a seriatim approach to the four principles and other matters before it, and to attempt to complete its work on each principle and on the question of methods of fact-finding within a certain number of meetings separately allocated to all these topics. The Committee also agreed to give early consideration to the establishment of a Drafting Committee.

12. At its fifteenth meeting, on 8 September 1964, the Special Committee adopted the following resolution (A/AC.119/5):

"The Special Committee

"Decides to establish a Drafting Committee composed of fourteen members with the following terms of reference:

When the discussion of a subject has been completed, the Drafting Committee should consider the proposals, amendments and records of the Special Committee.

On each principle and on the question of fact-finding, the Drafting Committee should have the task of preparing, without voting:

- (1) a draft text formulating the points of consensus; and
- (2) a list itemizing the various proposals and views on which there is no consensus but for which there is support.

As envisaged by the plan of work (A/AC.119/4), the drafts formulated by the Drafting Committee on each subject should be distributed to the Special Committee as soon as they have been prepared. They will be considered together by the Special Committee, at the time reserved in the plan of work for their discussion in the Special Committee, for possible inclusion in its report to the General Assembly."

The Special Committee also decided, at the same meeting, that the members of the Drafting Committee and its Chairman should be appointed by the Chairman of the

Special Committee. The Chairman announced, at the nineteenth meeting of the Special Committee, on 10 September 1964, that the Drafting Committee would be composed of the representatives of the following fourteen members of the Special Committee: Argentina, Australia, Burma, Czechoslovakia, France, Ghana, Italy, Lebanon, Mexico, Nigeria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

He further stated that Italy would serve on the Drafting Committee during its consideration of the four principles, but would be replaced by the Netherlands during the Drafting Committee's consideration of the question of methods of fact-finding. Finally, the Chairman announced that the Drafting Committee would meet under the chairmanship of Mr. A. Fattal (Lebanon), and that the Rapporteur of the Special Committee would be permitted to attend sessions of the Drafting Committee as an observer.

13. At its thirty-fourth meeting, on 24 September 1964, the Special Committee reviewed the plan of work (A/AC.119/4) it had adopted (see para. 11 above) in the light of the progress achieved. It decided to revise the number of meetings and dates allocated to certain matters still outstanding and agreed that the Committee should extend its session by a further day, namely until and including 2 October 1964.

14. In view of the fact that the proposals relating to fact-finding which were submitted to the Special Committee, and which took the form of draft resolutions, were of a procedural and not of a substantive character, the Special Committee decided, at its thirty-seventh meeting, on 29 September 1964, that these proposals, instead of being referred to the Drafting Committee, should be studied by a working group, composed of Guatemala, the Netherlands and the United Arab Republic, which should endeavour to submit to the Special Committee a single draft resolution acceptable to all the sponsors of the original proposals (see para. 375 below).

15. At its thirty-eighth meeting, on 29 September 1964, the Special Committee considered further the manner in which the Drafting Committee should, as required in its terms of reference (see para. 12 above), prepare the list itemizing proposals and views on which there was no consensus but for which there was support. On the proposal of the Chairman, the Special Committee decided that the list should be prepared in the manner followed in the present report.

CHAPTER II

GENERAL COMMENTS ON THE PRINCIPLES REFERRED TO THE SPECIAL COMMITTEE AND ON THE TASK OF THE COMMITTEE

A. General comments on the principles referred to the Special Committee

16. It was generally agreed that the four principles referred to the Special Committee by the General Assembly in its resolution 1966 (XVIII) constituted cornerstones of peaceful relations among States. Far from being subordinate branches of international law, they were its very heart, and binding upon all States as general principles of law. They were also basic to a true understanding of the meaning of the Charter. It was said that the "consideration of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter" was perhaps the most important item ever discussed by the Sixth Committee of the General Assembly, and that the Special Committee must approach its task with this in mind.

17. It was further said that only through the application of the principles before the Special Committee could world peace be established and the scourge of war eliminated. Peaceful coexistence and co-operation among nations regardless of differences in their social and economic systems was the only basis on which peace and security could rest. Conditions were now propitious for strengthening peace and peaceful coexistence through the codification and progressive development of international law, and, more particularly, of its fundamental principles as expressed in the United Nations Charter and other instruments of world significance. In these circumstances the Special Committee could contribute to the universal observance of international law, which should be binding on all countries, large or small, weak or strong.

18. Representatives stressed the complexity of the four principles before the Special Committee, as they went to the very root of peaceful relations among States. They also emphasized the part played by those principles in determining the policies of their respective Governments, and expressed the hope that the Special Committee would spare no effort in seeking to strengthen and elucidate the principles before it.

B. Task of the Special Committee

19. The great majority of representatives commented upon their understanding of the task of the Special Committee, in the light of its terms of reference. Many of them were of the opinion that the results of the Committee's work should be embodied in a draft declaration or set of formulations for submission to the General Assembly. The view was also expressed that the formulations prepared by the Committee might eventually serve, when the General Assembly had completed its consideration of all the principles of international law concerning friendly relations and co-operation among States, as a basis for preparing separate conventions. A variety of views, however, were expressed on the scope and content of any declaration or formulations to be prepared by the Special Committee. These views are summarized below.

20. It was said, by some representatives, that if the Special Committee prepared a draft declaration, such a declaration should be more than a mere reiteration of the provisions of the Charter and should take account, as required in operative paragraph 1 of General Assembly resolution 1966 (XVIII), of the evolution that had occurred in international law during the past twenty years, both in the practice of States and of the United Nations and as a result of the work of the Sixth Committee at the seventeenth and eighteenth sessions of the General Assembly; it should also take account of the provisions of various multilateral treaties and of certain declarations of major international significance. Only by giving due weight to factors of the foregoing nature could the Special Committee properly discharge its function of presenting a report, under resolution 1966 (XVIII), which would contain the conclusions of its study and its recommendations "for the purpose of the progressive development and codification of the four principles so as to secure their more effective application". The Special Committee had functions to perform similar to those of the International Law Commission, under Article 15 of its Statute, with respect to the codification and progressive development of international law. These functions also came expressly within the competence of the General Assembly under Article 13 of the Charter. As the International Law Commission and the General Assembly had found, it was virtually impossible to distinguish between codification and progressive development.

21. It was further argued that only by preparing concrete texts, for inclusion in conventions or a declaration, could the Special Committee secure the more effective application, as required by its terms of reference, of the four principles before it. Certain representatives stressed that the General Assembly had already recognized that the Charter was incomplete in certain respects, and could be supplemented by the adoption of Declarations codifying and developing certain Charter Articles, such as the Universal Declaration of Human Rights (General Assembly resolution 217 (III) A of 10 December 1948), the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960) and the Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 1904 (XVIII) of 20 November 1963). These Declarations had been adopted without anyone having objected that they were contrary to the Charter or violated the amendment procedures provided for in Articles 108 and 109 of the Charter. It was further said that Declarations had proved to be of great practical importance and had, in some instances, become, through general acceptance, part of the common law of mankind.

22. Certain other representatives did not wholly share the foregoing views. While not ruling out the possibility of a declaration, some of these representatives expressed doubts about the utility of hasty declarations or statements which proclaimed in a non-binding fashion principles already binding upon States under the Charter. Where there had been failures on the part of the United Nations, this had not been due to lack of clarity of Charter principles or of their expression in detailed codes but to the fact that certain States were not resolved to support any international system of law. In the absence of such a resolve, declarations or detailed formulations would have little utility in strengthening the application of the four principles before the Special Committee.

23. Some representatives also stressed that the Special Committee could not revise the Charter through the guise of "progressive development". If it sought to do so it would be acting outside its terms of reference and contrary to the provisions of the Charter which established procedures for amendment. It was further said that, on the pretext of spelling out the meaning of Article 2 of the Charter, certain representatives were attempting to add to it a number of entirely new concepts which themselves required definition and which in some cases were no more than political ideas. It was legitimate for the Special Committee to

comment on and explain the four principles which the Assembly had asked it to study, but it could not go beyond that function to distort the meaning of the Charter. In drawing up its report, the Committee could express the opinion that the Charter suffered from certain deficiencies and compile a list of the points in which it no longer fully met the needs of the international community; but a clear distinction must be drawn between what was actually contained in the Charter and what was not. The Committee must always keep in mind the distinction between the lex lata and the lex ferenda.

24. It was further said that declarations could be a useful method of making progress towards the development of new law in certain new and unknown fields, where Member States wished to break new ground: an example was the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly resolution 1962 (XVIII) of 13 December 1963). However, the Special Committee was dealing with principles enshrined in the very heart of the Charter. If it extended or distorted those principles beyond their true meaning it would do violence to the Charter itself and members of the Committee should therefore show a high sense of responsibility and restraint and must carefully confine themselves to those elements of the principles which were universally acknowledged to be necessary and direct corollaries of the Charter principles.

25. It was also said that the task of the Special Committee differed from that of the International Law Commission, in that the latter traditionally prepared draft articles for ultimate adoption by States, whereas the Special Committee had been set up to study certain principles and present a report capable of adoption by the General Assembly. Resolutions of the General Assembly did not in themselves constitute international law, but they might represent an important step in the process of making international law. The most important element in the process of evolving international law was universality. Resolutions adopted by a mere majority did not show what international custom was; accordingly, the Committee's basic function in studying the four principles was to ascertain the area in which there was a consensus among delegations. The Committee should aim at producing a document indicating the area of consensus within the Committee and capable of unanimous adoption by the General Assembly. However, the proposals placed before the Committee showed wide areas of disagreement; and while stress should be laid on areas of agreement it was important also that matters on which there was no agreement should be recorded.

CHAPTER III

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. Written proposals and amendments

26. Written proposals concerning the first principle considered by the Special Committee, namely the principle indicated in the title of the present chapter, were submitted by Czechoslovakia (A/AC.119/L.6), by Yugoslavia (A/AC.119/L.7), by the United Kingdom of Great Britain and Northern Ireland (A/AC.119/L.8) and jointly by Ghana, India and Yugoslavia (A/AC.119/L.15). On the submission of this latter joint proposal, Yugoslavia, as one of the co-sponsors, withdrew its original proposal. Italy introduced an amendment (A/AC.119/L.14) to the United Kingdom proposal. The texts of the foregoing proposals and amendment are set out below in the order of their submission to the Special Committee.

27. Proposal by Czechoslovakia (A/AC.119/L.6)

"Prohibition of the threat of force or use of force in international relations

"1. The threat of force 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, including the threat of force or use of force as a means of solution of territorial disputes and problems concerning frontiers between States, shall be prohibited.

"2. The planning, preparation, initiation and waging of a war of aggression shall constitute international crimes against peace giving rise to political and material responsibility of States and penal liability of the perpetrators of those crimes.

"3. Any propaganda for war, incitement to or fomenting of war and any propaganda for preventive war and for striking the first nuclear blow shall be prohibited. States shall take, within the framework of their jurisdiction, all measures, in particular legislative measures, in order to prevent such propaganda.

"4. States shall refrain from economic, political or any other form of pressure aimed against the political independence or territorial integrity of any State.

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"5. The prohibition of the use of force shall not affect either the use of force pursuant to a decision of the Security Council made in conformity with the United Nations Charter or the rights of States to take, in the case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the United Nations Charter, or self-defence of nations against colonial domination in the exercise of the right to self-determination.

"6. In order to secure full effectiveness of the prohibition of the threat or use of force, States shall act in such a manner that an agreement for general and complete disarmament under effective international control will be reached as speedily as possible and will be strictly observed."

28. Proposal by Yugoslavia (A/AC.119/L.7)

"The threat or use of force

"1. The threat or use of force in any manner inconsistent with the Charter of the United Nations shall be eliminated from international relations and shall never be used as a means of settling international issues.

"2. States shall, accordingly, desist from resorting to, or relying upon, force in any of its forms in their relations with other States, and from exerting pressure, whether by military, political, economic, or any other means, against the political independence or territorial integrity of any other State.

"3. Any situation brought about by such means shall not be recognized.

"4. The prohibition of the use of force shall not affect either the use of collective measures pursuant to a decision of the Security Council or of the General Assembly made in conformity with the United Nations Charter, or the rights of States to take, in the case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the United Nations Charter, nor shall it affect the right of nations to self-defence against colonial domination in the exercise of the right of self-determination."

29. Proposal by the United Kingdom (A/AC.119/L.8) and amendment by Italy (A/AC.119/L.14)

Proposal by the United Kingdom

"Threat or use of force

"Statement of principles

"1. Every State has the duty to refrain in its 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.

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"2. By the expression 'force' as used in paragraph 1 above is meant armed force. Armed force includes both the use by a Government of its regular naval, military or air forces and of irregular or volunteer forces.

"3. The prohibition of the threat or use of force embraces the duty of ... every State to refrain from organizing or encouraging the organization of armed bands within its territory or any other territory for incursions into the territory of another State.

"4. The prohibition of the threat or use of force embraces both the direct and indirect use of force. Accordingly, every State is under a duty to refrain from fomenting civil strife or committing terrorist acts in another State, or from tolerating organized activities directed towards such ends.

"5. The use of force is lawful when undertaken by or under the authority of a competent United Nations organ, including in appropriate cases the General Assembly, acting in accord with the Charter, or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence."

"Commentary

"(1) Paragraph 1 reproduces verbatim, in the form of a statement of the duties of States, the language of Article 2, paragraph 4, of the Charter; this is the basic principle enshrined in the Charter from which the other subsidiary principles set out in paragraphs 2 to 5 necessarily flow. Article 2, paragraph 4, of the Charter cannot, however, be viewed and interpreted in isolation. It must be considered in the context of the Charter as a whole, bearing in mind the purposes and principles stated in the preamble and in Articles 1 and 2 as well as the provisions of Chapters VI and VII and notably Article 51. In particular, there is a clear and vital connexion between Article 2, paragraph 4, and Article 39 which deals with any 'threat to the peace, breach of the peace, or act of aggression'. The phrase 'threat or use of force' as used in Article 2, paragraph 4, is not wholly co-extensive with the language of Article 39, but the practice of the United Nations shows clearly that allegations of violations of the principle enshrined in Article 2, paragraph 4, have almost invariably been framed in terms of Article 39. The powers and functions of the Security Council under Chapters VI and VII of the Charter in relation to the maintenance and restoration of international peace and security cover much wider ground than is comprehended within Article 2, paragraph 4, of the Charter; but it is nevertheless beyond dispute that the machinery set up under Chapters VI and VII of the Charter whereby the Security Council carries out its primary responsibility for the maintenance and restoration of international peace and security constitutes the framework within which allegations of violations of the basic principle prohibiting the threat or use of force can be investigated and determined.

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"(2) Paragraph 2 explains what is meant by the term 'force'. The travaux préparatoires of the San Francisco Conference indicate that, in the context of Article 2, paragraph 4, of the Charter, the expression 'force' means physical force or armed force and does not include economic or political pressure. The second sentence of this paragraph incorporates the well-established principle that the use of irregular forces or volunteers under Government control in order to participate in a military campaign or to support active rebel groups constitutes a use of force within the meaning of the general prohibition in paragraph 1.

"(3) Paragraph 3 deals with the case where the threat or use of force results from the connivance or collusion by the authorities of a State in activities whereby armed bands are organized on its territory or permitted to use its territory as a base for the purpose of effecting incursions into the territory of another State. The principle imputing responsibility to any State which organizes or encourages such activities is clearly established, although, in particular cases, it may not always be easy to determine the true facts of the situation.

"(4) Paragraph 4 deals with another aspect of what is sometimes referred to as 'indirect aggression'. A definitive list of the actions which might be considered to fall within the concept of 'indirect aggression' would however be impossible to compile since it would of necessity have to deal with the whole range of subversive activities which may take many forms. Hence, the well-established principle which imputes responsibility of any State which engages in such activities is expressed in generalized terms, and its application in particular cases may give rise to differences of view because of the inherent difficulty of establishing the facts of the situation.

"(5) Paragraph 5 sets out in a non-exhaustive manner the principal circumstances in which the use of force is lawful. It is based on and reflects a number of provisions in the Charter, including Article 2, paragraph 4 and Article 10 and Chapters VII and VIII. Circumstances in which force may be used vary widely and an exhaustive definition of them would be impracticable.

"(6) The necessary complement to the prohibition of the threat or use of force is the duty of every State to settle its international disputes by peaceful means in such a manner that international peace and security and justice are not endangered."

30. The amendment (A/AC.119/L.14) submitted by Italy to the United Kingdom proposal was to the effect that the following paragraph 6 should be added to the Statement of Principles:

"6. In order to ensure effectiveness of the prohibition of the threat or use of force in international relations, States shall endeavour to make the United Nations security system more effective and shall comply fully and in good faith with the obligations placed upon them by the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security."

It was further explained, in the amendment, that, while it was, in principle, advanced to the United Kingdom proposal, it should also be understood, should that proposal not be adopted, as an addition to both the proposals of Czechoslovakia (new paragraph 7), and of Yugoslavia (new paragraph 5).

31. Proposal by Ghana, India and Yugoslavia (A/AC.119/L.15)

"The threat or use of force

"1. Every State has the duty to refrain in its international relations from 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; such threat or use of force shall be eliminated from international relations and shall never be used as a means of settling international issues.

"2. The term 'force' shall include:

(a) the use by a State of its regular naval, military or air forces and of irregular or voluntary forces;

(b) other forms of pressure, which have the effect of threatening the territorial integrity or political independence of any State.

Any situation brought about by such means shall not be recognized.

"3. The prohibition of the use of force shall not affect either the use of force pursuant to a decision by a competent organ of the United Nations made in conformity with the Charter, or the rights of States to take, in case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter, or the right of peoples to self-defence against colonial domination in the exercise of their right to self-determination.

"4. No threat or use of force shall be permitted to violate the existing boundaries of a State and any situation brought about by such threat or use of force shall not be recognized by other States.

"5. Nothing in the present Chapter shall authorize any State to undertake acts of reprisal."

B. Debate

1. General comments

32. In their general comments on the principle which forms the subject of this chapter, representatives agreed that it represented a peremptory norm of international law, binding upon all States. Various representatives traced the

history and development of the principle in their respective national cultures and legislation and they cited examples of its embodiment in particular or general international conventions to which they were parties and in international declarations to which they had subscribed. Reference was made, inter alia, to the Convention respecting the limitation of the employment of force for the recovery of contract debts, The Hague, 1907; the Treaty for the Renunciation of War, Paris, 1928 (the Kellogg-Briand Pact); the Anti-War Treaty of Non-Aggression and Conciliation, Rio de Janeiro, 1933; the Charter of the Organization of American States, Bogota, 1948, and the Charter of the Organization of African Unity, Addis Ababa, 1963; the Act of Chapultepec, Mexico City, 1945; the Declaration on World Peace and Co-operation, Bandung, 1955 (Bandung Declaration); the Declaration of the Heads of State or Government of non-aligned countries, Belgrade, 1961 (Belgrade Declaration), and the Declaration of the Council of the Heads of African States or Governments, Cairo, June 1964.

33. The history of the development of the principle was also traced by a number of representatives. It was said that the prohibition of the use or threat of force was the outcome of a long process of development. In the earlier development of international law the question of the legality of war had not arisen. However, as the field of decision of States with respect to recourse to war had been narrowed by instruments such as the Covenant of the League of Nations and the Kellogg-Briand Pact, there had been an increasing centralization in international society of the power of decision regarding war and peace. The Charter represented a particularly great step forward, in that it extended the prohibition on recourse to aggressive wars, established in the Kellogg-Briand Pact, to the use of force in general and even to the threat of the use of force. Moreover, the Charter went further than any other previous international instrument in depriving individual States of the power of deciding whether their actions at the international level involving the use of force were founded in law, the existence of the United Nations signifying, above all other factors, the political and legal centralization of such power for the purpose of maintaining peace. Not only did the Charter vest the power of decision in bodies representing the international community, but also vested in them the power of enforcement through the right to decide upon and apply sanctions. However, certain representatives stated, under the Charter system the centralization of powers of

decision and action was not complete as the system of collective security, laid down in the Charter, depended, in the last analysis, upon the voluntary co-operation of Member States if it were to function. In order to remedy the limitations and imperfections of the Charter system it had been realized, at the time that the Charter was drafted, that an exception would have to be made in favour of States by authorizing them to use force in cases of self-defence as defined and limited by the Charter. It was also said by some representatives that the only organ which is competent to take decisions regarding enforcement action is the Security Council and that the right of self-defence exists under Article 51 only in the case of an armed attack.

34. It was stressed that, in defining the rights and duties of States with respect to the prohibition on the threat or use of force, Article 2, paragraph 4, of the Charter could not be interpreted in isolation, but must be taken within the totality of the related rights and duties established in the Charter. The prohibition of the resort to force in Article 2, paragraph 4, was balanced on the one hand by the positive duty incumbent upon Member States under Article 2, paragraph 3, to settle disputes by peaceful means and by the powers vested in United Nations bodies in Chapter VI of the Charter with respect to the pacific settlement of disputes, and, on the other hand, by the powers granted the Organization - particularly the Security Council in Chapter VII of the Charter - to maintain or restore international peace and security.

35. It was also stressed that the prohibition on the threat or use of force must be interpreted today in the light of developments since the Charter was drafted. It was necessary to take into account the practice of the United Nations with respect to that prohibition and the role which the Organization had played in interpreting the law in each particular case and in taking the necessary action in seeking to restore or maintain peace. One representative said, in this respect, that to formulate general rules might detract from the competence of the Organization and reduce its contribution in the interpretation, application and development of Charter principles. It was further said that, in addition to practice under the Charter, account must also be taken of international instruments concluded since the Charter and embodying similar principles. Finally, it was necessary to give due weight to the changes of the last twenty years. In this latter respect, reference was made to the collapse of the colonial system, the

emergence of the newly independent States, the development and progress of the socialist countries, and the great advances in science and technology, particularly in the field of the atom and the exploration of outer space.

2. Meaning of the term "in their international relations"

36. While no written proposals were submitted seeking to elucidate this point, several representatives commented upon the term "in their international relations" as it appeared in Article 2, paragraph 4, of the Charter. Those who discussed the point generally agreed that the term had the effect of limiting the prohibition in Article 2, paragraph 4, to disputes between States. Thus the Charter did not prohibit disturbances and civil wars within any particular State, or the use of force by that State in such disturbances or wars. However, difficulties of interpretation could arise if a particular group or community claimed international personality and recognition as a State, as such a group or community might invoke Article 2, paragraph 4, of the Charter and the right of self-defence while its adversary denied that it was entitled to do so.

3. Meaning of the term "against the territorial integrity or political independence of any State"

37. A few representatives also commented upon their understanding of the meaning of the term "against the territorial integrity or political independence of any State" as contained in Article 2, paragraph 4, of the Charter. However, as in the case of the previous point, no written proposals were submitted attempting to define it. Some of these representatives said that the term in question did not limit or circumscribe the prohibition on the threat or use of force contained in the same Article. It had been inserted at San Francisco in order to guarantee the territorial integrity and political independence of small and weak States, and was not intended to mean that one State could use force against another on the pretext that it had no designs on the latter's territorial integrity or political independence but sought to maintain the established constitutional order or to protect a minority, or on any other pretext. It was also pointed out that force could not be exercised in the abstract; when used, it was directed against an international legal entity, including its political organization, population and territory.

38. One representative indicated his view that the interpretation of the term could give rise to difficulties. From the discussions at San Francisco and from the analyses of certain jurists it might appear that the term had a limiting effect. If this were correct, did, for example, certain types of border incidents in fact amount to a use of force against the territorial integrity of a State, when the very issue at stake was that of sovereignty over a particular area and when each party maintained the other to be guilty of aggression?

39. It was generally agreed that the words "any State", in the term under discussion, made it clear that Article 2, paragraph 4, was addressed to all States, both Members of the United Nations and non-members. In this respect it was argued that, since non-members benefited from the provisions of Article 2, paragraph 4, they were also, by virtue of reciprocity, bound by that Article. They were also bound by it, as its provisions now constituted a general rule of law. However, the question still remained: what was a "State"? One representative said that the practice of the United Nations had been not to give the concept of a State too liberal a content. Another representative agreed that there might be disagreement on whether a particular entity constituted a State. Nevertheless, if a State used force against an entity, claiming that it did not constitute a State, it might be in breach of Article 2, paragraph 4, and it would be for the competent United Nations organ to determine whether the entity in question was in fact a State.

4. Meaning of the term "threat of force"

40. A few representatives commented on the meaning of the term "threat of force" as it appeared in Article 2, paragraph 4, of the Charter, without making any formal proposals with respect to it. It was stated that a threat of force could be direct or indirect, and that it could be expressed not only in deeds but also in words.

41. One representative emphasized a need for caution should the Special Committee decide to examine in detail the meaning of the term "threat of force", as it raised many problems. In this respect he posed a number of questions, without stating any position as to the answer which should be given to them. Did a "threat" of force include an increase in military potential? Must such a threat be openly made and communicated to the State threatened? Furthermore, how could it be determined to what extent a State making a threat was resolved to go? Could a "threat of force"

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be recognized as having the character of an aggression thus giving rise to the exercise of the right of self-defence? Did foreign military bases constitute a "threat", as some States claimed, or was not the point here involved political rather than legal?

5. Definition of the term "force"

(i) Armed force: regular and irregular or volunteer forces; armed bands; indirect aggression and armed reprisals

42. The proposals of Czechoslovakia (A/AC.119/L.6) and of Yugoslavia (A/AC.119/L.7) made only general reference to armed force, and did not spell out the various forms of such force which the sponsors of those proposals considered to come within the prohibition of the threat or use of force contained in Article 2, paragraph 4, of the Charter. The proposal of the United Kingdom (A/AC.119/L.8, para. 2 (see para. 29 above)), on the other hand, stated that the term "force" meant armed force, and that it included the use by a Government of both regular forces and of irregular or volunteer forces. While not limiting itself to armed force, the joint proposal of Ghana, India and Yugoslavia (A/AC.119/L.15, para. 3 (see para. 31 above)) also specified that the term "force" included the use of regular and of irregular or volunteer forces. The United Kingdom proposal (A/AC.119/L.8, paras. 4 and 5 (see para. 29 above)) further contained provisions to the effect that States must refrain from organizing or encouraging the organization of armed bands for incursions into the territory of another State, and that the prohibition of the threat or use of force also embraced the direct or indirect use of force, every State thus being required to refrain from fomenting civil strife or committing terrorist acts in another State. Finally, the joint proposal of Ghana, India and Yugoslavia (A/AC.119/L.15, para. 5 (see para. 31 above)) contained a proviso to the effect that nothing in that proposal authorized any State to undertake acts of reprisal.

43. It was generally agreed that the prohibition of the threat or use of force embraced the threat or the use of regular armed forces in a manner contrary to Article 2, paragraph 4, of the Charter. Some brief discussion took place regarding volunteer forces, armed bands, direct and indirect uses of force and reprisals, and while a certain degree of consensus emerged on these matters, as described in the remainder of this sub-section of the present report, the Special Committee was

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unable to arrive at a consensus on a comprehensive definition of "force" in view, inter alia, of a disagreement as to whether the term embraced political, economic and other forms of pressure (see paras. 47 to 62 below).

44. Certain representatives stated that it would be too much of a simplification to restrict "armed force" to the classic concept of military invasion of a foreign territory: it must also include irregular forces or armed bands leaving a State to operate in another State and any military support by a State of subversive activities in another State. These were practices which were the cause of dangerous tensions in many parts of the world. Furthermore, references to these various forms of armed force in any formulation adopted by the Committee would be not only desirable but would also be consonant with the corresponding provisions of the draft code of offences against the peace and security of mankind adopted by the International Law Commission.

45. In this respect, it was also pointed out that consideration should be given to attempting to establish the point at which the responsibility of a State arose in connexion with the use of regular or irregular and volunteer forces. Thus, the presence of foreign military forces in the territory of a State without its authorization or after the withdrawal of that authorization was a usurpation of the State's sovereignty, but there were similar cases which were far less simple. Although the dispatch of volunteers might be considered a form of indirect aggression, a whole range of situations must be envisaged, from the departure of individual volunteers - which entailed no violation of the principle of neutrality - to open participation in operations under the fiction of "the dispatch of volunteers". As regards the participation of individual volunteers in military actions, it was further stated that the legality of such participation had been recognized in all the relevant conventions concerning the laws and customs of war concluded from 1864 to 1949, including the Hague Convention of 1907 respecting the laws and customs of land warfare, and that this right was of particular importance for all cases where peoples were struggling against colonial domination. However, it was also pointed out that United Nations practice had taken a rather different point of view in connexion with the activities of volunteers in the Congo. Anyway, what should be prohibited was not the isolated cases of individual volunteers, but those in which States or Governments attempted to evade the prohibition of the threat or use of force by the transparent device of organizing irregular or volunteer forces to participate in armed ventures outside their own territory.

46. The opinion was expressed, with regard to armed reprisals, that such reprisals could not normally be placed on the same footing as self-defence. Reprisals were usually understood to mean an action taken after the fact, in other words, an act of revenge. They therefore fell within the scope of Article 2, paragraph 4. The Security Council had expressly recognized that view in its resolution of 9 April 1964 (S/5650) when it had condemned reprisals as being incompatible with the purposes and principles of the United Nations. This view should therefore find expression in any formulation adopted by the Special Committee. It was also stated, however, that the difficulty of defining reprisals might make it inadvisable to make direct reference to them in the formulations adopted by the Special Committee.

(ii) Economic, political and other forms of pressure or coercion

47. The proposals of Czechoslovakia (A/AC.119/L.6, para. 4 (see para. 27 above)) and of Yugoslavia (A/AC.119/L.7, para. 2 (see para. 28 above)) contained provisions to the effect that States should refrain from economic, political or any other forms of pressure against the political independence or territorial integrity of any State, while the joint proposal by Ghana, India and Yugoslavia (A/AC.119/L.15, para. 2 (see para. 31 above)) laid down that the term "force" included, in addition to armed force, "other forms of pressure, which have the effect of threatening the territorial integrity or political independence of any State". It also contained, as already pointed out (see para. 42 above), a proviso to the effect that nothing contained in it authorized any State to undertake acts of reprisal. The Special Committee debated in considerable detail whether the term "force" embraced pressures of the foregoing nature, and was unable to arrive at any consensus on this point, which was considered in the light of (a) the interpretation of Article 2, paragraph 4, both in its context in the Charter and with reference to other relevant Articles; (b) the legislative history of Article 2, paragraph 4, and (c) developments since the Charter and the current requirements of the world community. The debate on these aspects is summarized below.

48. It was generally agreed that Article 2, paragraph 4, could not be interpreted in isolation but must be read within the context of related Articles of the Charter. Representatives who were of the view that the term "force" embraced political, economic and other forms of pressure argued that where the Charter meant "armed force" it used that term, as, for example, in the Preamble and in Article 46. Where

"force" alone was used, unless the context made it perfectly clear that a limitation to "armed force" was intended, such as in Article 44, a wider interpretation, to cover political, economic and other forms of pressure, was perfectly legitimate and in the interests of the progressive development of the principle established in Article 2, paragraph 4. The text of Article 2, paragraph 4, was not clearly limited either textually or by necessary implication to a prohibition of armed force alone. Read in conjunction with the Preamble and Article 1, paragraphs 1 and 2, and Article 2, paragraph 3, of the Charter, the natural meaning of the term "force" in Article 2, paragraph 4, embraced all forms of force, rather than one specific form. Thus, in the Preamble, it was stated that the peoples of the United Nations were determined "to practice tolerance and live together in peace with one another as good neighbours"; Article 1, paragraph 1, established that the primary purpose of the United Nations was to maintain international peace and security; reference was made in Article 1, paragraph 2, to the development of "friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples"; and Article 2, paragraph 3, established the principle that international disputes should be solved solely by peaceful means. To give the fullest effect to the purposes and principles of the Charter it was necessary to refrain from all forms of force, not only armed force, and the meaning which accorded most closely with the purposes and principles should be the one adopted in the event of differences of interpretation. Furthermore, it was a rule of interpretation that, in the event of obscurities in legal texts, they should be interpreted to give them their fullest effect. Therefore, any act prejudicial to the purposes of the United Nations, or directed against "the territorial integrity or political independence of any State" should be considered a resort to the threat or use of force.

49. Other representatives, however, argued that the term "force", as appearing in Article 2, paragraph 4, and as read in the context of other relevant Articles in the Charter, was clearly limited to "armed force". This interpretation accorded with the Preamble to the Charter, which stated that "armed force shall not be used, save in the common interest". In other respects the Charter also served to confirm the clear distinction that existed between measures involving economic pressure and measures involving the use of armed force. Article 41, for example, cited, among "measures not involving the use of armed force", such measures as "complete or

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partial interruption of economic relations". If such severe measures were classified as measures not involving the use of armed force, it was difficult to see how lesser methods of economic pressure could be categorized as violations of the prohibition or the threat or use of force.

50. It was further argued that, if the term "force" in Article 2, paragraph 4, of the Charter were to embrace political, economic and other forms of pressure, there would be a lacuna in the Charter; that there would be a whole series of situations with which the Organization would be unable to deal effectively, and that this could not have been the intention of the drafters of the Charter. In this respect, the powers of the Organization laid down in Chapter VII of the Charter were specifically directed to the threat or use of armed force. No powers were given to the Security Council to deal with economic or political demands, as distinct from threats to or breaches of the peace. Thus, except in the most extreme cases, the Security Council would be unable to act, as it could hardly categorize economic pressure as a threat to the peace, breach of the peace, or act of aggression. Consequently, the plain inference from the context of Article 2, paragraph 4, was that the force which a Member was prohibited from using or threatening like the force which the Organization was authorized to use, was armed force and nothing else. Furthermore, where the framers of the Charter had meant "armed force" they had not always referred to "armed force". The words "to use force" occurred twice in the Charter: once in Article 44, and once in Article 2, paragraph 4, and in the former case it could not mean anything but "armed force".

51. In support of the view that the term "force" embraced political, economic and other pressures, it was further argued that, in laying down the rules for the employment of force by the Security Council, Chapter VII of the Charter used the term "measures" to mean either non-military force, as in Article 41, or armed force, as in Article 51. Article 51 clearly referred to armed force since it dealt with measures taken in response to an armed attack. Thus, the force which the Security Council could employ through the various "measures" it was authorized to take could be either armed force or the economic and other measures provided for in Article 41. It was therefore clear that the Charter, including Article 2, paragraph 4, did not seek to make a sharp distinction between armed and other forms of force.

52. In response to the view just set out, it was said that if it was true that economic measures coming within the ambit of Article 41 of the Charter constituted a use of force to which the prohibition in Article 2, paragraph 4, applied, States would be precluded from taking such measures except on a decision by the Security Council or in the case of self-defence. No foundation for such an interpretation could be found in the practice of States.

53. Further arguments for and against the inclusion of political, economic and other pressures within the meaning of "force" were advanced with reference to Article 51 of the Charter. Some representatives stated that if the term "force" included political, economic, and other forms of pressure, the question would arise whether a State could invoke the right of self-defence against such pressure. Article 51 of the Charter, however, referred only to the right of self-defence in the event of "armed attack". Consequently, there would either be a lacuna in the Charter, if "force" meant pressures other than "armed force", in respect of which a right of self-defence did not exist, or there would be a danger that Article 51 would in practice be extended to permit self-defence against political, economic and other pressures. It was difficult to believe that the framers of the Charter could have contemplated such a lacuna, and it was also undesirable to adopt an interpretation of "force" which might inevitably have the effect of broadening the concept of self-defence under Article 51 of the Charter.

54. Certain other representatives, however, said that the terms of Article 51 were perfectly clear, and that there was consequently no possibility that it could be extended to cover the use of armed force in self-defence against political, economic or other pressures. This, none the less, would not necessarily preclude States from taking measures of self-defence, other than armed measures, if they were the victims of political, economic or other pressures directed against their territorial integrity or political independence.

55. Many representatives who were of the view that "force", within the meaning of Article 2, paragraph 4, did not embrace political, economic and other forms of pressure, drew particular attention to the fact that, at the United Nations Conference on International Organization held at San Francisco, an amendment by Brazil, to extend the prohibition contained in that Article to economic coercion, was rejected. It was said that the rejection of this amendment by a large majority

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clearly established that, in the intention of the framers of the Charter, "force" in Article 2, paragraph 4, was confined to armed force.

56. On the other hand, certain representatives argued that the rejection of the Brazilian amendment did not necessarily mean that the San Francisco Conference did not agree with the ideas contained in that amendment. The rejection of that amendment was therefore not conclusive proof that the term "force" in Article 2, paragraph 4, had a limited meaning. From a reading of the text of the Brazilian amendment it would appear that its purpose had been to try to link the question of intervention to the question of the threat or use of force. In rejecting that amendment the drafters of the Charter had simply refused to identify the prohibition of the threat or use of force with the prohibition of intervention, and they had not intended to bring in question the meaning of the word "force". Had the latter been their intention they would have substituted the words "armed force".

57. It was further argued that, whatever the intentions of the drafters of the Charter, the Charter, as a constitutional instrument, must now be interpreted in the light of current needs and of developments since it was drafted. The Charter was a source of standards of international law creating a new legal order and, consequently, a means of strengthening the international relationships established after the Charter's adoption. Had it been drafted with the participation of all the present Members of the United Nations the fate of the Brazilian amendment might well have been different. Even prior to, and certainly since, the drafting of the Charter, a number of international instruments had recognized that the concept of force included economic and political coercion. Thus, for example, the Charter of the Organization of American States, adopted in 1948, laid down in article 15 that the principle of non-intervention prohibited not only armed force but also any other form of interference or attempted threat against the personality of a State, while article 16 forbade the use of coercive measures of an economic or political character to force the sovereign will of another State. At the Bandung Conference of 1955, the African and Asian countries had included in their Declaration on World Peace and Co-operation the principle of "Abstention by any country from exerting pressures on other countries". Other important international instruments to be taken into account, in this respect, were the Belgrade Declaration, the Charter of

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the Organization of African Unity and the Moscow Test-Ban Treaty. The definition of "coercion" given by the International Law Commission in its report on the Law of Treaties^{4/} was also of relevance.

58. Not only were there precedents in other international instruments for regarding the term "force" as embracing political, economic and other forms of pressure, but such an interpretation was also consonant with modern needs, with the progressive development of the principle under consideration, and with the views expressed in the Sixth Committee by many delegations at the eighteenth session of the General Assembly. It responded to the wishes of Asian, African and Latin American States. Since the San Francisco Conference the course of events had shown that economic force was a force to be reckoned with, just as much as military force. Economic force could threaten the political independence and territorial integrity of States as seriously as armed force, particularly at the present time when many new and small States had acceded to independence. It had, for example, been demonstrated at the United Nations Conference on Trade and Development that economic exploitation and other forms of pressure sometimes undermined the sovereignty and political independence of newly established States.

59. Those representatives who believed that the term "force" was limited to armed force were of the opinion that not only was a contrary interpretation impossible in the light of the preparatory work of the Charter, the records of the Dumbarton Oaks Conference, the rejection of the Brazilian amendment, and the subsequent practice of the United Nations, but also was unnecessary and impractical in the light of modern realities. As regards United Nations practice, General Assembly resolution 378 (V) and 380 (V) of 17 November 1950 showed, for instance, that the Assembly considered the term "force" to mean "armed force". International instruments, other than the Charter, which had been quoted as examples of prohibitions of economic and other pressures certainly did not establish that such pressures were embraced by the term "force". On the contrary, those instruments showed that where such pressures were to be covered it was expressly stipulated.

4/ Official Records of the General Assembly, Eighteenth Session, Supplement No. 9 (A/5509), chapter II, draft article 36, paragraph 3 of the commentary.

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60. To extend that term to cover political, economic and other forms of pressure would give rise to great difficulties of interpretation, and the Special Committee would have to consider what acts should be prohibited if economic pressure were to be prohibited. What, for example, would the situation be if a State imposed exchange control restrictions in its own interests, but which nevertheless had the effect of prejudicing the economy of another State which was largely dependent on tourism? More complex cases would be the raising of tariffs, nationalization of alien property motivated by political considerations, and the denial to a land-locked country of access to the sea. Could such acts be properly regarded as a threat or use of force contrary to Article 2, paragraph 4, of the Charter?

61. Even if only political, economic and other pressures "against the political independence or political integrity of any State" were to be considered as prohibited under Article 2, paragraph 4, great difficulties would arise. Did that, for example, mean economic, political or other pressure sufficiently powerful to endanger the political independence or territorial integrity of a State, or did it refer to the purpose for which such pressure was applied? It would in any case be difficult to distinguish between such pressure and the less severe political and economic pressure to which States inevitably resorted in their diplomacy every day.

62. Even in a highly organized national community, with a well-developed legal system and a State monopoly of the use of force, individual and collective "pressure" continued to be an important factor in the actual regulation of society and was often, in this respect, the essential concomitant of the established and centralized authority responsible for putting the law into effect. It was all the more to be expected, therefore, in the as yet insufficiently organized international society of the present day, that "pressure" should play a still larger part in persuading States to comply with a minimum legal order. It should be recognized that, in an interdependent world, it was inevitable and desirable that States would attempt to influence the actions and policies of other States and that the objective of international law should not be to prevent such activity but rather to ensure that it was compatible with the sovereign equality of States and self-determination of their peoples. To prohibit entirely "any form of pressure" would be to render impossible normal diplomatic relations. It should be left to the Security Council or the General Assembly to decide whether economic or political

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pressure, in any particular case, threatened the political independence or territorial integrity of any State. To lay down a general rule in advance might be to interfere with the right of States to regulate their economic relations with other States and would thus increase the danger of international conflicts.

63. It was further argued that, while certain forms of political and economic pressure clearly violated the principles of international law, they should be considered within the context of intervention and not the context of force. To consider them in the latter context would not only raise objections of the nature already outlined, but would also permit the continuation of certain reprehensible and illegal forms of pressure under the guise that they were not directed against the political independence or territorial integrity of States. It was, however, also argued that, on the contrary, it was necessary to establish the prohibition on certain forms of pressure both in the context of the prohibition of the use of force and in that of intervention so as to provide for the complete protection of a State from without and from within.

6. Use of force in territorial disputes and border claims

64. A prohibition against the threat or use of force in territorial disputes and boundary problems was contained in the proposals of Czechoslovakia (A/AC.119/L.6, para. 1 (see para. 27 above)) and of Ghana, India and Yugoslavia (A/AC.119/L.15, para. 4 (see para. 31 above)).

65. It was generally agreed that such threat or use of force for the settlement of territorial disputes and boundary problems was contrary to the principle under consideration. Many representatives were of the opinion that a prohibition to this effect merited particular mention in any formulation adopted by the Special Committee, as territorial disputes and border claims were a constant source of international tension, and had in the past been a primary cause of war. Specific reference to problems of this nature was also warranted by the fact that several international documents concluded since the Charter, including the Charter of the Organization of African Unity (article XIX), contained provisions prohibiting the threat or use of force as a means of settling territorial disputes and border problems. As some States had in the past attempted to argue that such disputes and problems were not covered by the general terms of Article 2, paragraph 4, of the Charter, special

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importance should be attached to the enunciation by the Special Committee of a prohibition of the threat or use of force in such cases.

66. Some other representatives agreed that specific mention of territorial disputes and border claims in any formulation adopted by the Special Committee warranted further study. It was pointed out, however, that such mention would have to be carefully worded so as not to imply any restriction or limitation on the more general terms of the prohibition contained in Article 2, paragraph 4, of the Charter. There were other disputes, which could be just as critical as territorial and border disputes and which should also be settled solely by peaceful means.

67. One representative expressed the view that any prohibition of the threat or use of force in respect to territorial disputes and border claims could not be considered as legalizing or condoning the occupation of a territory by means contrary to the Charter or to United Nations resolutions. In reply to a question to this effect, one of the sponsors of the joint proposal by Ghana, India and Yugoslavia (A/AC.119/L.15) stated that this view was shared by the sponsors of that proposal. That proposal was not intended to condone any breach of international law relating to existing boundaries and any dispute in such a case should be settled in conformity with the Charter.

7. Wars of aggression

68. The proposal of Czechoslovakia (A/AC.119/L.6, para. 2 (see para. 27 above)) contained a proviso to the effect that the planning, preparation, initiation and waging of a war of aggression constituted international crimes against peace giving rise to political and material responsibility of States and penal liability of the perpetrators of these crimes.

69. Some representatives were of the view that any formulation adopted by the Special Committee should contain a provision along these lines. It was stated that such a provision would, in particular, be in accordance with the principles set forth in the Charter of the United Nations, and the charters of the international military tribunals at Nuremberg and for the Far East. Even prior to these international instruments, a number of treaties had been concluded which had declared aggressive war to be an international crime. The General Assembly had itself confirmed, in its resolution 95 (I) of 11 December 1946, that the planning,

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preparation, initiation, or waging of a war of aggression constituted international crimes. This principle therefore rested on adequately sound foundations, and appropriate devices could be found for determining when it had been violated.

70. Certain other representatives, while not specifically endorsing the formulation presented by Czechoslovakia, expressed the belief that mention of the principle could appropriately be made in some form or other in the Committee's recommendations.

71. Several representatives, however, while recognizing that wars of aggression constituted international crimes, were of the opinion that any general formulation would give rise to difficulties and was therefore undesirable. In this respect, attention was drawn to the difficulties which had previously arisen, and which were well known, concerning the definition of what constituted "aggression". Furthermore, it would be difficult to give practical effect to a general formulation if it did not indicate the means of arriving at a determination that aggression had been committed and of assessing material and penal responsibility.

72. One representative was of the view that the insertion of a provision on wars of aggression and the penal liability thus incurred was not only beyond the Committee's mandate but also completely unnecessary.

8. Legal uses of force

73. All the proposals before the Special Committee on the principle under consideration contained provisions concerning the legal uses of force. It was generally agreed that any formulation adopted by the Special Committee should contain a provision on this subject, which was discussed at length in the Committee. In view of the length of the discussion it is summarized below, in the present section of the report, under a number of sub-headings.

(i) Use of force on the decision of a competent organ of the United Nations

74. The proposal of Czechoslovakia (A/AC.119/L.6, para. 5 (see para. 27 above)) included, in legal uses, the use of force pursuant to a decision of the Security Council made in conformity with the United Nations Charter. In addition, the proposals of Yugoslavia (A/AC.119/L.7, para. 4 (see para. 28 above)) and of the United Kingdom (A/AC.119/L.8, para. 5 (see para. 29 above)), also referred expressly

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to the use of force when undertaken on the authority of the General Assembly. The joint proposal of Ghana, India and Yugoslavia (A/AC.119/L.15, para. 3 (see para. 31 above)) referred to the use of force "by a competent organ of the United Nations".

75. It was generally agreed that the use of force pursuant to a decision of the Security Council made in conformity with the Charter constituted a legal use. Some representatives also approved of express mention, among legal use of force, of such uses undertaken on the authority of the General Assembly pursuant to recommendations by the Assembly made under Articles 10 and 11 of the Charter. It was argued that such a reference was necessary to a complete enumeration of the legal uses of force in view of the role which the General Assembly was authorized to play, and had played in the maintenance of international peace and security. Certain other representatives, however, expressed their disagreement in this respect. In their view, the Charter clearly laid down that the application of enforcement measures or the use of force could be decided upon and undertaken solely by the Security Council. Under the Charter, the Members of the United Nations conferred on the Security Council primary responsibility for the maintenance of international peace and security, and assigned to the General Assembly the quite different function of considering the general principles of co-operation in the maintenance of international peace and security and making recommendations with regard to such principles.

76. A number of representatives suggested that it would be sufficient if the Special Committee were to refer, in any formulation on the legal uses of force, to measures undertaken by or on the authority of a competent organ of the United Nations, acting in conformity with the Charter.

(ii) Use of force on the decision of a regional agency

77. The proposal by the United Kingdom (A/AC.119/L.8, para. 5 (see para. 29 above)) stated, inter alia, that the use of force was lawful when undertaken "by a regional agency acting in accordance with the Charter". No specific mention of regional agencies was contained in the other proposals before the Special Committee.

78. A number of representatives expressly supported mention, in any formulation adopted by the Special Committee, of measures which regional agencies might take under Chapter VIII of the Charter. In this respect, it was stated that certain

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regional agreements, such as the Inter-American Treaty of reciprocal assistance, which provided for the use of force by regional agencies, were fully consonant with the Charter and their validity had not been challenged. Furthermore, the Security Council had never questioned the rights of regional agencies in this respect.

79. Other representatives, however, expressed some reservations about express mention of the use of force by regional agencies, unless strictly circumscribed, and so worded as not to weaken the powers of the Security Council. In this connexion, it was stated that any decision by a regional organization to use coercive measures or force against a Member of the United Nations, without the authorization of the Security Council, would be a breach of the Charter and illegal. Members of the United Nations supporting such a decision would furthermore be acting in contravention of Article 103 of the Charter, which laid down that obligations under the Charter prevailed over obligations under any other international agreement.

(iii) Use of force in the exercise of the right of individual or collective self-defence

80. All the proposals before the Special Committee made reference to the legal use of force in the exercise of the right of individual or collective self-defence (Czechoslovakia, A/AC.119/L.6, para. 5 (see para. 27 above)); Yugoslavia (A/AC.119/L.7, para. 4 (see para. 28 above)); the United Kingdom (A/AC.119/L.8, para. 5 (see para. 29 above)); and Ghana, India and Yugoslavia (A/AC.119/L.15, para. 3 (see para. 31 above)). It was generally agreed that the right of individual or collective self-defence, as recognized in Article 51 of the Charter, constituted an exception to the prohibition on the threat or use of force contained in Article 2, paragraph 4, of the Charter, and that express mention should be made of this exception in any formulation adopted by the Special Committee.

81. A number of representatives spoke of the necessity of giving a restrictive interpretation to the right of individual or collective self-defence. Such an interpretation was said to be essential to the maintenance of peace: any other interpretation which had the effect of increasing the individual competence of States to the detriment of that of the United Nations would be contrary to the Organization's purposes. It was stated, in these respects, that Article 51 of the

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Charter limited the right of self-defence to cases where an armed attack had occurred, to the exclusion of every other act, including provocation. Furthermore, it permitted its exercise only until such time as the Security Council had taken the measures necessary to maintain international peace and security. On the one hand, the Security Council could take further measures if its first measures did not restore peace; on the other, if the Council did not take the necessary measures, the victim of armed aggression could continue to exercise its right of self-defence.

82. One representative cited a number of theories, extending the concept of self-defence, which he believed to be dangerous and contrary to a proper interpretation of Article 51 of the Charter. He referred, inter alia, to the argument that the right of self-defence could be exercised not only in the case of armed attack, but also when the military potential and aggressive intentions of a State gave grounds for thinking it was preparing an attack. The answer to this argument was that armed attack was armed attack and nothing else. Pursuant to a recent theory, the prohibition of the threat or use of force was only relative and not absolute, since the strict interpretation of Article 2, paragraph 4, and Article 51 of the Charter might produce the result that States could violate the rights of other States with impunity, provided they did not resort to armed force. This argument was contrary to the centralization of authority in the United Nations as established by the Charter. According to a third theory, a belligerent whose adversary had violated the obligation not to use force could, in the exercise of a right of reprisal, use nuclear and thermonuclear weapons. However, this would be contrary to the principle of "proportionality", under which the response to an armed attack should be proportionate to the kind and nature of the attack. Furthermore, nuclear weapons could be considered as an instrument of genocide, which struck at armed forces and civilians indiscriminately, and which also violated the rights of neutral States which would be affected by their use.

(iv) Use of force in self-defence against colonial domination

83. A right of self-defence of peoples and nations against colonial domination, in the exercise of their right of self-determination, was included in the proposals of Czechoslovakia (A/AC.119/L.6, para. 5 (see para. 27 above)), of Yugoslavia (A/AC.119/L.7, para. 4 (see para. 28 above)), and of Ghana, India and Yugoslavia (A/AC.119/L.15, para. 3 (see para. 31 above)). Some representatives supported the

inclusion of such a right in any formulation adopted by the Special Committee. In this respect, reference was made to the Charter of the Organization of African Unity which affirmed the right of African countries still under foreign domination to self-determination and proclaimed, on the part of the independent African States, their "absolute dedication to the total emancipation of the African Territories which are still dependent". Reference was also made to the Declaration of the Heads of State or Government of non-aligned countries adopted at Belgrade in 1961, section III of which demanded that an immediate stop should be put to armed action against dependent peoples and that the integrity of their national territory should be respected.

84. It was further stated that the practice of the United Nations itself had been against regarding the struggle of colonial peoples for liberation, which was one of the most important phenomena of the modern era, as a violation of the prohibition of the use of force. The Charter provisions undoubtedly covered the right of oppressed peoples to defend themselves against foreign oppression. The United Nations Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)) expressly stated that the subjection of peoples to alien subjugation was contrary to the United Nations Charter. The Declaration also reaffirmed that all peoples had the right to self-determination, and called for the cessation of all armed action or repressive measures directed against dependent peoples. Other resolutions of United Nations organs, dealing with specific colonial problems, also supported the application of the principle of self-determination, which should now be considered as a general principle of law.

85. It was further argued that the right of self-determination would be meaningless if it could not be defended against a colonial Power which attempted by force to deny it. If the Special Committee did not take this into consideration it would jeopardize the progress already achieved by the United Nations in the vital field of decolonization. Were the Special Committee to adopt a proposal along the lines suggested by the United Kingdom (A/AC.119/L.8 (see para. 29 above)), this would be a serious challenge to the whole decolonization movement, for not only was it silent on the sanctity of the right of self-determination but it would brand as indirect aggression any meaningful support to a people acting in self-defence to assert that right, and might entitle colonial

Powers to invite other States to aid them in suppressing national liberation movements in their colonies. The work of laying down principles of law banning the use of force would be incomplete if it did not provide for the elimination of colonialism. The use of armed force, which was still being resorted to in a number of territories to repress the aspirations of their peoples to freedom and self-determination, violated the Charter and the resolutions adopted by the United Nations and was a flagrant example of the unlawful threat or use of force prohibited by Article 2, paragraph 4, of the Charter. Colonial rule was in contradiction with contemporary international law, the Charter and resolutions of the General Assembly.

86. On the other hand, some representatives were opposed to any formulation by the Special Committee which would include reference to a legal right of peoples and nations to self-defence against colonial domination. Some of these representatives stated that, while they were opposed to colonialism and recognized the right of colonial peoples and nations to self-determination, revolution was a political, not a legal, concept. While revolution might be the leaven of law, one could not speak of its intrinsic legality, and, except possibly for the French Constitution of 1793, it had never been regarded as a legal right.

87. It was further pointed out by some representatives that Article 2, paragraph 4, of the Charter only prohibited the threat or use of force against States, or, in other words, to entities having legal personality in international law. This prohibition did not extend to rebellions against the constituted authorities. A specific mention of a right of self-defence against colonial domination was therefore unnecessary. It would be sufficient, in the case of a genuine war of liberation, for the Security Council or the General Assembly to determine whether aggression by a colonial Power was involved. Furthermore, once a colonial people had won their independence, Article 51 of the Charter, concerning self-defence, granted adequate protection against armed intervention by the former metropolitan Power.

88. It was also argued that, if express mention were made of a right of self-defence against colonial domination, it would be a move backward towards the traditional concept of the "just war". The Declaration on the granting of independence to colonial countries and peoples, in its paragraph 6, rejected the concept of wars

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of liberation. Moreover, to sanction a so-called right of self-defence against colonial domination would be to encourage a nation to use force, contrary to the principles of the United Nations, and the reasons in favour of the prohibition of armed force in international relations were equally cogent in regard to the settlement of disputes relating to the exercise of self-determination. To make an exception in this latter case would only have the effect of greatly increasing existing tensions and would endanger international peace and security. It would give a State complete freedom to wage war provided that it appropriated the charge of colonial domination when so doing. In this latter context, it was relevant to note that Article 2, paragraph 4, of the Charter forbade a State to use force to impair the territorial integrity of another State and "wars of liberation" in many cases would have precisely that result. It would also be strange to restrict the concept of self-defence to cases of colonial domination when there were many other forms of domination, such as ideological domination. The question would also arise whether the right of an ethnic minority to self-defence against oppression by a majority belonging to another race should not also be recognized.

89. It was further stated that colonial rule, whether by way of the administration of a Trust Territory or otherwise, was not contrary to the Charter, and States administering dependent Territories, in accordance with the Charter, were responsible for the maintenance of law and order in those Territories. If a so-called right of self-defence against colonial domination were to be considered to derogate from the position just stated it would make it all the more unacceptable.

9. Non-recognition of nullity of situations brought about by the illegal threat or use of force

90. The initial proposal of Yugoslavia (A/AC.119/L.7, para. 3 (see para. 28 above)) and the subsequent joint proposal of Ghana, India and Yugoslavia (A/AC.119/L.15, para. 4 (see para. 31 above)) contained provisions to the effect that any situation brought about by the illegal threat or use of force should not be recognized. Some representatives expressed the opinion that any formulation adopted by the Special Committee should contain such a provision. The view was also expressed that situations brought about by the illegal threat or use of force should be considered null and void.

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91. In favour of the non-recognition of situations brought about by the threat or use of force, it was argued that non-recognition of territorial conquests was a general principle of law within the meaning of article 38 of the Statute of the International Court of Justice, both because of the number and importance of the conventions which embodied it and because it could be regarded as a corollary to the prohibition in Article 2, paragraph 4, of the Charter of the United Nations of the threat or use of force against the territorial integrity or political independence of any State. Reference was made to the principle of non-recognition of territorial conquests as embodied in article 17 of the Charter of the Organization of American States, to the anti-war Treaty of non-aggression and conciliation, (Rio de Janeiro, 1933) and to the Draft Declaration on rights and duties of States (articles 9 and 11) prepared by the International Law Commission. It was stated that its enunciation also by the Special Committee would contribute to developing the juridical basis of the prohibition on the threat or use of force and would enhance the authority of international law in general.

92. The view was also advanced that the non-recognition of territorial conquests should not be regarded as a sanction. It was the result of a juridical and political evaluation of a situation which every State had the right to make for itself, and act accordingly. If, however, in certain cases, the juridical appraisal of the situation were made by the Security Council or the General Assembly, and the conclusion reached by those bodies that a situation had been brought about by the illegal threat or use of force, Member States would be under an obligation not to recognize that situation.

93. Some other representatives, while sympathizing with it, did not share the opinion that the Special Committee should attempt to lay down a general principle of non-recognition of situations brought about by the threat or use of force. Collective non-recognition had been tried in the past and had been found to be wanting. A general rule of non-recognition would be hard to apply, would give rise to difficulties of implementation and of determining whether a situation had in fact been brought about by the threat or use of force and might create more problems than it would solve. In particular, great difficulties would arise if a rule of non-recognition were regarded as having retroactive effect. Many territorial settlements in the past were based upon treaties following upon a

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resort to force and there would be no profit in calling such settlements in question. Even if restricted to the future, problems would arise. The United Nations was frequently called upon to supervise cease-fires in situations where there had been a recourse to force. Individual Members of the United Nations might differ as to which party in such situations had illegally resorted to force and non-recognition by individual States might thus hamper the efforts of the United Nations seeking to maintain and restore peace as a collective body.

10. War propaganda

94. The proposal of Czechoslovakia (A/AC.119/L.6, para. 3 (see para. 27 above)) contained a proviso prohibiting war propaganda and providing that States should take the necessary legislative and other measures to this end.

95. Several representatives were in favour of including such a prohibition of war propaganda in the Special Committee's formulations. It was said that a provision of this nature was not new in United Nations practice, and had in fact been the subject of General Assembly resolution 110 (II) of 3 November 1947, on measures to be taken against propaganda and the inciters of a new war. The prohibition of war propaganda was a logical corollary of the principle being considered by the Special Committee. Propaganda should serve to promote the ideals of peace, friendship and understanding among peoples. It should not be used to educate young people in the spirit of war, as had been done in the past with disastrous consequences. Propaganda for striking the first nuclear blow was particularly dangerous in modern times and should be specifically prohibited.

96. Other representatives, while agreeing that war propaganda was undesirable, expressed reservations about including mention of it in any specific formulation adopted by the Special Committee, except possibly by way of commentary. It was stated that "war propaganda" was extremely difficult to define, and what might be regarded as a statement of fact in one country might be viewed as war propaganda in another. To attempt to define it would merely be to repeat the sterile discussions which had taken place in the United Nations in the two Special Committees on the Question of Defining Aggression. Furthermore, the greatest caution should be exercised in considering any general proposal providing for legislation against war propaganda. Such a general proposal would open the way to violations of the very freedom of information which it was the responsibility of

the United Nations to protect. The principle of not unduly restricting freedom of speech and thought was overriding importance. It was further argued that, rather than attempting to draft a general formulation open to these objections it should be left for the Security Council or the General Assembly to determine in each case whether war propaganda - or, for that matter, non-military pressures and wars of liberation - conducted by a particular State constituted a threat to the peace, breach of the peace or act of aggression.

97. Several representatives were of the view that the question of war propaganda should be more appropriately considered within the wider context of the diffusion of ideas tending to strengthen peace and friendship among peoples. If any condemnation of war propaganda were to be made by the Special Committee, it should be coupled with a statement on the importance of the free flow of information for the preservation of peace which had been the subject of General Assembly resolution 381 (V) of 17 November 1950.

11. Disarmament

98. The proposal of Czechoslovakia (A/AC.119/L.6, para. 6 (see para. 27 above)) contained a provision to the effect that States should act in such a manner that an agreement for general and complete disarmament under effective international control would be reached as speedily as possible and strictly observed.

99. It was generally agreed that the question of disarmament was one of the most urgent tasks facing the present-day world, and that general and complete disarmament under effective international control would most effectively guarantee the removal of the threat of war. A number of representatives were of the opinion, in this context, that general and complete disarmament was an essential corollary of the principle under discussion giving rise to a legal duty on the part of States to co-operate with one another for the purpose of ensuring progressive disarmament until general and complete disarmament could be achieved. The Special Committee should therefore adopt a specific provision to this effect.

100. In support of the above view it was stated that, while in the past some had considered disarmament to be a purely political matter, the legal nature of the principle of general and complete disarmament could not be doubted since the conclusion in 1963 of the Moscow Treaty banning nuclear weapons tests in the atmosphere, in outer space and under water, which incorporated this principle in

its preamble, and since the adoption of the General Assembly resolution on general and complete disarmament in 1959 (resolution 1378 (XIV) of 20 November 1959). Furthermore, the question of disarmament was so important that the Special Committee could not ignore it in approaching its task. It was important not only because of the dangers of nuclear war, but also because of the material resources squandered in the arms race.

101. Several representatives were of the opinion that, if disarmament were to be mentioned at all, it might perhaps be included in a commentary and should not form part of any formulation of the principle under consideration. They did not believe that the cause of disarmament would necessarily be advanced by an express declaration that States had a duty to co-operate in seeking to reach an agreement on general and complete disarmament.

102. Other representatives considered that the mention of disarmament should not be included in the Special Committee's recommendations. General and complete disarmament was a political, not a legal question, and was the specific responsibility of other United Nations bodies, such as the Disarmament Committee. These representatives did not see how the Special Committee could make any useful contribution to the work of these latter bodies. It was futile to repeat the need for an agreement on general and complete disarmament, without at the same time proposing a means of solving the difficulties in the way of the conclusion of such an agreement, particularly the question of inspection.

103. One representative considered that, while the question of nuclear and thermonuclear weapons was closely linked to the general problem of disarmament, it was a question which could be considered separately by the Special Committee from the point of view of the international legal order. Such weapons were contrary to the laws of mankind, but it had been maintained that "contrary to the laws of mankind" was not necessarily synonymous with "contrary to international law", and the imprimatur of the international community was still needed in order to make the use of such weapons an international crime.

12. Making the United Nations security system more effective

104. In its amendment (A/AC.119/L.14, see para. 30 above) to the United Kingdom proposal (A/AC.119/L.8), Italy proposed the addition of a paragraph providing that States should endeavour to make the United Nations security system more effective

and should comply fully and in good faith with obligations placed upon them by the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security. In this respect it was argued that the Charter provisions, imposing on Member States the obligation to make it possible for the United Nations to perform its functions in relation to peace and security, were no less binding and fundamental than those set forth in Article 2, paragraph 4, and in Article 51 of the Charter. If the prohibition of the threat or use of force were to be made more effective, it was essential that Member States should provide the Organization with the requisite means to take effective action to maintain international peace and security. Thus, if the Special Committee were to enumerate the duties of States with respect to the threat or use of force, it could not fail to include mention of the obligation to provide the Organization with the means to act effectively.

105. A number of representatives supported the Italian amendment, and stated that it deserved thorough study by the Special Committee. One representative, while expressing sympathy with the ideas contained in it, regretted that some other points put forward in the discussion and equally worthy of attention, had not been included in that amendment.

C. Decision of the Special Committee on the recommendations of the Drafting Committee

1. Decision

106. At its 42nd meeting, the Special Committee considered two papers submitted by the Drafting Committee, concerning the principle which forms the subject of this chapter. The texts of these two papers, in the order of their introduction to the Committee, were as follows:

Paper No. 1 (Drafting Committee Paper No. 10 and Corr. 1)

"PRINCIPLE A

/i.e. 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/

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"I. Draft text formulating the points of consensus

"1. Every State has the duty to refrain in its 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.

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

- (a) Wars of aggression constitute international crimes against peace.
- (b) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursions into the territory of another State. 5/
- (c) Every State has the duty to refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State, or from conniving at or acquiescing in organized activities directed towards such ends, when such acts involve a threat or use of force. 5/
- (d) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State, or as a means of solving its international disputes, including territorial disputes and problems concerning frontiers between States.

"3. Nothing in the foregoing paragraphs affects the provisions of the Charter concerning the lawful use of force.

"II. List itemizing the various proposals and views on which there is no consensus but for which there is support

"1. There was disagreement in the Special Committee in regard to the circumstances or situations in which the use of force was lawful in accordance with the Charter. The following were the points in this connexion on which no consensus could be reached:

- (a) Whether the Security Council is the only United Nations organ competent to authorize the lawful use of force, or whether the General Assembly is also competent in that regard.
 - (i) For relevant proposals, see annex A, paragraph 1.
 - (ii) For relevant views, see annex B, paragraph 1 (a).

5/ The inclusion of sub-paragraphs (b) and (c) was agreed to by certain delegations only on the understanding that the substance of the two paragraphs should also be included under principle C /i.e. the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter/ when that principle is drafted. The delegations in question were of the view that the acts mentioned in the two sub-paragraphs are pre-eminently acts of intervention although under certain circumstances they could become acts involving the threat or use of force.

(b) Whether or not express mention should be made of the lawful use of force by a regional agency acting in accordance with the Charter.

(i) For relevant proposals, see annex A, paragraph 1.

(ii) For relevant views, see annex B, paragraph 1 (b).

(c) Whether or not the right of individual or collective self-defence should be stated to be in accordance with Article 51 of the Charter.

(i) For relevant proposals, see annex A, paragraph 1.

(ii) For relevant views, see annex B, paragraph 1 (c).

(d) Whether or not the legal uses of force include a right of nations or peoples to self-defence against colonial domination in the exercise of their right to self-determination.

(i) For relevant proposals, see annex A, paragraph 1.

(ii) For relevant views, see annex B, paragraph 1 (d)."

The other points on which no consensus could be reached were as follows:

"2. Whether States have a legal obligation to endeavour to make the United Nations security system more effective and to comply fully and in good faith with their obligations under the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security.

(i) For relevant proposal, see annex A, paragraph 2.

(ii) For relevant views, see annex B, paragraph 2.

"3. Whether States have a legal obligation to act in such a manner that an agreement for general and complete disarmament under effective international control will be speedily reached and strictly observed.

(i) For relevant proposal, see annex A, paragraph 3.

(ii) For relevant views, see annex B, paragraph 3.

"4. Whether to include a prohibition of propaganda for war, and an obligation for States to take, within the framework of their jurisdiction, all measures, including legislative measures, in order to prevent it.

(i) For relevant proposal, see annex A, paragraph 4.

(ii) For relevant views, see annex B, paragraph 4.

/...

"5. Whether States have a legal duty not to recognize situations brought about by the illegal use or threat of force.

(i) For relevant proposal, see annex A, paragraph 5.

(ii) For relevant views, see annex B, paragraph 5.

"6. Whether to include a provision that nothing in connexion with this principle shall authorize States to undertake acts of reprisal.

(i) For relevant proposal, see annex A, paragraph 6.

(ii) For relevant views, see annex B, paragraph 6.

"7. The definition of the term 'force', in particular whether that term embraces economic, political or other forms of pressure.

(i) For relevant proposal, see annex A, paragraph 7.

(ii) For relevant views, see annex B, paragraph 7.

"ANNEX A

"Proposals and amendments concerning which no consensus was reached

"1. Legal uses of force

(a) Czechoslovakia (A/AC.119/L.6)

'5. The prohibition of the use of force shall not affect either the use of force pursuant to a decision of the Security Council made in conformity with the United Nations Charter or the rights of States to take, in the case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the United Nations Charter, or self-defence of nations against colonial domination in the exercise of the right to self-determination.'

(b) United Kingdom (A/AC.119/L.8)

'5. The use of force is lawful when undertaken by or under the authority of a competent United Nations organ, including in appropriate cases the General Assembly, acting in accord with the Charter, or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence.'

Commentary

'(5) paragraph 5 sets out in a non-exhaustive manner the principal circumstances in which the use of force is lawful. It is based on and reflects a number of provisions in the Charter, including a

Article 2, paragraph 4, and Article 10 and Chapters VII and VIII. Circumstances in which force may be used vary widely and an exhaustive definition of them would be impracticable.'

(c) Ghana, India and Yugoslavia (A/AC.119/L.15)

'3. The prohibition of the use of force shall not affect either the use of force pursuant to a decision by a competent organ of the United Nations made in conformity with the Charter, or the rights of States to take, in case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter, nor the right of peoples to self-defence against colonial domination in the exercise of their right to self-determination.'

"2. Making the United Nations security system more effective

Italy (A/AC.119/L.14)

'6. In order to ensure effectiveness of the prohibition of the threat or use of force in international relations, States shall endeavour to make the United Nations security system more effective and shall comply fully and in good faith with the obligations placed upon them by the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security.'

"3. Agreement for general and complete disarmament under effective international control

Czechoslovakia (A/AC.119/L.6)

'6. In order to secure full effectiveness of the prohibition of the threat or use of force, States shall act in such a manner that an agreement for general and complete disarmament under effective international control will be reached as speedily as possible and will be strictly observed.'

"4. War propaganda

Czechoslovakia (A/AC.119/L.6)

'3. Any propaganda for war, incitement to or fomenting of war and any propaganda for preventive war and for striking the first nuclear blow shall be prohibited. States shall take, within the framework of their jurisdiction, all measures, in particular legislative measures, in order to prevent such propaganda.'

/...

"5. Non-recognition of situations brought about by illegal use or threat of force

Ghana, India and Yugoslavia (A/AC.119/L.15)

'3. Any situation brought about by such means shall not be recognized.'

"6. Acts of reprisal

Ghana, India and Yugoslavia (A/AC.119/L.15)

'5. Nothing in the present Chapter shall authorize any State to undertake acts of reprisal.'

"7. Meaning of 'force'

(a) Czechoslovakia (A/AC.119/L.6)

'4. States shall refrain from economic, political or any other form of pressure aimed against the political independence or territorial integrity of any State.'

(b) United Kingdom (A/AC.119/L.8)

'2. By the expression "force" as used in paragraph 1 above is meant armed force ...'.

'Commentary'

'(2) Paragraph 2 explains what is meant by the term "force". The travaux préparatoires of the San Francisco Conference indicate that, in the context of Article 2, paragraph 4, of the Charter, the expression "force" means physical force or armed force and does not include economic or political pressure ...'.

Ghana, India and Yugoslavia (A/AC.119/L.15)

'2. The term "force" shall include:

(a) ...

(b) other forms of pressure, which have the effect of threatening the territorial integrity and political independence of any State.'

/...

"ANNEX B^{6/}

"Views expressed in the discussions, concerning which no consensus was reached

"1. Legal uses of force

(a) On the decision of a competent organ of the United Nations

Romania (SR.7, p. 18, SR.16, p.6) and USSR (SR.14, p. 12) referred only to the Security Council.

Italy (SR.7, pp. 6, 7), Sweden (SR.10, p. 11) and Guatemala (SR.14, p. 9) referred to a competent organ of the United Nations.

United States (SR.3, p. 17, SR.15, p. 19), Nigeria (SR.4, p. 10), Netherlands (SR.7, p. 12), UAR (SR.8, p. 8), United Kingdom (SR.16, p. 14), Venezuela (SR.16, p. 18), and Australia (SR.17, p. 11) preferred a formula mentioning both the Security Council and the General Assembly.

(b) By a regional agency

United States (SR.3, p. 17, SR.15, p. 19, SR.17, p. 17), Sweden (SR.10, p. 11), United Kingdom (SR.16, pp. 12-13), Venezuela (SR.16, p. 18) and Australia (SR.17, p. 11) supported a formula referring to regional agencies.

USSR (SR.14, p. 12) stated that any decision by a regional organization to use coercive measures or force against a Member of the United Nations without the authorization of the Security Council would be a breach of the Charter.

(c) Individual or collective self-defence

India (SR.3, p. 8), Argentina (SR.3, p. 11), United States (SR.3, p. 16), Nigeria (SR.4, p. 10), Japan (SR.5, p. 15), Mexico (SR.9, pp. 11-13) and Sweden (SR.10, p. 11) referred to individual or collective self-defence under Article 51 of the Charter.

Mexico (SR.9, pp. 11-13) stated that the right of self-defence continued to exist only until the Security Council had taken measures necessary to maintain international peace and security; USSR (SR.14, p. 12) criticized the United Kingdom proposal for not mentioning armed attack and the Security Council in connexion with self-defence.

6/ The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

United States (SR.3, p. 14) raised the question whether the threat of force gave rise to the right of self-defence. Mexico (SR.9, pp. 11-13) stated that self-defence was only permitted under Article 51 in the event of armed attack, to the exclusion of every other act, including provocation.

Lebanon (SR.3, pp. 11-12) and United States (SR.3, pp. 13-13) raised the question whether economic pressure or 'economic aggression' would give rise to a right of self-defence. UAR (SR.8, pp. 8, 9) replied that while the use of economic coercion justified the exercise by the victim country of its right to self-defence, the exercise of that right should not reach the point of using armed force.

Mexico (SR.9, p. 13) said that the use of nuclear weapons was in itself contrary to the Charter. United States (SR.15, pp. 15, 19) said that the Charter prohibited, not the use of specific weapons, but the use or threat of force in certain ways.

(d) Self-defence against colonial domination

Czechoslovakia (SR.4, p. 6, SR.8, pp. 6-7), Yugoslavia (SR.4, p. 9, SR.9, p. 22), USSR (SR.5, p. 9, SR.14, p. 11), Romania (SR.7, p. 18, SR.16, p. 5), UAR (SR.8, pp. 8-9, SR.17, p. 16), Ghana (SR.10, pp. 14-15) and India (SR.17, p. 4) favoured the inclusion of a provision on the subject.

Japan (SR.5, pp. 14-15), Canada (SR.6, p. 9), Italy (SR.7, pp. 6-7, SR.16, p. 8), Netherlands (SR.7, p. 12), Lebanon (SR.7, p. 14), Nigeria (SR.7, p. 22), Sweden (SR.10, p. 9), Dahomey (SR.10, p. 12), Guatemala (SR.14, p. 7), United States (SR.15, pp. 15, 19, SR.17, p. 18), United Kingdom (SR.16, p. 14), Venezuela (SR.16, pp. 17-18), and Australia (SR.17, pp. 14-15) opposed such a provision.

"2. Making the United Nations security system more effective

Italy (SR.16, pp. 7-9), Australia (SR.17, p. 9) and United States (SR.17, p. 18) supported the Italian amendment; United Kingdom (SR.16, p. 15) found it acceptable in principle, but wished to give further thought to its wording and placement in the text; Yugoslavia (SR.17, p. 9) expressed sympathy with the ideas of the amendment, but thought that it would not be easy to incorporate in the statement of the principle; and UAR (SR.17, p. 16) considered that it deserved thorough study.

"3. Agreement for general and complete disarmament under effective international control

Czechoslovakia (SR.4, p. 6), USSR (SR.5, p. 9), Romania (SR.7, p. 18), UAR (SR.8, p. 10) and Poland (SR.9, p. 7) favoured the inclusion of a provision on the subject.

/...

Netherlands (SR.9, p. 11) stressed the urgency of disarmament, but could not yet make proposals how the Committee could avoid the objection that it was futile to repeat the need for an agreement without proposing a solution of the difficulties involved.

Italy (SR.7, p. 7), Nigeria (SR.7, p. 22), Sweden (SR.10, p. 10), United States (SR.15, p. 18), United Kingdom (SR.16, pp. 14-15), Venezuela (SR.16, p. 17), and Australia (SR.17, p. 13), opposed the inclusion of a provision on the subject in principle A.

Sweden (SR.10, p. 10) and United Kingdom (SR.16, pp. 14-15) suggested that the subject might be dealt with in the commentary.

"4. War propaganda

Czechoslovakia (SR.4, p. 6), USSR (SR.5, p. 8), Romania (SR.7, p. 18), and Poland (SR.9, p. 8) favoured the inclusion of a provision on the subject.

United States (SR.3, p. 14, SR.15, pp. 15, 18), Nigeria (SR.7, p. 21), Sweden (SR.10, p. 9), Italy (SR.16, p. 8), United Kingdom (SR.16, p. 13), Venezuela (SR.16, p. 17), and Australia (SR.17, p. 13) opposed the inclusion of such a provision.

Netherlands (SR.7, p. 11) was in doubt as to the desirability of retaining the notion of war propaganda in principle A, and thought that any provision on the question should take account of constitutional restrictions to which the executive authority was subject in that respect.

"5. Non-recognition or nullity of situations brought about by illegal use or threat of force

Nigeria (SR.4, p. 10, SR.7, p. 21) stated that changes brought about or advantages acquired through the threat or use of force would be considered null and void.

India (SR.3, p. 8) said that a situation resulting from a use of force to violate the frontiers of a State should not be recognized by other States; Mexico (SR.9, pp. 15-16) favoured the inclusion of the principle of non-recognition of territorial conquests, and stated that if the Security Council or the General Assembly had determined that a territorial acquisition had been brought about by the threat or use of force, Members would be required to apply the principle of non-recognition; Argentina (SR.3, p. 10), Guatemala (SR.14, p. 8), Romania (SR.16, p. 6) and Venezuela (SR.16, p. 17) favoured inclusion of the principle of non-recognition.

Japan (SR.5, p. 13) asked how a situation brought about by force or pressure could be declared null and void.

Netherlands (SR.7, p. 11), Sweden (SR.10, p. 11), United Kingdom (SR.16, p. 15) and Australia (SR.17, p. 13) considered such a provision inadvisable.

"6. Acts of reprisal

Mexico (SR.9, p. 15) and India (SR.17, p. 5) supported the inclusion of a provision on acts of reprisal.

"7. Meaning of 'force'

Argentina (SR.3, p. 11), United States (SR.3, p. 12, SR.15, pp. 17-18), United Kingdom (SR.5, pp. 12-13, SR.16, p. 13), France (SR.6, pp. 5-6), Italy (SR.7, p. 6), Netherlands (SR.7, p. 8), Lebanon (SR.7, p. 14), Australia (SR.10, p. 7, SR.17, p. 12), Sweden (SR.10, p. 10), Guatemala (SR.14, p. 7), and Venezuela (SR.16, p. 16) expressed the view that the meaning of 'force' in Article 2, paragraph 4, of the Charter was confined to armed force.

Mexico (SR.9, pp. 14-15) saw no legal reason why 'force' should not embrace certain forms of economic, political and other pressure, but opposed including economic, ideological, indirect or other aggression in the concept in order to avoid enlarging the scope of self-defence.

India (SR.3, pp. 7, 8, SR.17, p. 4) Czechoslovakia (SR.4, p. 6, SR.8, pp. 4-6), Yugoslavia (SR.4, p. 9, SR.9, pp. 20-21, SR.17, pp. 5-9), Nigeria (SR.4, p. 10, SR.7, p. 23), USSR (SR.5, p. 8, SR.14, pp. 10-11), Ghana (SR.5, p. 17, SR.10, p. 14), Romania (SR.7, p. 17, SR.16, pp. 4-5), UAR (SR.8, p. 9), Poland (SR.9, p. 8), Madagascar (SR.9, p. 17), and Burma (SR.9, pp. 18-19) expressed the view that the meaning of 'force' was not confined to armed force, but extended to economic, political and other forms of pressure or coercion.

Sweden (SR.10, p. 10) suggested that the Committee's draft should exclude any affirmation that the term 'force' was either limited to armed force or included economic and other non-military forms of pressure."

/...

Paper No. 2

"PRINCIPLE A

i.e., 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 Nations⁷

"The Committee was unable to reach any consensus on the scope or content of this principle.

(a) For proposals and amendments, see annex A.

(b) For views expressed during the discussion, see annex B."

"ANNEX A

"Proposals and amendment concerning which no consensus was reached

"Proposal by Czechoslovakia (A/AC.119/L.6)

(reproduced in paragraph 27 of the report)

"Proposal by Yugoslavia (A/AC.119/L.7)

(reproduced in paragraph 28 of the report)

"Proposal by the United Kingdom (A/AC.119/L.8) and amendment thereto by Italy (A/AC.119/L.14)

(reproduced in paragraphs 29 and 30 of the report, respectively)

"Proposal by Ghana, India and Yugoslavia (A/AC.119/L.15)

(reproduced in paragraph 31 of the report)."

"ANNEX B⁷

"Views expressed in the discussions, concerning which no consensus was reached

"A. Meaning of 'in their international relations'

India (SR.3, p. 7) said that certain groups or communities might claim international personality or statehood and that consequently any

^{7/} The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

use or threat of force against them would be subject to Article 2, paragraph 4; also, a State could not use force against any other State, whether or not a Member of the United Nations.

United States (SR.3, p. 15), Madagascar (SR.9, p. 17), Sweden (SR.10, p. 9), and Australia (SR.17, p. 14) stated that Article 2, paragraph 4 did not apply to civil wars or rebellions. Sweden (SR.10, p. 9) suggested a provision that rebellions were not forbidden under Article 2, paragraph 4 in order to clarify that struggles for independence were permitted. Guatemala (SR.14, p. 7) suggested a provision that Article 2, paragraph 4 did not cover the force to which a State might resort in order to suppress an internal rebellion. Australia (SR.17, p. 14) said that the Charter could not give legal recognition to a right of insurrection.

"B. Meaning of 'against the territorial integrity or political independence'

United States (SR.3, pp. 15-16) said that analysis of the phrase was very difficult. Madagascar (SR.9, pp. 17-18) and Sweden (SR.10, p. 10) said that the phrase did not limit the scope of the prohibition of the use or threat of force. Guatemala (SR.14, p. 8) said that force could not be used in the abstract, but when used, it was directed against an international legal entity, including its political organization, its population and its territory.

"C. Meaning of 'threat of force'

Argentina (SR.3, p. 11) said that the threat of force could be direct or indirect. United States (SR.3, p. 14) was of the opinion that the threat must be openly made and communicated by some means to the State threatened, and referred to the use of military force if proffered demands were not accepted. Madagascar (SR.9, p. 17) said that the threat could be expressed not only in deeds but also in words.

"D. Meaning of 'force'

Argentina (SR.3, p. 11), United States (SR.3, p. 12, SR.15, pp. 17-18), United Kingdom (SR.5, pp. 12-13, SR.16, p. 12), France (SR.6, pp. 5-6), Italy (SR.7, p. 6), Netherlands (SR.7, p. 8), Lebanon (SR.7, p. 14), Australia (SR.10, p. 7, SR.17, p. 12), Sweden (SR.10, p. 10), Guatemala (SR.14, p. 7), and Venezuela (SR.16, p. 16) expressed the view that the meaning of 'force' in Article 2, paragraph 4 of the Charter was confined to armed force.

Mexico (SR.9, pp. 14-15) saw no legal reason why 'force' should not embrace certain forms of economic, political and other pressure, but opposed including economic, ideological, indirect or other aggression in the concept in order to avoid enlarging the scope of self-defence.

India (SR.3, pp. 7, 8, SR.17, p. 4), Czechoslovakia (SR.4, p. 6, SR.8, pp. 4-6), Yugoslavia (SR.4, p. 9, SR.9, pp. 20-21, SR.17, pp. 5-9), Nigeria (SR.4, p. 10, SR.7, p. 23), USSR (SR.5, p. 8, SR.14, pp. 10-11), Ghana (SR.5, p. 17, SR.10, p. 14), Romania (SR.7, p. 17, SR.16, pp. 4-5), UAR (SR.8, p. 9), Poland (SR.9, p. 8), Madagascar (SR.9, p. 17), and Burma (SR.9, pp. 18-19) expressed the view that the meaning of 'force' was not confined to armed force, but extended to economic, political and other forms of pressure or coercion.

Sweden (SR.10, p. 10) suggested that the Committee's draft should exclude any affirmation that the term 'force' was either limited to armed force or included economic and other non-military forms of pressure.

"1. Irregular or volunteer forces, and armed bands

Argentina (SR.3, p. 11) stated that the prohibition covered irregular forces or armed bands leaving a State to operate in another State. Sweden (SR.10, p. 9), Guatemala (SR.14, p. 8), and Venezuela (SR.16, p. 16) supported the inclusion of a provision on the subject.

United States (SR.3, p. 13) and USSR (SR.14, p. 9) stated that the departure of individual volunteers and their participation in military actions were legal. United Kingdom (SR.16, p. 11) and Australia (SR.17, p. 11) said that Governments could not organize volunteer forces and send them to another State.

USSR (SR.14, p. 11) said that paragraphs 2, 3 and 4 of the United Kingdom proposal could be invoked against national liberation movements and against States wishing to assist them.

"2. Indirect use of force

Argentina (SR.3, p. 11) stated that the prohibition should cover any military support by a State of subversive activities in another State. Canada (SR.6, p. 9) said that subversion, infiltration by trained guerrillas, and the supply of arms to insurrectionary forces should be outlawed. Madagascar (SR.9, p. 17) said that the fomenting of internal disorder on behalf of a foreign Power should be regarded as a use of force. Guatemala (SR.14, p. 8) said that all States had the duty to refrain from provoking internal conflicts or committing terroristic acts in the territory of other States and not to tolerate activities organized for that purpose. Sweden (SR.10, p. 9), United Kingdom (SR.16, p. 12), and Venezuela (SR.16, p. 16) supported the United Kingdom proposal.

USSR (SR.14, p. 11) said that paragraphs 2, 3 and 4 of the United Kingdom proposal could be invoked against national liberation movements and against States wishing to assist them.

"3. Use of force in territorial disputes and boundary problems

India (SR.3, p. 8), Czechoslovakia (SR.4, pp. 5-6), USSR (SR.5, pp. 7-8), Canada (SR.6, p. 9), and Sweden (SR.10, p. 11) considered that a prohibition of force in territorial disputes would be useful; United States (SR.15, p. 17) suggested including it as a commentary; and United Kingdom (SR.16, p. 13) said that the proposals merited further study.

United States (SR.3, p. 16) raised the question whether a State should be considered to have used force illegally if it had resisted in good faith another State endeavouring to affirm its sovereignty - a sovereignty subsequently recognized to it - over a portion of territory.

UAR (SR.17, p. 16) stated that the three-Power proposal did not condone the occupation of territory by means contrary to the Charter or to United Nations resolutions; Ghana (SR.17, p. 18) confirmed the interpretation.

France (SR.6, p. 4) said that the last phrase of the first paragraph of the Czechoslovak proposal gave the paragraph a more restrictive meaning than it would otherwise possess.

"4. Wars of aggression

USSR (SR.5, p. 8) and Czechoslovakia (SR.4, p. 6, SR.8, pp. 7-8) supported the Czechoslovak proposal; Netherlands (SR.7, pp. 10-11) favoured retention of the notion of the penal liability of perpetration of international crimes against peace; Sweden (SR.10, p. 9) favoured mention of the threat or waging of wars of aggression; and Romania (SR.16, p. 6) considered the definition of Principle A should cover the concept of political, material and moral responsibility for violations of that principle.

Japan (SR.5, p. 15) and Italy (SR.7, p. 7) raised the question how, or by what organ, political and material responsibility of a State would be established. Czechoslovakia (SR.8, pp. 7-8) replied that an appropriate device would be found in case of any violation of international peace and security.

United Kingdom (SR.16, p. 13) and Venezuela (SR.16, p. 16) found the Czechoslovak proposal unclear.

Nigeria (SR.7, p. 21) and United States (SR.15, p. 18) opposed inclusion of a provision on the subject.

"5. Acts of reprisal

Mexico (SR.9, p. 15) and India (SR.17, p. 5) supported the inclusion of a provision on acts of reprisal.

/...

United States (SR.17, p. 18) considered such a provision unnecessary.

"6. Economic, political and other forms of pressure or coercion

(See also above under the heading Meaning of "force")

Japan (SR.5, p. 14) asked whether the Czechoslovak and Yugoslav proposals meant economic and political pressure sufficiently powerful to endanger the political independence or territorial integrity of a State, or whether they referred to the purpose for which the pressure was applied.

Nigeria (SR.7, p. 22) stated that paragraph 2 of the Yugoslav proposal was somewhat succinct.

"E. Legal uses of force

"1. On the decision of a competent organ of the United Nations

Romania (SR.7, p. 18, SR.16, p. 6) and USSR (SR.14, p. 12) referred only to the Security Council.

Italy (SR.7, pp. 6, 7), Sweden (SR.10, p. 11), and Guatemala (SR.14, p. 9) referred to a competent organ of the United Nations.

United States (SR.3, p. 17, SR.15, p. 19), Nigeria (SR.4, p. 10), Netherlands (SR.7, p. 12), UAR (SR.8, p. 8), United Kingdom (SR.16, p. 14), Venezuela (SR.16, p. 18), and Australia (SR.17, p. 11) preferred a formula mentioning both the Security Council and the General Assembly.

"2. By a regional agency

United States (SR.3, p. 17, SR.15, p. 19, SR.17, p. 17), Sweden (SR.10, p. 11), United Kingdom (SR.16, pp. 12-13), Venezuela (SR.16, p. 18) and Australia (SR.17, p. 11) supported a formula referring to regional agencies.

USSR (SR.14, p. 12) stated that any decision by a regional organization to use coercive measures or force against a Member of the United Nations without the authorization of the Security Council would be a breach of the Charter.

"3. Individual or collective self-defence

India (SR.3, p. 8), Argentina (SR.3, p. 11), United States (SR.3, p. 16), Nigeria (SR.4, p. 10), Japan (SR.5, p. 15), Mexico (SR.9, pp. 11-13) and Sweden (SR.10, p. 11) referred to individual or collective self-defence under Article 51 of the Charter.

/...

Mexico (SR.9, pp. 11-13) stated that the right of self-defence continued to exist only until the Security Council had taken measures necessary to maintain international peace and security; USSR (SR.14, p. 12) criticized the United Kingdom proposal for not mentioning armed attack and the Security Council in connexion with self-defence.

United States (SR.3, p. 14) raised the question whether the threat of force gave rise to the right of self-defence. Mexico (SR.9, pp. 11-13) stated that self-defence was only permitted under Article 51 in the event of armed attack, to the exclusion of every other act, including provocation.

Lebanon (SR.3, pp. 11-12) and United States (SR.3, pp. 13-14) raised the question whether economic pressure or 'economic aggression' would give rise to a right of self-defence. UAR (SR.8, p. 9) replied that while the use of economic coercion justified the exercise by the victim country of its right to self-defence, the exercise of that right should not reach the point of using armed force.

Mexico (SR.9, p. 13) said that the use of nuclear weapons was in itself contrary to the Charter. United States (SR.15, pp. 15, 19) said that the Charter prohibited, not the use of specific weapons, but the use or threat of force in certain ways.

"4. Self-defence against colonial domination

Czechoslovakia (SR.4, p. 6, SR.8, pp. 6-7), Yugoslavia (SR.4, p. 9, SR.9, p. 22), USSR (SR.5, p. 9, SR.14, p. 11), Romania (SR.7, p. 18, SR.16, p. 5), UAR (SR.8, pp. 8-9, SR.17, p. 16), Ghana (SR.10, pp. 14-15), and India (SR.17, p. 4) favoured the inclusion of a provision on the subject.

Japan (SR.5, pp. 14-15), Canada (SR.6, p. 9), Italy (SR.7, pp. 6-7, SR.16, p. 8), Netherlands (SR.7, p. 12), Lebanon (SR.7, p. 14), Nigeria (SR.7, p. 22), Sweden (SR.10, p. 9), Dahomey (SR.10, p. 12), Guatemala (SR.14, p. 7), United States (SR.15, pp. 15, 19, SR.17, p. 18), United Kingdom (SR.16, p. 14), Venezuela (SR.16, pp. 17-18), and Australia (SR.17, pp. 14-15) opposed such a provision.

"F. Corollaries of the prohibition of the use or threat of force

"1. Non-recognition or nullity of situations brought about by illegal use of force

Nigeria (SR.4, p. 10, SR.7, p. 21) stated that changes brought about or advantages acquired through the threat or use of force would be considered null and void.

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India (SR.3, p. 8) said that a situation resulting from a use of force to violate the frontiers of a State should not be recognized by other States; Mexico (SR.9, pp. 15-16) favoured the inclusion of the principle of non-recognition of territorial conquests, and stated that if the Security Council or the General Assembly had determined that a territorial acquisition had been brought about by the threat or use of force, Members would be required to apply the principle of non-recognition; Argentina (SR.3, p. 10), Guatemala (SR.14, p. 8), Romania (SR.16, p. 6) and Venezuela (SR.16, p. 17) favoured inclusion of the principle of non-recognition.

Japan (SR.5, p. 13) asked how a situation brought about by force or pressure could be declared null and void.

Netherlands (SR.7, p. 11), Sweden (SR.10, p. 11), United Kingdom (SR.16, p. 15) and Australia (SR.17, p. 13) considered such a provision inadvisable.

"2. War propaganda

Czechoslovakia (SR.4, p. 6), USSR (SR.5, p. 8), Romania (SR.7, p. 18), and Poland (SR.9, p. 8) favoured the inclusion of a provision on the subject.

United States (SR.3, p. 14, SR.15, pp. 15, 18), Nigeria (SR.7, p. 21), Sweden (SR.10, p. 9), Italy (SR.16, p. 8), United Kingdom (SR.16, p. 13), Venezuela (SR.16, p. 17), and Australia (SR.17, p. 13) opposed the inclusion of such a provision.

Netherlands (SR.7, p. 11) was in doubt as to the desirability of retaining the matter of war propaganda in Principle A and thought that any provision on the question should take account of constitutional restrictions to enrich the executive authority was subject in that respect.

"3. Agreement for general and complete disarmament under effective international control

Czechoslovakia (SR.4, p. 6), USSR (SR.5, p. 9), Romania (SR.7, p. 18), UAR (SR.8, p. 10) and Poland (SR.9, p. 7) favoured the inclusion of a provision on the subject.

Netherlands (SR.7, p. 11) stressed the urgency of disarmament, but could not yet make proposals how the Committee could avoid the objection that it was futile to repeat the need for an agreement without proposing a solution of the difficulties involved.

Italy (SR.7, p. 7), Nigeria (SR.7, p. 22), Sweden (SR.10, p. 10), United States (SR.15, p. 18), United Kingdom (SR.16, pp. 14-15), Venezuela (SR.16, p. 17), and Australia (SR.17, p. 13), opposed the inclusion of a provision on the subject in principle A.

Sweden (SR.10, p. 10) and United Kingdom (SR.16, pp. 14-15) suggested that the subject might be dealt with in the commentary.

"4. Making the United Nations security system more effective

Italy (SR.16, pp. 7-9), Australia (SR.17, p. 9) and United States (SR.17, p. 18) supported the Italian amendment; United Kingdom (SR.16, p. 15) found it acceptable in principle, but wished to give further thought to its wording and placement in the text; Yugoslavia (SR.17, p. 9) expressed sympathy with the ideas of the amendment, but thought that it would not be easy to incorporate in the statement of the principle; and UAR (SR.17, p. 16) considered that it deserved thorough study."

107. By 13 votes to 10, with 2 abstentions, the Special Committee decided to put Paper No. 2 to the vote first.

108. By 11 votes to 2, with 12 abstentions, the Special Committee adopted Paper No. 2.

2. Explanations of vote

109. Explanations of vote were given by the representatives of Romania, Ghana, Netherlands, Yugoslavia, the USSR, Lebanon, Argentina, the United States, Burma, the United Arab Republic, Czechoslovakia, Canada, India, the United Kingdom, Italy, Australia, Poland and Guatemala.

110. The representative of Romania said that he had abstained in the vote on Paper No. 2 because he had intended to vote in favour of Paper No. 1. Paper No. 1 represented a step forward in the development of the principle to which it related and contained some of the elements which should be included in any statement of that principle. In the view of his delegation, a complete statement of that principle should, however, also include the following additional elements: a condemnation of the threat or use of force by States in their international relations as a violation of the Charter and as incompatible with the standards of the contemporary world; the duty of every State to refrain in its international relations from any form of pressure, whether direct or indirect, military, political, economic or other against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations; the duty of every State to refrain from any pressure against peoples struggling to achieve their independence; the duty of States to co-operate with a view to achieving general and complete disarmament and a prohibition of propaganda advocating the use of force in international relations.

111. The representative of Ghana said that he had voted for Paper No. 2 because, in his view, it was the only proposal actually before the Special Committee.

Paper No. 1 had been drawn up solely for the purpose of reaching a compromise and several delegations had made substantial concessions to achieve that end. However, one delegation had finally indicated it could not support that Paper as it stood, it had therefore failed to achieve its purpose and was thus not properly before the Committee. In view of the fact that, nonetheless, Paper No. 1 was reproduced in the report of the Special Committee, he wished to place on record his views on the contents of that Paper. Self-determination was the very essence of peaceful coexistence; the colonial peoples were therefore justified in using every possible means to liberate themselves. Such a right would assuredly have been written into the Charter had it been drafted in 1964, for the "fundamental human rights" referred to in the Preamble were irreconcilable with the continued existence of colonialism. The greatest service the Committee could have rendered the colonial peoples would have been to give a legal formulation to their right of self-defence: that had been the purpose of the proposal by Ghana, India and Yugoslavia (A/AC.119/L.15). The Committee had not done so; it must accordingly be placed on record that his delegation could not accept paragraphs 2 (b) and (c) of section I of Paper No. 1 as affecting that right, and must therefore reserve its position on those paragraphs until the right of self-defence against colonial domination was expressly recognized in any formulation of the principle under consideration.

112. The representative of the Netherlands said that, in explaining his vote, he wished to comment on the results of the Special Committee's work. The Committee had not been able to reach any agreement on the scope or content of the first three of the principles before it. Consequently, the agreement reached on the fourth principle, namely the principle of sovereign equality (see para. 339 below), presented such an incomplete picture of international law as to constitute a travesty. In approving that latter principle his delegation clearly presupposed that the points contained therein would not remain mere isolated statements. Specifically, if, when the General Assembly had concluded its consideration of the matter, a draft statement of principles was drawn up, it would be very difficult for his Government to accept those principles unless they accorded proper recognition to the role played in international law by the procedures used by the

United Nations for the peaceful settlement of disputes, including the procedure of judicial settlement. His delegation had emphasized both in the Sixth Committee and in the Special Committee that such procedures and the full utilization of other procedures existing under international law were indispensable for the progressive development of international law. His delegation had therefore made its vote in favour of the Drafting Committee's proposal relating to the pacific settlement of international disputes (see para. 201 below) contingent on agreement being reached on that aspect of the matter, as it would also have done in the case of Paper No. 1 relating to the prohibition of the threat or use of force, if that Paper had been put to the vote.

113. The representative of Yugoslavia said that his delegation deeply regretted the fact that the Special Committee had been unable to reach agreement on Paper No. 1, the text of which was the result of very long discussions and the patient efforts of many delegations. That was why, although he was not opposed to the proposal contained in Paper No. 2, his delegation had abstained in the vote on that document. With respect to Paper No. 1 his delegation considered that section I thereof contained only some of the elements which the principle concerned should comprise. His delegation had thus only agreed to Paper No. 1 as a compromise, and subject to the reservation stated in the foot-note to section I to the effect that the substance of paragraphs 2 (b) and (c) of that section should be included also under the principle of non-intervention when it was drafted. Furthermore, in the view of his delegation, these two paragraphs could not be interpreted independently of the other paragraphs which should properly form part of the principle, including the exceptions to the prohibition on the threat or use of force, and the right of colonial peoples to fight for their freedom.

114. The representative of the Union of Soviet Socialist Republics said that the Drafting Committee had laboured unremittingly to reach agreement on the elements to be included in the formulation of the principle relating to the prohibition of the threat or use of force. Thanks to the flexibility and wisdom shown by many delegations which wished to further the development of international law, it had finally drawn up a compromise text, Paper No. 1, which listed, in section I, the provisions acceptable to all delegations and, in section II, several very important provisions on which it had not been possible to reach agreement. That document had

been accepted by all the members of the Drafting Committee subject to approval by their Governments. Such approval had not eventually been forthcoming from the Government of one member of the Drafting Committee, thus depriving Paper No. 1 of any value, a regrettable development because that document actually contained a promising compromise formula. His delegation had therefore abstained in the vote on Paper No. 2. As regards the actual contents of Paper No. 1, his delegation had stated in the Drafting Committee that it agreed to the points contained in section I of that Paper as they were points forming part of the formulation of the principle prohibiting the threat or use of force. However, his delegation did not consider that the points enumerated in section I exhausted the content of that principle. The formulation thereof would be complete only if it likewise included the provisions contained in paragraphs 1 (a) and (c), 3, 4, and 7 (a) of Annex A of Paper No. 1. He also stated that in the view of his delegation, the Committee had only completed the first stage of its work. He further stressed that the use of force by colonial peoples fighting for their liberation from colonial domination was lawful and that, therefore, paragraphs 2 (b) and (c) of section I of Paper No. 1 did not deal with either the right of colonial peoples to resort to armed force for their liberation or the right of other States to assist them. Reviewing the results of the Committee's work, he said that in his delegation's view some progress had been made; there had been a detailed discussion, based on actual texts, and the Committee had worked out some initial elements which would facilitate further work on the subject. Owing to obstruction by one delegation, however, the Committee had been unfortunately prevented from going further in the case of the first three principles before it. His delegation nevertheless hoped that, when the matter went before the General Assembly, that delegation would find it possible to support measures backed by the overwhelming majority of Members.

115. The representative of Lebanon said that he deeply regretted that the Drafting Committee had been unable to submit a text on the principle under consideration which eventually enjoyed a full consensus. The failure, however, was not as complete as it might seem at first sight, for Paper No. 1 had been endorsed by thirteen members of the Drafting Committee and had been provisionally endorsed by the delegation of the fourteenth member subject to consultation with its Government. It was all the more regrettable that in the end the efforts of the various blocs to achieve solidarity had led nowhere.

116. The representative of Argentina said that he regretted the direction which the Special Committee's work had taken, particularly in that, when it had considered the conclusions of the Drafting Committee, it had changed the order of the principles before it and studied first of all the conclusion regarding the principle of sovereign equality, which had not been a good omen for the future. After the adoption of those conclusions, he had hoped that the Special Committee would also adopt specific formulations with respect to the principle of pacific settlement of international disputes and particularly to the principle of non-intervention, to which the Latin American countries traditionally attached exceptional importance. That, however, had unfortunately not been the case. Furthermore, it had not been possible to put Paper No. 1 regarding the principle relating to the prohibition of the threat or use of force to the vote because of the incomprehensible attitude of certain delegations. It was therefore in order to protest against the tactics used to prevent Paper No. 1 from being put to the vote, although agreement could have been reached on it, that his delegation had voted against Paper No. 2.

117. The representative of the United States said that he had voted in favour of Paper No. 2. He sincerely regretted that the Special Committee had not reached agreement on the wording of section I of Paper No. 1. Had that Paper been put to the vote as it stood his delegation would not have been able to support it. While he had provisionally approved the text of that Paper, this had been on the understanding that it was subject to consultation with his Government and further consideration in the Drafting Committee in the light of instructions received by representatives from their Governments. For legal reasons his Government had found itself unable to accept one provision of the text of Paper No. 1 because, in its view, paragraph 2 (d) of section I was open to misinterpretation, and more particularly the phrase "Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State". His delegation was of the view that, since Article 2, paragraph 4, of the Charter provided that States must refrain from the threat or use of force against the territorial integrity of other States, it was obvious that they were bound to respect the frontiers of other States. As Article 2, paragraph 4, of the Charter thus contained a binding treaty provision on the point, it would be extremely ill-considered for the Special Committee not only to try to restate what was already incontestably accepted but,

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what was more serious, to make such a statement in an ambiguous form which could hardly fail to give rise to legal controversies and numerous difficulties of interpretation. The text of paragraph 2 (d) of section I of Paper No. 1 was incautious because it flatly stated that every State had the duty to refrain from the threat or use of force to violate existing boundaries, without any qualifications. It could thus be open to the interpretation that it failed to take account of the law of hot pursuit. Moreover, the express mention in this form of territorial disputes and violations of boundaries in the principle relating to the prohibition of the threat or use of force was, in the view of his delegation, particularly unjustifiable as the Special Committee had already agreed, in relation to the principle of sovereign equality, to state that the territorial integrity and political independence of a State were inviolable. Despite the fact that his delegation did not believe there was any need for including a text on this particular point in the principle concerning the prohibition of the threat or use of force, it had suggested alternative wordings or approaches to paragraph 2 (d) including a wording to the following effect: "It is the duty of every State to refrain from the threat or use of force to change the existing frontiers of another State or as a means of settling territorial disputes and problems concerning frontiers between States." The word "change", which was factual, was better than the term "violate", which was too subjective. It should therefore have satisfied those who considered it desirable to insert a clause on territorial disputes in the principle under consideration. However, this suggestion, as in the case of others made by his delegation, had been categorically rejected. His delegation had, for example, further suggested that the words "to violate the existing boundaries of another State, or" should be deleted from paragraph 2 (d), and that, instead, statements for the record should be made by delegations of their understanding that, under Article 2, paragraph 4, of the Charter, their Governments had the duty to respect the boundaries of other States. This suggestion had not been accepted. His delegation had also been prepared to accept a suggestion by the United Kingdom that the text should read: "Every State has a duty to refrain from the threat or use of force to violate existing boundaries of another State with a view to effecting a change in the latter State's boundaries or as a means of solving its territorial disputes and problems concerning frontiers between States". This suggestion,

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however, had been also rejected by a small minority of delegations. His delegation was therefore not responsible for a failure to reach final agreement on the principle under consideration. He also wished to place on record the position of his delegation on certain other points covered in section I of Paper No. 1. In its understanding, the word "acquiesce" as used in paragraph 2 (c) meant that a State had knowledge of and legal authority to deal with actions which were at variance with the provision in that paragraph, yet wilfully failed to put a stop to them. Lastly, his delegation interpreted paragraph 3 of section I to mean that nothing in paragraphs 1 and 2 affected the lawful use of force consistent with the Charter of the United Nations.

118. The representative of Burma stated that his delegation had abstained from the vote on Paper No. 2 for the same reasons as the representative of Yugoslavia. In the view of his delegation, Paper No. 2 did not reflect the actual situation in the Drafting Committee.

119. The representative of the United Arab Republic stated that, in the view of his delegation, Paper No. 1 was not properly before the Committee as it had been objected to by one delegation. This view was confirmed by the Drafting Committee's submission of Paper No. 2, which could not conceivably be reconciled with Paper No. 1. As his delegation had thus considered that there was only one text before the Special Committee, it had abstained when the motion to give priority to Paper No. 2 had been put to the vote. The reason why it had abstained during the voting on Paper No. 2 itself was that, in its view, the great amount of effort which had been expended on consideration of the principle in question should have led to a formulation in keeping with the developments in international life since the adoption of the Charter. It had therefore been unable to support a draft which simply declared the inability of the Special Committee to reach a consensus on the principle. On the other hand, as Paper No. 2 had represented the only course of action open to the Committee at that late stage, he had not been able to vote against it. As regards the specific contents of Paper No. 1, which had not been discussed in the Special Committee, his delegation wished to reserve its position.

120. The representative of Czechoslovakia said that his delegation deeply regretted that the Special Committee had been unable to take action on Paper No. 1. Though

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far from perfect, that text had represented a compromise reached after long and difficult negotiations and had it been put to the vote his delegation would have been able to support it. At the same time, it would have explained that it did not consider that section I of Paper No. 1 was exhaustive, and it would have stressed the importance which it attached to the inclusion of paragraphs 1 (a), 3, 4, 5, 6 and 7 (a) of annex A of the same Paper in the formulation of the principle. The great efforts which had gone into the preparation of Paper No. 1 had been rendered futile by the failure of one delegation to ratify what had appeared to be unanimously accepted. The suggestions made by that latter delegation with respect to paragraph 2 (d) of section I of Paper No. 1, in particular the deletion of reference to the violation of boundaries, would have impaired the balance of the proposal as a whole. The delegation of Czechoslovakia could not accept any legal arguments in favour of the deletion of a reference to what was generally considered a part of international law. Believing as it did that agreement could have been reached on the principle under consideration, his delegation had been unable to vote in favour of Paper No. 2.

121. The representative of Canada said that his delegation had abstained during the voting on Paper No. 2 because it had not been convinced that there was really a profound and irremediable disagreement, on the points set out in Paper No. 1. Even though agreement had not been finally reached, he believed that the Committee's work on this principle had been valuable and should advance the work of the Sixth Committee.

122. The representative of India stated that the proposal by Ghana, India and Yugoslavia (A/AC.119/L.15), concerning boundaries, in the form in which it had been incorporated in Paper No. 1, had been accepted by thirteen members of the Drafting Committee. But one country alone finally frustrated the work of the Special Committee, by insisting on amendments which would not have served the interests of peace. This was all the more regrettable since the opposition by one delegation to the formulation of the principle relating to the prohibition of the threat or use of force was done by claiming to defend the United Nations Charter. That delegation had taken the position that it did not want the singling out of any particular provision of the Charter or to restate it. Yet it had supported many other proposals entailing restatement of what was obvious in the Charter and had desired to single out the use of force and regional agencies and to debar any mention of reprisals.

123. The representative of the United Kingdom said that it had been with regret that he had voted in favour of Paper No. 2. Paper No. 1 contained the points on which a provisional consensus had been achieved, and while he had had difficulties with some points, notably paragraph 2 (a) in section I, he would have been prepared to support Paper No. 1 as a whole, subject to further study by Governments. As a result of the last minute difficulties which had arisen, however, it had become clear that the Committee's only course was to report to the General Assembly that it had been unable to reach a consensus on the principle relating to the prohibition of the threat or use of force. The Committee's work, nevertheless, had not been entirely wasted. Paper No. 1, which showed the large measure of agreement reached, would be included in the Committee's report and the progress made could be built upon by the General Assembly and elsewhere. The Committee had been entirely right in its decision to proceed by way of consensus. The development of international law was not a question for a majority vote and the only logical course was to proceed by consensus.

124. The representative of Italy said that his delegation had voted in favour of Paper No. 2, in spite of the fact that it embodied a negative conclusion. Regardless of differences on specific points, one of the fundamental reasons why the Special Committee had failed in such a large part of its task was the refusal of a number of delegations to accept all the institutions and institutional implications of the United Nations Charter. It was in the institutional structure of the United Nations and the functions and powers of United Nations bodies, rather than in the formulation of rules of conduct, that the essential ways and means to make the principles of the Charter more effective should be found. This was particularly true of the four principles referred to the Special Committee. By minimizing or disregarding the institutional apparatus and by trying to set the international community back to an even more inorganic stage than it had reached in the twentieth century, a number of delegations had made the Committee's task far more difficult. He was confident that the General Assembly would dispose of such retrograde conceptions of contemporary international law and of the United Nations. It was to be hoped that the Committee's work would serve as a basis for further endeavours in more favourable circumstances.

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125. The representative of Australia said that his delegation's vote in favour of Paper No. 2 should not be interpreted as arising from any affection for that document or for the result it recorded. His delegation, however, felt it had in self-respect no alternative but to vote for it, as it had been adopted without dissent in the Drafting Committee, and as it was clear that consensus on Paper No. 1 had broken down. The point on which consensus had broken down was however a narrow one, concerning the wording of an illustrative provision which could have had no independent legal effect, having regard to the terms of Article 2, paragraph 4, of the Charter. For that reason, his delegation could have accepted paragraph 2 (d) of section I of Paper No. 1 in any of the forms suggested. In his view, the failure to reach a consensus on the principle under consideration was not the end but only the beginning of United Nations work in the progressive development and codification of that principle.

126. The representative of Poland said that his delegation had abstained in the vote on Paper No. 2 because it considered that Paper No. 1 would better serve the progress of international law. While the statement of the principle under consideration contained in section I of Paper No. 1 was not exhaustive, it represented a reasonable compromise and his delegation would have voted in favour of it had it been put to the vote.

127. The representative of Guatemala stated that the Committee's session had not been a failure as the principles before it had been carefully examined and the positions of delegations were now better understood. His delegation had voted in favour of Paper No. 2 because it was a faithful reflection of the outcome of the Committee's discussions. In view of the close link between the prohibition of the threat or use of force and the principle of non-intervention, which was an immutable principle of Latin American and general international law, the Committee's work would have lacked a certain balance had it adopted a formulation on the one principle and not on the other.

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CHAPTER IV

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. Written proposals and amendments submitted during the initial debate

128. In regard to the above principle five written proposals were submitted to the Special Committee by Czechoslovakia (A/AC.119/L.6), by Yugoslavia (A/AC.119/L.7), by the United Kingdom of Great Britain and Northern Ireland (A/AC.119/L.8), by Japan (A/AC.119/L.18) and jointly by Ghana, India and Yugoslavia (A/AC.119/L.19). Yugoslavia withdrew its original proposal (A/AC.119/L.7) in favour of the three-Power proposal (A/AC.119/L.19) submitted by that country, Ghana and India. Four written amendments to the proposal by the United Kingdom (A/AC.119/L.8) were submitted by France (A/AC.119/L.17), by Canada and Guatemala (A/AC.119/L.20), by the Netherlands (A/AC.119/L.21) and by Canada (A/AC.119/L.22). The amendment by Canada and Guatemala (A/AC.119/L.20) was later withdrawn by its sponsors. The texts of the above-mentioned proposals and amendments are given below in the order in which they were submitted to the Special Committee.

129. Proposal by Czechoslovakia (A/AC.119/L.6)

"The principle of peaceful settlement of disputes

"1. States shall settle their international disputes solely by peaceful means so that international peace, security and justice are not endangered.

"2. The parties to a dispute shall enter first into direct negotiation, and, having regard to the circumstances and the nature of the dispute, may also use by common agreement other peaceful means of settling disputes, such as enquiry, mediation, conciliation, arbitration or judicial settlement, and resort to regional agencies or arrangements."

130. Proposal by Yugoslavia (A/AC.119/L.7)

"Peaceful settlement of disputes

"1. International disputes shall be settled solely by peaceful means, in a spirit of understanding, on a basis of sovereign equality and without the use of any form of pressure.

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"2. States shall, accordingly, seek early, appropriate and just settlement of their international disputes by such peaceful means as may previously have been agreed upon between them or such other peaceful means as may be most appropriate according to the circumstances and the nature of the dispute, in particular those means indicated in Article 33 of the Charter.

"3. In seeking a peaceful settlement the parties to a dispute, as well as all other States, shall refrain from any action that could aggravate the situation."

131. Proposal by the United Kingdom (A/AC.119/L.8) and amendments by France (A/AC.119/L.17), Canada and Guatemala (A/AC.119/L.20), Netherlands (A/AC.119/L.21) and Canada (A/AC.119/L.22)

Proposal by the United Kingdom

"Peaceful settlement of disputes

"Statement of principles

"1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

"2. The parties to any such dispute shall first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

"3. Unless they are capable of settlement by some other means, legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

"Commentary

"(1) The language of paragraph 1 follows closely that of Article 2, paragraph 3, of the Charter. Although the primary objective of the United Nations, as an organization, is to ensure the maintenance of international peace and security, it is essential to bear in mind that the Organization is equally dedicated to the concept that the principles of justice must be respected.

"(2) Paragraph 2, the language of which follows closely that of Article 33 of the Charter, spells out, in a non-exhaustive manner, the various means of peaceful settlement. Broadly speaking, the means of peaceful settlement thus enumerated fall into two categories:

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- (a) those means which, so far as the terms of settlement are concerned, depend upon voluntary acceptance by the parties;
- (b) those means which oblige the parties to accept settlement determined by a third party organ.

Negotiation, mediation, inquiry and conciliation fall into the first of these categories; arbitration and judicial settlement fall into the second. Although reference to regional agencies or arrangements is not a means of settlement in itself, resort to such regional agencies or arrangements, which may incorporate either or both of the categories of peaceful settlement, should in any case be encouraged. Although the means of negotiation is that most commonly used, at least in the initial stages, for the peaceful settlement of international disputes, it is not the only or necessarily the most effective method of resolving a dispute. In the event that the method of negotiation is initially adopted by the parties to a dispute and does not result in a solution, the parties should continue to seek a solution by making use of one of the other means of peaceful settlement enumerated, having regard to the nature of the dispute.

"(3) Paragraph 3 emphasizes the principle, enshrined in Article 36, paragraph 3, of the Charter, that legal disputes should as a general rule be referred by the parties to the International Court of Justice. All States Members of the United Nations are ipso facto parties to the Statute of the Court. The principle that legal disputes should as a general rule be referred to the Court also finds expression in operative paragraph 3 of Part C of General Assembly resolution 171 (II) of 14 November 1947. The second preambular paragraph of Part C of that resolution draws attention to the consideration that the International Court of Justice could settle or assist in settling many disputes in conformity with the principles of justice and international law if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services. In this connexion, operative paragraph 1 of Part C of the resolution draws the attention of those States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible.

"(4) The second sentence in paragraph 3, which is based on Article 95 of the Charter, makes it clear that parties to a dispute of a legal nature may entrust the solution of their differences to other means of judicial settlement."

132. The French amendment (A/AC.119/L.17) to the United Kingdom proposal provided for the addition to the statement of principles in that proposal of a new paragraph 4 as follows:

"4. Recourse to any one of the means of peaceful settlement of disputes, in conformity with an undertaking freely entered into, shall be regarded as derogating from the sovereignty of the State."

133. The amendment (A/AC.119/L.20) by Canada and Guatemala to the United Kingdom proposal, which was later withdrawn by its sponsors, proposed the insertion of the following new paragraph between paragraphs 2 and 3 of the statement of principles in that proposal:

"Parties to a dispute which, notwithstanding resort to the procedures mentioned in the previous paragraph, and in particular resort to the procedures provided for by regional agencies or arrangements, remains unsettled should, in accordance with the relevant provisions of the Charter, bring it before the General Assembly or the Security Council as the case may be."

134. The Netherlands amendment (A/AC.119/L.21) to the United Kingdom proposal provided for the addition, at the end of paragraph 3 of the statement of principles in that proposal, of the following:

"General multilateral conventions adopted under the auspices of the United Nations should contain a clause providing that disputes relating to the interpretation or application of the convention which the parties have not agreed to settle, or have not been able to settle, by some other peaceful means, may be referred on the application of any party to the International Court of Justice."

135. Lastly, the Canadian amendment (A/AC.119/L.22) to the United Kingdom proposal provided for the addition of the following new paragraph at the end of the statement of principles in the proposal:

"Nothing in the foregoing paragraphs prejudices or derogates from the powers and functions which are vested by the provisions of the Charter in the General Assembly and the Security Council respectively in relation to the pacific settlement of international disputes."

136. Proposal by Japan (A/AC.119/L.18)

"Peaceful settlement of disputes

"The following paragraph shall be inserted in the principal and operative part of the outcome of the Special Committee:

'Every State should accept the compulsory jurisdiction of the International Court of Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, as soon and with as few reservations as possible.'

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137. Proposal by Ghana, India and Yugoslavia (A/AC.119/L.19)

"Peaceful settlement of disputes

"1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice are not endangered.

"2. Unless otherwise provided for, the parties to any dispute shall, first of all, seek a solution by direct negotiations; taking into account the circumstances and the nature of the dispute, they shall seek a solution by inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

"3. (a) If any dispute is not capable of settlement by some other means and if the parties agree that it is essentially legal in nature, such a dispute shall, as a general rule, be referred by all the parties to it to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

(b) In accordance with the provisions of Article 9 of the Statute of the International Court of Justice concerning the election of the judges of the Court, the United Nations shall take early steps to assure that in the Court as a whole there are represented more fully and equitably the main forms of civilization and the principal legal systems of the world. At the same time, it is the duty of the United Nations to continue its efforts in the field of the progressive development of international law and its codification in order to strengthen the legal basis of the judicial settlement of international disputes.

"4. States should, as far as possible, include in the bilateral and multilateral agreements, to which they become parties, provisions concerning the particular peaceful means mentioned in Article 33 of the Charter of the United Nations, by which they desire to settle their differences.

"5. In view of their gravity and their tendency to increase tensions rapidly and, thereby, endanger international peace and security, territorial disputes and problems concerning frontiers shall be settled solely by peaceful means.

"6. In seeking a peaceful settlement the parties to a dispute, as well as other States, shall refrain from any action which may aggravate the situation and shall act in accordance with the purposes and principles of the Charter of the United Nations and the provisions of this Chapter."

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B. Debate

1. General obligation to settle international disputes by peaceful means

138. The principle stated in Article 2, paragraph 3, of the United Nations Charter, that States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, was generally recognized by the representatives who took part in the debate as a legal obligation which contemporary international law imposed on all States members of the international community. Proposals concerning this general obligation were submitted by Czechoslovakia (A/AC.119/L.6, para. 1 (see para. 129 above)), Yugoslavia (A/AC.119/L.7, para. 1 (see para. 130 above)), the United Kingdom (A/AC.119/L.8, para. 1 (see para. 131 above)) and Ghana, India and Yugoslavia (A/AC.119/L.19, para. 1 (see para. 137 above)).

139. It was stated that the principle of peaceful settlement appeared as the logical corollary of the injunction to refrain from the threat or use of force contained in Article 2, paragraph 4, of the Charter. The history of international law and international relations showed that the two principles had developed side by side. As international law had progressively outlawed the threat or use of force in the settlement of international disputes, the procedures for the peaceful settlement of disputes had necessarily been developed, within their juridical framework, to help solve the conflicts of interest which inevitably arose in the relations among States.

140. In this respect the Charter represented the final stage in an evolution marked by a series of international instruments and acts which, as they had progressively restricted the right to resort to war recognized by traditional international law, had at the same time gradually developed the means of peacefully settling disputes and established the legal obligation of States to use such means. During the debate mention was also made of the Calvo and Drago doctrines, the Permanent Commissions of Inquiry set up by the Bryan treaties, the Hague Conventions for the Pacific Settlement of Disputes, 1899 and 1907, the Covenant of the League of Nations and the Kellogg-Briand Pact.

141. A number of representatives pointed out that, despite the historical importance of the instruments and acts antedating the Charter, the principle of the peaceful settlement of international disputes did not assume its full value and

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importance until the Charter had prohibited the use of force and proclaimed the sovereign equality of States. Since the adoption of the Charter the principle had been universally recognized and proclaimed in a series of multilateral international instruments, such as the Pact of the League of Arab States, 1945, the Inter-American Treaty of Reciprocal Assistance, 1947, the Charter of the Organization of American States, 1948, the Treaty of Friendship, Co-operation and Mutual Assistance (Warsaw Treaty), 1955, the Bandung Declaration, 1955, the Belgrade Declaration, 1961, and the Charter of the Organization of African Unity, 1963. The newly independent countries of Africa had shown the importance they attached to the peaceful settlement of disputes with the recent adoption, in fulfilment of article XIX of the Charter of African Unity, of a Protocol of Mediation, Conciliation and Arbitration. The Commission of Mediation, Conciliation and Arbitration established under the Charter of the Organization of African Unity was considered one of the principal organs of that organization. At the same time, the principle of peaceful settlement of international disputes had been emphasized in numerous bilateral instruments and declarations, such as the Joint Communiqué issued in 1959 by the United States and the Soviet Union and the 1961 joint declaration by the same countries on the principle of general and complete disarmament.

142. Some representatives stressed the practical importance of the principle of peaceful settlement of international disputes for the promotion of friendly relations and co-operation, the strengthening of peaceful coexistence among States and the maintenance of peace and security. Certain of them emphasized that the need to settle international disputes solely by peaceful means was today more imperative than ever, particularly taking into account the recent advances of science and technology which had multiplied the possibilities of conflict and had increased the capacity for mutual destruction.

143. Other representatives stressed that the principle of pacific settlement should not be considered in isolation, but together with the other principles before the Committee. The effective and impartial application of these other principles depended in large measure upon the development of the principle of the peaceful settlement of disputes. These representatives considered that the development of international law would be greatly advanced if progressive solutions could be reached on the principle of the peaceful settlement of disputes.

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144. To the above observations on the development, significance and importance of the principle of peaceful settlement of international disputes, some representatives added a number of general remarks on specific legal questions raised by the formulation and interpretation of that principle.

145. Some representatives considered that the distinction between political and legal disputes should not be overlooked. Although they recognized that the distinction between the two types of dispute was never absolute, they believed that some disputes were undoubtedly mainly legal in character while others were mainly political. In principle, legal disputes were those in which the parties disagreed as to their respective rights and duties and in which they could reach a settlement on the basis of existing law, while political disputes were those in which the parties were trying to change existing law. Such a distinction, these representatives held, would mark an advance, because it would facilitate the submission of legal disputes to judicial settlement, thus at least avoiding the settlement of that category of disputes by reference to political criteria and by political means. Other representatives, however, argued that all international disputes had a political aspect which could not be ignored, so that any distinction between political and legal disputes would be purely academic and impossible to apply, and would yield no positive results.

146. With regard to the question which category of international disputes was covered by the Charter, one representative pointed out that the Charter was concerned with disputes likely to endanger international peace and security, as provided in Article 33, paragraph 1. If there was no such danger, the parties need not even seek a settlement of the dispute. Moreover, Article 2, paragraph 3, according to that representative, did not impose on Members of the United Nations the obligation to settle their disputes by peaceful means, but the obligation not to resolve them by any other means. Thus it would be lawful for two States parties to a dispute which did not endanger peace to maintain the status quo without violating the Charter. What the Charter laid down was not so much that disputes should be settled but that international peace and security should not be threatened. On the other hand, another representative indicated that while Article 33 and various other provisions of Chapter VI of the Charter, particularly Articles 36 and 37, dealt only with disputes "the continuation of which is likely to endanger the maintenance of international peace and security", that did not

relieve States of the obligation to try to settle in good faith and by peaceful means the less serious disputes which came within the ambit of the more general terms of Article 2, paragraph 3. Article 2, paragraph 3, that representative held, applied to all international disputes, including those the continuation of which was not likely to endanger the maintenance of international peace and security. That interpretation was confirmed by the Preamble to the Charter, in which States declared that they were determined to "live together in peace with one another as good neighbours", and by Article 1, paragraph 2, of the Charter which provided that one of the purposes of the United Nations was "to develop friendly relations among Nations" - from which the same representative deduced that the authors of the Charter had not only wished to propose methods of peaceful settlement but had also wanted international disputes to be actually settled.

147. Some representatives stressed that under Article 1, paragraph 1, and Article 2, paragraph 3, of the Charter, international disputes were to be settled in conformity with "the principles of justice and international law", in such a manner "that international peace and security, and justice, are not endangered". In that connexion, some representatives urged that the reference in the Charter to justice should be confirmed, since settlements of disputes by peaceful means, but contrary to justice, would increase the risk of violence and could not be lasting.

148. Finally, one representative raised the question when a dispute should be considered to have arisen. That representative said that there was now the beginning of a body of international case-law on the subject, since both the Permanent Court of International Justice and the International Court of Justice had given opinions on the question. It appeared from that incipient case-law that it was not enough for one party to affirm or deny the existence of a dispute, nor was it a question of whether there was a real conflict between the interests of the parties; what had to be shown in order to establish whether a dispute had arisen was that the claims of the parties must be genuinely opposed. The same representative added that although that criterion might be useful in the application of Article 2, paragraph 3, and Article 33 of the Charter, there remained the problem of distinguishing between true and false claims, since States should not be entitled to the consideration of claims devoid of all foundation and good faith through the use of fallacious legal arguments.

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2. Means of peaceful settlement of international disputes

149. It was generally recognized that the Charter system leaves the parties to disputes free to choose the means of peaceful settlement they consider most suitable. However, the various speakers who took part in the discussion stressed the merits of one or other means of peaceful settlement, or argued that the question should be approached from the point of view not only of the lex lata but also of the lex ferenda so as to improve the existing procedures of settlement to the greatest possible extent. Provisions concerning the means of settlement in general were contained in the proposals submitted by Czechoslovakia (A/AC.119/L.6, para. 2 (see para. 129 above)), Yugoslavia (A/AC.119/L.7, para. 2 (see para. 130 above)), the United Kingdom (A/AC.119/L.8, para. 2 (see para. 131 above)) and Ghana, India and Yugoslavia (A/AC.119/L.19, para. 2 (see para. 137 above)).

150. A number of representatives pointed out that, in dealing with the principle of peaceful settlement of international disputes, the Committee should not overlook the existence of the General Act of 26 September 1928 for the pacific settlement of international disputes, revised by resolution 268 (III) of 28 April 1949 of the General Assembly. One representative, emphasizing that the General Act was a great step forward in the history of procedures for the peaceful settlement of international disputes, suggested that States Members of the United Nations should be urged to accede to it.

151. It was also pointed out by a number of representatives that not all international disputes affected the vital interests of States, and that therefore it was desirable that States should agree on various means of settlement before specific disputes arose, since that would at least facilitate the settlement of less important disputes.

152. Various representatives felt that the existence of procedures for the settlement of international disputes was one thing and the obligation of States to use those procedures quite another. States should be urged, they felt, to resort to the procedures in question, since it was pointless to improve existing means or create new ones if States showed no inclination to resort to them. Some representatives stressed the possibility of strengthening the means of peaceful settlement through the international organizations which had come into being since the Second World War. In this respect, one representative drew attention to the

American Treaty of Pacific Settlement (Pact of Bogota), concluded under the auspices of the Organization of American States in 1948, which he said to be the most advanced instrument on the subject in existence, since it laid down that any dispute which had not been resolved by one pacific procedure must be submitted to another, and so on until the dispute had been settled.

153. Finally, one representative pointed out that the establishment and use by States of means of peaceful settlement of disputes was intimately bound up with one of the most difficult and complex problems arising in the international community - that of peaceful change of existing conditions.

154. The following is a summary of the views expressed during the debate on each of the recognized means of peaceful settlement of disputes, with the main points of agreement and disagreement to which they gave rise:

(i) Direct negotiation

155. The debate on this means of peaceful settlement revolved around the question whether it was necessary or appropriate to give direct negotiation special legal emphasis as against the other means of peaceful settlement recognized by international law and set forth in the Charter. Many arguments were advanced on that question.

156. A number of representatives urged that direct negotiation was the fundamental means of resolving international disputes and had been established as such by international law and State practice. They had no intention, they asserted, of belittling the importance of or the part played by other means of peaceful settlement; their attitude was based solely on the function actually performed by direct negotiations in international relations. Thus, if direct negotiation was the means by which most international disputes were settled, that was due to the fact that by its very nature it most adequately met the need for the prompt and flexible settlement of international disputes, that it better preserved the equality of the parties, that it could be used for the settlement of both political and legal disputes, and that it offered the most effective means for the peaceful settlement of disputes. Moreover, direct negotiations best promoted compromise, and prevented disputes from acquiring proportions which made them a threat to international peace and security, since they made it possible for conflicts to be dealt with as soon as they arose. Furthermore, direct negotiation was a means

which did not oblige third States to take up a specific position on disputes which did not affect their interests or threaten international peace and security. Indeed, it was thanks to direct negotiation, these representatives held, that world war had been avoided on more than one occasion - as, for example, during the Cuban crisis of 1962 - and that the principles of peaceful coexistence had been reinforced and developed in international relations. In addition, the means of direct negotiation, while it brought about the settlement of disputes, could at the same time bring into being rules regulating future relations between the States concerned, thus promoting the development of international law through the conclusion of multilateral and bilateral agreements. Accordingly, these representatives felt that explicit recognition should be given to the international reality that direct negotiation constituted the principal means for the settlement of disputes. One of these representatives asserted that the means of direct negotiation could not be unilaterally renounced by States, and was therefore the sole means of settlement which, in this sense, was obligatory on them.

157. In support of their view, the representatives who argued for recognition of the means of direct negotiation pointed out that negotiation was given a prominent place in international treaties, agreements and other acts and they mentioned, in this connexion: article 21 of the Charter of the Organization of American States; article II of the American Treaty of Pacific Settlement; chapter I, article 1 of the Revised General Act for the Pacific Settlement of International Disputes approved by the General Assembly on 28 April 1949; article 17 of the Statute of the International Atomic Energy Agency; the Belgrade Declaration of 1961; the United States-USSR Joint Communique of 27 September 1959, and General Assembly resolution 1616 (XV) of 21 April 1961. They also stressed that the Charter itself, in Article 33 (1), mentioned negotiations in first place.

158. Other representatives, however, while recognizing the great importance of direct negotiation, which was the very essence of diplomacy, felt that it should not be given priority over the other means of settlement of disputes, since that would be to distort the principles which were the foundation of the entire existing system of peaceful settlement of disputes. In their view, the constant trend in the development of international law in this regard since the nineteenth century had been to transcend the stage of negotiation and to establish and improve

more institutional means of settlement based on recourse to third parties or organs. The development of international institutions in recent years reflected just that trend. These representatives recognized that direct negotiation was a normal and current practice and that many international disputes were resolved by its means. They held, however, that the considerable drawbacks of that method of settlement should not be overlooked. Direct negotiation had disadvantages, demonstrated by history, which, according to the representatives in question, ruled it out as the ideal, principal or exclusive means of peaceful settlement of international disputes. Thus, direct negotiation did not allow the facts to be established objectively and impartially, nor enable third parties to exercise a moderating influence on the dispute, nor prevent the putting forward of exaggerated claims which might aggravate the dispute, nor ensure equal terms, since usually one of the parties was in a weaker position than the other; nor could it be used for the solution of certain types of disputes, nor guarantee the solution of a dispute since either party could choose to be intransigent at any moment. Direct negotiation was essential in order to try to reconcile conflicting interests, but the real problem arose when such reconciliation was not possible, namely, when it had not been possible to resolve the dispute by negotiation.

159. One representative expressed the view that negotiations should always be conducted in good faith, without any form of pressure and without affecting the legitimate interests of a State or people. If these conditions were not satisfied negotiations might, under certain circumstances, even constitute intervention.

160. With respect to the argument that negotiations not only settled disputes but could also establish rules regulating future relations between the States concerned, another representative stated that negotiation as a means for concluding international agreements was quite distinct from, and should not be confused with, negotiation as a means of pacific settlement of disputes.

161. Those representatives who felt that negotiation should not be given a particular priority were also of the view that the establishment of a hierarchy among the methods of peaceful settlement of disputes would be contrary to the system laid down by Article 33, paragraph 1, and other provisions of the Charter. Article 33 left the parties free to choose the means of settlement they preferred,

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and that freedom was recognized without reservations and at all times. It would therefore be inadmissible to modify the Charter system on that important point by attempting to establish a kind of legal obligation to negotiate nolens volens. What the Charter did was to provide that when the parties could not reach agreement on the choice of the means of settlement therein set forth, they might have recourse to the United Nations itself in order to try to reach a solution, in accordance with the provisions of Chapter VI. The Charter did not give preference to negotiation or to any other method of solving disputes, and an attempt to weaken its provisions in that regard would not contribute to the progressive development of international law. If the Charter mentioned negotiations first, it was because in the majority of cases the parties had recourse to that method first, but that did not imply that the parties were obliged to proceed in that manner, considering the other means as accessory or secondary. Some of the representatives in question pointed out that direct negotiation gave the parties great freedom of action, but that in the case of certain disputes it would be wiser to renounce that freedom and accept in advance a more formal method of settlement which would enable objective rules to be applied.

162. Accordingly, in the view of these representatives, there would be no justification for stating, as a general principle, that recourse should be had to direct negotiation in the first place. The choice of means would depend on the will of the parties and the nature of the dispute.

163. Finally, other representatives pointed out that reference might be made in the first place to the method of direct negotiation but without implying that preference had to be given to that means of settlement over any other desired by the parties. They considered that while it was significant that instruments such as the United Nations Charter, the Bandung Declaration, the Belgrade Declaration, the Charter of the Organization of American States and the Charter of the Organization of African Unity gave negotiation pride of place among the means of settling disputes, negotiation was not in itself sufficient unless it was accompanied by the desire of the parties to co-operate, neither was it a guarantee of justice. For these representatives, negotiation might justifiably be mentioned first since it was the first step towards the peaceful settlement of a dispute and was the most ancient method used by States. Furthermore, in the reality of

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international life, it solved the majority of disputes. That, however, was not at all the same thing as regarding it as the sole means of settlement or as a means to which the parties were obliged to have recourse, since Article 33 of the Charter adopted a flexible criterion and established that the parties could use means "of their own choice". In this connexion, the same representatives took the view that when a treaty stipulated a specific means of settlement other than direct negotiation, the States parties should obviously apply it, and also that the right of States to bring disputes of a particularly serious nature before the appropriate United Nations organ could not be called in question.

(ii) Inquiry, mediation and conciliation

164. Some representatives referred to the procedures for inquiry, mediation and conciliation established by regional organizations, such as the Organization of American States, the Organization of African Unity and various European organizations. One of them dwelt upon the procedures of mediation and conciliation which were within the terms of reference of the organs of the United Nations and drew attention to the Panel for Inquiry and Conciliation which had been established by the General Assembly of the United Nations (General Assembly resolution 268 (III) of 28 April 1949).

(iii) Arbitration

165. Referring to the problems connected with the settlement of legal disputes, one representative raised the question of the improvements which could be made in existing conventional arbitration procedure. After pointing out the drawbacks and shortcomings inherent in the three means by which, under existing law, disputes could be brought before an arbitration tribunal - namely, the conclusion of an ad hoc agreement (compromis), the inclusion in a treaty of a "compromissory clause", and the conclusion of a "general treaty of arbitration" - the representative suggested that the following measures might be taken to remedy those drawbacks and shortcomings: (a) acceptance of the competence of the International Court of Justice to determine whether a dispute was a legal one; (b) acceptance of the competence of the International Court of Justice to determine whether a dispute was justifiable under the terms of the arbitration treaty; (c) agreement that the

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International Court of Justice or its President would settle questions connected with the composition of the arbitral tribunal or other procedural matters, in conformity with article 3 of the United Nations draft articles on arbitral procedure, which had been drawn up by the International Law Commission; and (d) generalization of the practice whereby States agreed to accept judicial settlement whenever arbitration failed.

(iv) Judicial settlement

166. The proposals of the United Kingdom (A/AC.119/L.3, para. 3 (see para. 131 above)), Japan (A/AC.119/L.18 (see para. 136 above)) and Ghana, India and Yugoslavia (A/AC.119/L.19, para. 3 (see para. 137 above)) contained particular provisions relating to this mode of settlement.

167. The debate on judicial settlement of international disputes centred on whether, in the formulation of the principle relating to peaceful settlement, particular mention should be made of the role of the International Court of Justice in the matter and whether it was advisable to appeal to States to accept the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute.

168. With regard to the first of these points, some representatives pronounced themselves in favour of an explicit reference to the Court in the formulation of the principle of peaceful settlement of disputes. They stated that it would be inconceivable not to mention the important role of the International Court of Justice in that respect.

169. Other representatives, however, argued that such a reference was not necessary from either a strictly legal or a practical point of view and might give rise to ambiguity regarding the nature of the Court's jurisdiction, particularly if the reference was a general one which did not go into details. Still other representatives said that they had no objection to reference being made to the Court, provided that it was not at the expense of other means of settlement provided for in Article 33 of the Charter and in other relevant Charter provisions.

170. The question of the timeliness and desirability of an appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice provoked greater controversy. Representatives favouring or opposing such an appeal put forward numerous arguments in support of their positions.

171. The representatives who were in favour of an appeal for the acceptance of the compulsory jurisdiction of the Court believed that the Special Committee should recommend that States should accept that jurisdiction under Article 36, paragraph 2, of the Statute of the Court. The procedure for the judicial settlement of international disputes would thereby be improved and international law would be strengthened. States which accepted the compulsory jurisdiction of the Court, in the opinion of these representatives, were obviously more concerned over the possible consequences of their legal obligations than the States which had not yet accepted the compulsory jurisdiction. This resulted in a basic difference of approach to the formulation of substantive rules of international law and thereby hindered its development. Moreover, acceptance of the Court's compulsory jurisdiction, being an act entirely dependent on the will of States, could not be considered a limitation or renunciation of their sovereignty. Thus it could not be maintained that the nearly forty States which had accepted the Court's compulsory jurisdiction had abandoned their sovereignty. It was argued, furthermore, that States always exercised their freedom of action within the framework of international law. That freedom, however, as far as the choice of means of peaceful settlement was concerned, was contingent on the other party's agreeing to choose the same means of settlement. Agreement in this respect might be easier to achieve if all States were under the ultimate obligation of submitting their disputes to the Court.

172. It was also pointed out that the Statute provided for the acceptance of the Court's compulsory jurisdiction in Article 36, paragraph 2, and that the General Assembly was in no way barred from inviting States to accept it. In fact, General Assembly resolution 171 (II) of 14 November 1947 proclaimed the desirability of the acceptance by States of the compulsory jurisdiction of the Court. It was clear that resort to the Court offered considerable advantages and greater guarantees than other means of settlement. For one thing, in the light of the objectivity and impartiality of the Court, the real inequality in the strength of States would not affect the outcome as in the case of other means of settlement and final settlement, being based on law, could be accepted by unsuccessful parties without feeling that they had lost prestige. Furthermore, the inadequate development of international law and the lack of an international legislator enhanced the

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importance of the function of the International Court of Justice since it could fill the existing gaps by means of a case-law adapted to the needs of an evolving international community.

173. The representatives who favoured such an appeal recognized that the compulsory jurisdiction of the Court had been rejected by the San Francisco Conference and other subsequent conferences and that its general acceptance raised considerable difficulties. However, they considered that the present signs of a reduction in international tension suggested that the time would be opportune for an appeal. They added that the small proportion of States which at present accepted the compulsory jurisdiction of the Court and the nature of some reservations attached to those acceptances should not prevent the attention of States from being drawn to a method of settlement which had great advantages both for individual States and for the international community as a whole.

174. Those representatives who opposed an appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice said that it would not accord with the realities of international life and recent experience in the matter. They argued that to attempt to put the compulsory jurisdiction of the International Court of Justice first among means of peaceful settlement would be to adopt a doctrinaire position contrary to the principle of sovereign equality and independence of States and to the principle of free choice by all States parties to a dispute of the most suitable means of peaceful settlement in the light of their interests and the nature and circumstances of the dispute in question. According to these representatives, recognition of the Court's jurisdiction should be optional, since the history of international law and more recent diplomatic events showed that the great majority of the States making up the international community did not consider compulsory jurisdiction either appropriate or advisable, and that only some forty States had adhered to the optional clause in Article 36, paragraph 2, of the Statute of the Court. Moreover, a number of States which had accepted the Court's compulsory jurisdiction had done so with reservations which virtually nullified their acceptance. It was recalled that the San Francisco Conference had rejected compulsory jurisdiction and that Article 36, paragraph 3, of the Charter and Article 36, paragraph 1, of the Statute of the Court excluded such jurisdiction from the Charter system by declaring that disputes were to be referred to the Court by

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all parties, not merely by one. Furthermore, it was stressed that the various conferences on the codification of international law which had been held under the auspices of the United Nations, such as the 1958 Conference on the Law of the Sea, the 1961 Conference on Diplomatic Intercourse and Immunities, and the 1963 Conference on Consular Relations, had also rejected the inclusion of articles prescribing the compulsory jurisdiction of the Court in the conventions adopted and had limited themselves to setting it out in optional protocols, which had so far received an insignificant number of ratifications or accessions.

175. Other representatives, who also opposed an appeal for acceptance of compulsory jurisdiction, pointed out that the small degree of integration so far achieved by the international community was an obstacle to the more general acceptance of such jurisdiction and that that was particularly true of the States which had recently achieved independence, as was shown by the fact that very few of the new States Members of the United Nations had accepted such jurisdiction. In that regard it was pointed out that, in order for many States to have confidence in the Court's jurisdiction, it was essential not to appeal for acceptance of compulsory jurisdiction, but to speed up the process of codification and progressive development of international law and to ensure that the membership of the Court reflected a more equitable geographical distribution. Some representatives felt that the attitude adopted by the new States was justified because of the situation in which they found themselves as a result of having formally inherited legal obligations deriving from the colonial regime to which they had been subjected, and that Article 38, paragraph 1 (c), of the Statute of the Court, which provided that the Court should decide in accordance with "the general principles of law recognized by civilized nations" was not likely to dispel the new States' lack of confidence. One representative also stated that the organs of the United Nations themselves had done nothing to help dispel the lack of confidence in the Court since they had almost always resolved disagreements as to their competence without consulting it. (Further arguments advanced in the same respect appear in part 3 of the present chapter.)

176. To illustrate the views outlined above, some representatives pointed out that the States belonging to geographical areas which had reached a high degree of integration had accepted the obligation to submit a wide range of legal disputes

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to the International Court of Justice, while States belonging to other areas which had not yet attained the same degree of integration distrusted the procedure of judicial settlement of disputes. Thus, they noted that while article 1 of the European Convention for the Pacific Settlement of Disputes, and article XXXI of the American Treaty of Pacific Settlement, gave considerable prominence to the procedure of judicial settlement, the Charter of the Organization of African Unity had omitted mention of that procedure as one of the means of peaceful settlement of disputes. Finally, a number of representatives pointed out that the existence of tension and distrust in international relations made it difficult to determine when a dispute was a legal one and that, consequently, the best way to secure more frequent recourse to judicial settlement would be to first define the legal aspects of the political questions which most directly affected international peace and security.

177. During the debate on the procedure of judicial settlement, some representatives expressed the view that the parties to a dispute should first of all agree that the dispute was essentially legal in nature before referring it to the Court. Other representatives, however, firmly opposed any mention of such a proviso since it would in many cases afford States a pretext for circumventing the jurisdiction of the Court and since, moreover, Article 36, paragraph 3, of the Charter conferred upon the Security Council the power to decide, as a first step, whether or not a dispute was a legal one for the purpose of referral to the International Court of Justice.

178. Some representatives, who rejected any appeal for adherence to the optional clause, none the less stated that their respective countries had accepted the Court's jurisdiction in the case of certain technical conventions, or had otherwise provided for compulsory arbitration. Other representatives considered this to be an encouraging development.

(v) Resort to regional agencies or arrangements

179. Some representatives stressed that account should be taken of a recent trend in the peaceful settlement of international disputes, namely resort to regional agencies or arrangements. It was clear, in their view, that regional agencies were often better qualified than world organizations to settle a certain type of

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dispute arising within their own regions; furthermore, the value of recourse to such regional agencies had been amply shown by the recent practice of the new Organization of African Unity and by the history of older bodies such as the League of Arab States, the Organization of American States and the European organizations. One representative also said that Article 20 of the Charter of the Organization of American States specified, in conformity with Article 52 of the Charter of the United Nations, that all international disputes that might arise between American States should be submitted to the peaceful procedures set forth in the regional organization's Charter before being referred to the Security Council of the United Nations. Another representative, however, expressed the view that regional agencies were not the final answer, since the disputes which engaged the attention of the international community were often those that arose between States belonging to different regions.

(vi) Resort to the competent bodies of the United Nations

180. The joint amendment of Canada and Guatemala (A/AC.119/L.20 (see para. 133 above)) and the amendment of Canada (A/AC.119/L.22 (see para. 135 above)) to the United Kingdom proposal (A/AC.119/L.8) made reference to the settlement of disputes by the Security Council or the General Assembly.

181. Various representatives said that, in the formulation of the means of peaceful settlement of international disputes, it would not be enough simply to list the traditional methods of settlement which appeared in Article 33 of the Charter, since the institutional procedures for settlement under Articles 34 to 38 in Chapter VI and Article 14 in Chapter IV of the Charter were the most important innovation in that regard in the Charter, an innovation begun at the world level by the Covenant of the League of Nations. These representatives held that a careful consideration of those institutional procedures in the Charter was necessary, because United Nations practice daily demonstrated that many international disputes were settled by recourse to such procedures. Thus, they considered, in order to avoid a gap in the formulation of the principle of peaceful settlement of international disputes the vital role often played by the competent bodies of the United Nations in the peaceful settlement of international disputes should be stressed.

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182. One representative emphasized that the Charter system for the settlement of international disputes by recourse to United Nations bodies represented an important step forward, since by means of such procedures those bodies could deal with both "situations" and "disputes" and were authorized to put forward recommendations. Another representative was in favour of redoubling efforts to secure the more direct involvement of United Nations bodies in the procedures for the peaceful settlement of international disputes and pointed out in that connexion that the granting of exceptional powers of decision to the General Assembly had contributed to the settlement of the question of the former Italian colonies.

(vii) Advisory opinions of the International Court of Justice

183. Referring to possible means of strengthening and perfecting the means of peaceful settlement of international disputes, some representatives said that the advisory opinion of the International Court of Justice should be sought more frequently and that its conclusions should command general respect. They considered, in view of the Court's prestige and authority, that attention should be given to the possibility of making greater use of that institution both to develop United Nations law and to settle disputes between States.

(viii) Good offices and legal consultation

184. One representative stressed that Article 33, paragraph 1, of the Charter did not explicitly mention either good offices or legal consultation among the means of peaceful settlement, but that such omissions were not important since the list in Article 33 was not exhaustive and under the terms of that Article the parties could resort to "other peaceful means of their own choice". He recalled that the San Francisco Conference had expressly decided to add inquiry to the means listed in the Dumbarton Oaks draft, but had omitted good offices, which had not been separated from mediation despite their distinct legal character. On the other hand, good offices were included in the list of means or procedures for peaceful settlement in the Charter of the Organization of American States. Another representative drew attention to the proposal put forward by certain countries for the establishment of a permanent commission of good offices as a subsidiary organ of the United Nations General Assembly.

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3. Questions relating to the principle of peaceful settlement of disputes

185. During the debate on this principle, various questions were raised as being in one manner or another related to the peaceful settlement of international disputes and which were later dealt with in proposals and amendments submitted by the members of the Committee. These issues, with a summary of the observations made on them, are set forth hereunder.

(i) The duty to settle territorial and frontier disputes by peaceful means

186. The proposal submitted by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 5 (see para. 137 above)) referred to territorial and frontier disputes and stated that they should be settled solely by peaceful means. The sponsors of the proposal observed that, as in the course of the discussions on the principle of prohibition of the threat or use of force a number of delegations had expressed their misgivings with regard to territorial disputes and frontier problems (referred to in the proposal by Czechoslovakia (A/AC.119/L.6 (see para. 27 above))), they had thought it appropriate in the treatment of this principle, to make an explicit and specific reference to the duty to settle this category of disputes peacefully, in view of the fact that the gravity and nature of this category of disputes frequently made them serious threats to international peace and security. While no observations were made on this provision of the three-Power proposal during the debate, one representative referred to the letter on the subject of the peaceful settlement of territorial and frontier questions sent by the Chairman of the Council of Ministers of the USSR, on 31 December 1963, to the Heads of States or Governments of all countries.

(ii) The duty to refrain from aggravating the situation

187. The proposal by Yugoslavia (A/AC.119/L.7, para. 3 (see para. 130 above)) and the proposal submitted by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 6 (see para. 137 above)) contained a provision on this subject.

188. A number of representatives observed that the duty to settle disputes by peaceful means implied a duty of States to refrain from aggravating the situation. This duty, they said, was incumbent both on the States parties to the disputes and on third States, since any dispute between States affected the entire international

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community, so that all States had the duty of helping to settle it by refraining from exacerbating it. It was pointed out that the recent Protocol of Mediation, Conciliation and Arbitration adopted by the Organization of African Unity provided that when a dispute had been referred to the Commission of Mediation, Conciliation and Arbitration all members of the Organization had the duty of refraining from any act likely to aggravate the situation.

(iii) Resort to means of peaceful settlement does not derogate from the sovereignty of States

189. This question was dealt with in the amendment by France (A/AC.119/L.17 (see para. 132 above)) to the United Kingdom proposal (A/AC.119/L.8).

190. A number of representatives expressed the view that in order to dispel certain misgivings and to remove any doubt on the matter, it would be advisable to specify clearly that a State's consent to submit a dispute to a judge or arbitrator or to any other means of pacific settlement was an act of its own free will and therefore, far from impairing its sovereignty, constituted a supreme manifestation of that sovereignty. As the sovereignty of each State was subject to the supremacy of international law, the use of procedures recognized by international law for the settlement of disputes could in no way be regarded as incompatible with the principle of sovereign equality of States. These observations were not challenged by any representative, although one representative felt that such a provision would be out of place in the conclusions to be adopted on the principle of peaceful settlement of international disputes.

(iv) Composition of the International Court of Justice

191. The proposal submitted by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 3 (b) (see para. 137 above)) mentioned the question of the composition of the International Court of Justice.

192. Some representatives expressed the view that the geographical composition of the International Court of Justice was one of the reasons for the fact that many States showed reluctance to enlist its services for the settlement of their disputes or refused to accept its compulsory jurisdiction. Thus, these representatives felt that a more equitable representation of the various geographic groups and juridical

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systems of the world was essential if States were to be encouraged to resort to the International Court of Justice and to accept its compulsory jurisdiction. A revision of the Court's composition, they considered, would help to increase the confidence of States in the Court as the principal judicial organ of the United Nations, and, therefore, to develop the procedure of peaceful settlement of international disputes. One representative pointed out that his country had submitted to the General Assembly a proposal that the number of judges of the International Court of Justice should be increased.

193. However, other representatives pointed out that the composition of the Court raised complex problems, and that the rules for the election of its members could not be radically altered. The best means of improving the representation of the geographical groups which regarded themselves as still under-represented, they argued, was not to change the rules for the election of the Court's members but to give due weight to the importance of the matter when elections took place. Thus, it was pointed out that at the last elections to the Court, held in 1963, it had been clear that the States Members of the United Nations had endeavoured - while still respecting the rules in force - to improve the balance within the Court between the various geographical groups. In addition, they argued that the Court had always shown objectivity and impartiality and that, moreover, there were certain geographical groups which, though adequately represented in the Court, nevertheless did not resort to it for the settlement for their international disputes.

(v) Codification and progressive development of international law

194. The proposal by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 3 (b) (see para. 137 above)) referred also to this matter.

195. In connexion with the use of arbitration and compulsory judicial settlement as means for the peaceful settlement of disputes, some representatives stressed the vital importance of the codification and progressive development of international law as a means of obtaining general and unqualified acceptance of such procedures by the great majority of the States making up the international community. In their view, the lack of confidence which many States at present displayed in such

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procedures was due in large measure to the antiquated, inequitable, fragmentary and uncertain character of many of the rules comprising the body of substantive rules of existing international law.

196. Thus, those representatives pointed out, no State could risk endangering its vital interests by having recourse to procedures of arbitration or compulsory judicial settlement as long as uncertainty remained about the scope and content of international law. They also pointed out that the decision to accept or reject compulsory jurisdiction was not made in a vacuum, but carried with it the implicit acceptance of the body of substantive legal rules relevant to the subject matter of the dispute in question. That explained the misgivings of the new and developing States, since the majority of them had not taken part in the process of the creation and development of the institutions and rules of international law, which had been consolidated and systematized during the nineteenth and early twentieth centuries. Many of those rules, they added, such as, for example, the rules relating to State responsibility and to the protection of foreign investments, profoundly affected the situation of the new or economically weak States and had been established, in part, contrary to their interests. Consequently, in the opinion of those representatives, many States now considered those rules unjust, though formally sanctioned by international law, thus creating a dichotomy between international legality and justice, the inevitable result of which was that such States preferred to resort to political action rather than submit their disputes to arbitration or compulsory judicial settlement. Lastly, those representatives considered it essential that the United Nations should continue its efforts for the codification and progressive development of international law with a view to securing the juridical basis for the settlement of disputes, as General Assembly resolutions 1505 (XV) of 12 December 1960, 1686 (XVI) of 18 December 1961 and 1815 (XVII) of 18 December 1962, in particular, emphasized.

(vi) Disputes relating to the application and interpretation of conventions

197. The Netherlands amendment (A/AC.119/L.21 (see para. 134 above)) to the United Kingdom proposal and the proposal by Ghana, India and Yugoslavia (A/AC.119/L.19, para. 4 (see para. 137 above)) stated that treaties should contain clauses relating to the settlement of disputes.

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198. With a view to establishing and developing the procedure of judicial settlement as a means for the settlement of disputes, some representatives advocated recognition that at least one particular category of disputes, namely, disputes relating to the interpretation and application of multilateral conventions adopted under the auspices of the United Nations, should as a matter of principle be referred to the International Court of Justice, as proposed in the Netherlands amendment. In the view of those representatives, such conventions contained carefully drafted and precise rules of international law which had been drawn up with the participation of all States Members of the United Nations and disputes arising in regard to their interpretation or application constituted a special well-defined category.

199. Thus, those representatives considered it natural that a State which had voluntarily subscribed to the rules contained in those conventions and had accepted the rights and obligations deriving therefrom should undertake to use a procedure of impartial settlement of disputes, such as recourse to the International Court of Justice, in the event of a dispute between it and another State party to the convention over the extent of those rights and obligations. They added, moreover, that the compulsory jurisdiction of the International Court of Justice in the settlement of such disputes would be mandatory only in cases where the parties had refused or failed to settle the dispute through the use of other means of peaceful settlement. Lastly, one representative suggested that, with a view to improving the chances of a provision to that effect being accepted by the General Assembly, it would be advisable that such a provision should be limited to multilateral conventions relating to social, cultural or scientific questions adopted under the auspices of the United Nations.

200. The sponsors of the three-Power proposal thought it better to do no more than indicate that States should include in the bilateral and multilateral agreements to which they became parties provisions concerning the particular peaceful means mentioned in Article 33 of the Charter by which they desired to settle their differences.

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C. Decision of the Special Committee on the recommendation of the Drafting Committee

201. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee Paper No. 13):

"PRINCIPLE B i.e. 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".

"The Committee was unable to reach any consensus on the scope or content of this principle.

(a) For proposals and amendments, see annex A.

(b) For views expressed during the discussion, see annex B."

"ANNEX A

"Proposals and amendments concerning which no consensus was reached

Proposal by Czechoslovakia (A/AC.119/L.6)

(reproduced in paragraph 129 of the report)

Proposal by Yugoslavia (A/AC.119/L.7)

(reproduced in paragraph 130 of the report)

Proposal by the United Kingdom (A/AC.119/L.8) and amendments by France (A/AC.119/L.17), Canada and Guatemala (A/AC.119/L.20), Netherlands (A/AC.119/L.21) and Canada (A/AC.119/L.22)

(reproduced in paragraphs 131, 132, 133, 134 and 135 respectively)

Proposal by Japan (A/AC.119/L.18)

(reproduced in paragraph 136 of the report)

Proposal by Ghana, India and Yugoslavia (A/AC.119/L.19)

(reproduced in paragraph 137 of the report)

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"ANNEX B^{8/}

"Views expressed in the discussions, concerning which no consensus was reached

"A. General obligation of peaceful settlement of international disputes

Argentina (SR.19, pp. 15-16): the Charter is concerned only with those disputes between States which are likely to endanger international peace and security. United States (SR.22, p. 20): Article 2, paragraph 3, of the Charter relates to all international disputes, whether or not likely to endanger international peace and security.

Argentina (SR.19, p. 15): a 'dispute' is a disagreement on points of fact or law, a contradiction or a difference in juridical doctrine between States. United States (SR.22, pp. 21-22): a 'dispute' is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons, where the claim of one is positively opposed by the other; there is no dispute if the claim on one side is totally unfounded.

Italy (SR.21, pp. 4-5) and France (SR.21, p. 16): political disputes, and the distinction between them and legal disputes, should not be ignored.

"B. Settlement of border disputes

Ghana (SR.22, p. 9) and India (SR.24, p. 21) supported inclusion of a provision on the subject.

"C. Modes of settlement

"1. In general

India (SR.23, pp. 7-8): 'Unless otherwise provided for' in three-Power draft covers the case where bilateral or multilateral treaties to which States are parties provide a method for solving disputes, and also covers the right of the parties to bring a dispute before the appropriate United Nations organ. 'Of their own choice' refers to a choice made either before or after a dispute has arisen.

Ghana (SR.22, p. 7): means of settlement should be chosen 'by common agreement'.

United States (SR.22, p. 19): undesirable to require agreement of all parties.

8/ The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

"2. Negotiations

United Arab Republic (SR.24, p. 5): negotiations should be carried out (1) in good faith, (2) in the absence of all forms of pressure, and (3) without affecting the legitimate interests of another State or people.

Czechoslovakia (SR.18, pp. 4-5, SR.21, pp. 23-24), Yugoslavia (SR.18, p. 7), Romania (SR.19, pp. 11-13), USSR (SR.20, pp. 4-5, SR.22, p. 29) and Poland (SR.20, p. 10): special emphasis should be given to direct negotiation as a means of settlement. Czechoslovakia (SR.18, p. 4): negotiation cannot be unilaterally renounced. India (SR.23, pp. 5-7): particular reference should be made to direct negotiations as the pre-eminent means of settlement, but that means need not be resorted to first in all disputes.

United Kingdom (SR.19, pp. 6, 7, SR.24, p. 9), Argentina (SR.19, p. 18), France (SR.21, p. 14), Lebanon (SR.21, p. 21), Mexico (SR.22, p. 14), United States (SR.22, pp. 19, 23), Dahomey (SR.23, p. 11), UAR (SR.24, pp. 4-5), and Australia (SR.24, pp. 16-19): undesirable or unnecessary to lay special stress on negotiations.

"3. Good offices

Argentina (SR.19, pp. 17-18) referred to good offices. Italy (SR.21, p. 13) referred to a proposal for a permanent commission of good offices as a subsidiary organ of the General Assembly.

"4. Legal consultation

Argentina (SR.19, p. 18) referred to legal consultation as a means of settlement.

"5. Mediation and conciliation

Italy (SR.21, pp. 12-13) referred to regional conciliation procedures, to mediation and conciliation by the Security Council, the Secretary-General, and ad hoc bodies, and to the existing United Nations Panel for Inquiry and Conciliation.

"6. Arbitration

Italy (SR.21, pp. 9-10) suggested improvements in arbitral procedure: (1) acceptance of the competence of a court to determine whether a dispute is a legal one, (2) acceptance of the competence of a court to determine whether the dispute is justiciable within the terms of the arbitration treaty, (3) a provision for settlement by the International Court of Justice or its President of disagreements on the composition of the arbitral tribunal or other procedural matters, and (4) an undertaking for judicial settlement whenever negotiation or arbitration fails.

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"7. Judicial settlement

Japan (SR.18, pp. 11-12, SR.21, pp. 17-21, SR.24, p. 10), Italy (SR.21, pp. 8-9), United States (SR.22, p. 18), Sweden (SR.22, pp. 25-27), United Kingdom (SR.24, p. 8), and Australia (SR.24, pp. 19-20): Committee should appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice, with as few reservations as possible. Nigeria (SR.18, p. 10): appeal to all States to make more use of the International Court of Justice, where appropriate, having regard to the provisions of its Statute, particularly Article 36.

Romania (SR.19, pp. 13-14), USSR (SR.20, pp. 6-7, SR.22, p. 26), Poland (SR.20, pp. 8-10), Lebanon (SR.21, pp. 21-23), Czechoslovakia (SR.21, pp. 25-26), Burma (SR.21, pp. 26-27), Ghana (SR.22, pp. 6-7, 8), India (SR.23, pp. 8-9), and UAR (SR.24, pp. 5-6): Committee should not appeal to States to accept the compulsory jurisdiction of the International Court of Justice. Dahomey (SR.23, p. 11): best solution would be to affirm the principle of voluntary acceptance of the jurisdiction of a supreme international tribunal, but it would be difficult to agree on a text, so Article 2, paragraph 3, 33 and 36 of the Charter should be reaffirmed.

France (SR.21, pp. 16-17), Mexico (SR.22, p. 14), Yugoslavia (SR.23, p. 12) and UAR (SR.24, pp. 5-6) supported including a reference to the International Court of Justice.

United States (SR.22, p. 19) and United Kingdom (SR.24, pp. 7, 21) opposed the phrase 'if the parties agree that it is essentially legal in nature' in para. 3 of the three-Power draft.

"8. Advisory opinions of the International Court of Justice

Mexico (SR.22, p. 13) and United States (SR.22, p. 17) referred to advisory opinions as a means of settlement of disputes.

"9. Revised General Act for the Pacific Settlement of International Disputes

Italy (SR.21, p. 13) referred to the Revised General Act. Sweden (SR.22, p. 25) suggested an appeal to States to accede to it.

"10. Resort to regional agencies or arrangements

Italy (SR.21, p. 12), Ghana (SR.22, p. 7), Sweden (SR.22, p. 25) and UAR (SR.24, p. 5) supported the reference to regional agencies or agreements.

"11. Settlement through United Nations organs

Italy (SR.21, pp. 5, 10-12), France, (SR.21, p. 16), Mexico (SR.22, pp. 12-13), Sweden (SR.22, p. 25), Canada (SR.23, p. 5), Guatemala (SR.23, p. 5), United Kingdom (SR.24, p. 9), and Australia (SR.24, p. 15): the role of United Nations organs, in particular the Security Council and the General Assembly, should not be overlooked.

"D. Corollaries of the obligation of peaceful settlement

"1. Obligation not to aggravate the situation

Yugoslavia (SR.18, p. 7, SR.23, pp. 12-13), Nigeria (SR.18, p. 9), Romania (SR.19, p. 13) and Ghana (SR.22, p. 7) expressed support for a provision on the subject.

"2. Disputes clauses in agreements and conventions

Netherlands (SR.19, p. 10, SR.24, pp. 11-13), Italy (SR.21, p. 8), France (SR.21, p. 16), United States (SR.22, p. 18), United Kingdom (SR.24, p. 9) and Australia (SR.24, p. 15) supported the Netherlands amendment. Lebanon (SR.24, p. 14) suggested adding 'and relating to social, cultural or scientific questions' after 'under the auspices of the United Nations' in the Netherlands amendment, in order to make it more acceptable to the General Assembly. (For States which opposed an appeal for acceptance of the compulsory jurisdiction of the International Court of Justice, see under heading C.7 above.)

"3. Elections to the International Court of Justice

Lebanon (SR.21, p. 23), Burma (SR.21, p. 26), Ghana (SR.22, pp. 6, 8) and UAR (SR.24, p. 6): the situation would be improved if the Court were made more representative of the different legal systems of the world.

United States (SR.22, p. 17) and United Kingdom (SR.24, p. 9): a provision on the subject would be superfluous.

"4. Progressive development and codification of international law

Ghana (SR.22, p. 9), Mexico (SR.22, p. 12) and Yugoslavia (SR.23, p. 12): facilitating the process of shaping international law would contribute to the settlement of disputes.

"5. Provision that recourse to peaceful settlement does not derogate from sovereignty

France (SR.21, p. 15), United States (SR.22, p. 18), United Kingdom (SR.24, p. 9), and Australia (SR.24, p. 14) supported the French amendment.

USSR (SR.22, p. 29): French amendment is somewhat vague and has little relevance."

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CHAPTER V

THE DUTY NOT TO INTERVENE IN MATTERS WITHIN THE DOMESTIC JURISDICTION OF ANY STATE, IN ACCORDANCE WITH THE CHARTER

A. Written proposals and amendments

202. Five written proposals concerning the third principle considered by the Special Committee were submitted by Czechoslovakia (A/AC.119/L.6), by Yugoslavia (A/AC.119/L.7), by the United Kingdom of Great Britain and Northern Ireland (A/AC.119/L.8), by Mexico (A/AC.119/L.24), and by Ghana, India and Yugoslavia (A/AC.119/L.27). On the submission of the latter joint proposal, Yugoslavia, as one of the co-sponsors, withdrew its original proposal. Guatemala introduced an amendment (A/AC.119/L.25) to the United Kingdom proposal. An amendment to the United Kingdom proposal was also submitted by the United States (A/AC.119/L.26). These proposals and amendments were as follows:

203. Proposal by Czechoslovakia (A/AC.119/L.6)

"The Principle of Non-Intervention"

"1. States shall refrain from any direct or indirect intervention under any pretext in the internal or external affairs of any other State. In particular, any interference or pressure by one State or group of States for the purpose of changing the social or political order in another State shall be prohibited.

"2. States shall refrain from any acts, manifestations or attempts aimed at a violation of the territorial integrity or inviolability of any State.

"3. States shall refrain from exerting pressure by any means, including the threat to sever diplomatic relations, in order to compel one State not to recognize another State."

204. Proposal by Yugoslavia (A/AC.119/L.7)

"Non-Intervention"

"1. No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State.

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"2. Accordingly, States shall refrain from any form of interference or attempted threat against the independence or right to sovereign equality of any other State and in particular its right to select its political economic and social system and to pursue the development thereof.

"3. States shall therefore especially refrain from:

- (a) using or encouraging the use of coercive measures of a political or economic character to force the sovereign will of another State either in the field of its internal or external relations, in order to obtain advantages of any kind;
- (b) attempting to impose a political or social system on another State;
- (c) interfering in civil strife in another State;
- (d) organizing, assisting, fomenting, inviting, or tolerating subversive or terrorist activities against another State;
- (e) interfering with or hindering in any form or manner the free disposition of the natural wealth and resources of another State."

205. Proposal by the United Kingdom (A/AC.119/L.8) and amendments by Guatemala (A/AC.119/L.25) and the United States (A/AC.119/L.26):

Proposal by the United Kingdom

"Statement of principles

"1. Every State has the right to political independence and territorial integrity.

"2. Every State has the duty to respect the rights enjoyed by other States in accordance with international law, and to refrain from intervention in matters within the domestic jurisdiction of any other State."

"Commentary

"Non-intervention

"(1) The basic principle in paragraph 1 is reflected in the United Nations Charter, for example, in Article 2, paragraph 4.

"(2) The first part of paragraph 2 expresses the duty of States correlative to the right enjoyed by them under paragraph 1.

"The second part of paragraph 2, which expresses the classic doctrine of non-intervention to be found in numerous multilateral, regional and

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bilateral treaties, is a particular application of the first part. The wording does, however, leave certain questions unresolved, as, for example, what is meant by 'intervention' and what is meant by 'matters within the domestic jurisdiction'. In the context of inter-State relations, 'intervention' connotes in general forcible or dictatorial interference.

"(3) In considering the scope of 'intervention', it should be recognized that in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and self-determination of their peoples.

"(4) It would, therefore, be impossible to give an exhaustive definition of what constitutes 'intervention'. Much of the classic conception of intervention has been absorbed by the prohibition of the threat or use of force against the political independence or territorial integrity of States in accordance with Article 2, paragraph 4, of the Charter. There are, however, other forms of intervention, in particular the use of clandestine activities to encompass the overthrow of the Government of another State, or to secure an alteration in the political and economic structure of that State, which illustrate the dangers of attempting an exhaustive definition of what constitutes 'intervention'.

"(5) In the event that a State becomes a victim of unlawful intervention practised or supported by the Government of another State, it has the right to request aid and assistance from third States, which are correspondingly entitled to grant the aid and assistance requested. Such aid and assistance may, if the unlawful intervention has taken the form of subversive activities leading to civil strife in which the dissident elements are receiving external support and encouragement, include armed assistance for the purpose of restoring normal conditions."

206. The amendment submitted by Guatemala (A/AC.119/L.25) to the United Kingdom proposal was to the following effect:

"(1) Replace paragraph 2 by the following:

"2. Every State has the duty to respect the rights enjoyed by other States in accordance with international law. Correlatively, the fundamental rights of States are not subject to impairment in any form."

"(2) Add the following new paragraph 3:

"3. No State or group of States has the right to intervene, directly or indirectly for any reason whatever in matters within the domestic jurisdiction of States. In consequence,

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the principle of non-intervention bars not only the use of armed force but also any other form of interference of an economic or political nature designed to force the sovereign will of another State."

207. The United States submitted the following amendment (A/AC.119/L.26) to the United Kingdom proposal:

"(1) In paragraph 2 under 'Statement of Principles', insert, after 'intervention', the words 'contrary to the Charter'."

"(2) Add a new paragraph 3 under 'Statement of Principles':

"3. The United Nations is not authorized to intervene in matters which are essentially within the domestic jurisdiction of any State, and nothing in the Charter requires any Member to submit such matters to settlement under the Charter; but this principle is subject to the authority granted the Security Council under Chapter VII of the Charter concerning action with respect to threats to the peace, breaches of the peace, and acts of aggression."

"(3) In paragraph (2) under 'Commentary', delete everything after 'The second part of paragraph 2' and substitute:

"makes clear that the obligation referred to springs from Article 2, paragraph 4, of the Charter, which constitutes a limitation of State action. The scope of the word 'intervention' is indicated by the wording of Article 2, paragraph 4. However, the concept of 'domestic jurisdiction' is not expressly included in Article 2, paragraph 4."

"(4) Substitute a new paragraph (3) under 'Commentary', as follows:

"3. Paragraph 3 reflects the content of Article 2, paragraph 7, of the Charter. Article 2, paragraph 7, contains the only express reference in the Charter regarding non-intervention. However, it may be noted that neither in Article 2, paragraph 7, nor elsewhere in the Charter is there any express definition of either 'intervention' or 'domestic jurisdiction'."

"(5) In paragraph (4) under 'Commentary', delete 'therefore', after 'it would' in the first line. Delete everything after 'exhaustive definition of what constitutes intervention' and substitute:

"or 'domestic jurisdiction'. In considering the scope of 'intervention', it should be recognized that, in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other

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States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and self-determination of their peoples."

208. Proposal by Mexico (A/AC.119/L.2⁴)

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

"1. Every State has the duty to refrain from intervening, alone or in concert with other States, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits any form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

"2. Consequently, every State has the duty to refrain from carrying out any of the acts specified hereunder, as also any other acts which may possibly be characterized as intervention:

"(1) The use or encouragement of the use of coercive measures of an economic or political nature in order to force the sovereign will of another State and obtain from the latter advantages of any kind;

"(2) Permitting, in the areas subject to its jurisdiction, or promoting or financing anywhere:

(a) The organization or training of land, sea or air armed forces of any type having as their purpose incursions into other States;

(b) Contributing, supplying or providing arms or war materials to be used for promoting or aiding a rebellion or seditious movement in any State, even if the latter's Government is not recognized; and

(c) The organization of subversive or terrorist activities against another State;

"(3) Making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages;

"(4) Preventing or attempting to prevent a State from freely disposing of its natural riches or resources;

"(5) Imposing or attempting to impose on a State a specific form of organization or government;

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"(6) Imposing or attempting to impose on a State the concession to foreigners of a privileged situation going beyond the rights, means of redress and safeguards granted under the municipal law to nationals."

209. Proposal by Ghana, India and Yugoslavia (A/AC.119/L.27)

"Principle C: Non-intervention

"1. No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State; nor to interfere in the right of any State to choose and develop its own political, economic and social order in the manner most suited to the genius of its people.

"2. Accordingly no State may use or encourage the use of coercive measures of an economic or political character to force the sovereign will of another State and obtain from it advantages of any kind. In particular States shall not:

(a) organize, assist, foment, incite or tolerate subversive or terrorist activities against another State or interfere in civil strife in another State;

(b) interfere with or hinder, in any form or manner, the promulgation or execution of laws in regard to matters essentially within the competence of any State;

(c) use duress to obtain or maintain territorial agreements or special advantages of any kind; and

(d) recognize territorial acquisitions or special advantages obtained by duress of any kind by another State."

210. Mexico also submitted to the Special Committee a working paper (A/AC.119/L.23) containing the inter-American texts relating to the principle of non-intervention and expressed the hope that elements might be found in those texts which could be used by the Special Committee for the more effective discharge of its task. The working paper referred to Articles 15-17 of the Charter of the Organization of American States, 1948, to Article 1 of the Convention relating to Duties and Rights of States in the Event of Civil Strife, 1928, and to the Draft instrument on violations of the principle of non-intervention, prepared by the Inter-American Juridical Committee, 1959.

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B. Debate

1. General comments

211. In their general comments on the principle which forms the subject of the present chapter, a number of representatives stressed its importance for the maintenance and promotion of friendly relations and co-operation among States. The principle of non-intervention was described by some representatives as one of the corner-stones of the political and legal system created by the United Nations and as the foundation of peaceful coexistence, guaranteeing the sovereign equality of States. They emphasized that the principle acquired special importance for smaller countries, particularly those which had emerged from colonial domination, as its observance was the guarantee of their sovereignty and of their independent development. In this respect the principle of non-intervention complemented the principle of self-determination. However, the principle of non-intervention also had importance for all States, as its observance would ensure that every State enjoyed all its rights under international law.

212. The principle, it was said, was also closely connected with the maintenance of international peace and security. Intervention in the affairs of other States could be a source of international tension and violence and, as one representative pointed out, might in the extreme case even lead to thermonuclear war.

213. One representative emphasized that the principle of non-intervention, which called for respect for the will of peoples, prohibited the export either of counter-revolution to socialist countries or of revolution to the capitalist countries.

2. Basis of the principle

214. Several representatives traced the development of the concept of non-intervention from a political principle to a principle of general international law. They recalled that it had been given expression in Article 15 (8) of the League of Nations Covenant, had been embodied in the Convention on Rights and Duties of States in 1933, and further affirmed in the Additional Protocol relative to Non-intervention adopted at the Inter-American Conference for the Maintenance of Peace held in 1956. It was also contained in the Declaration of American Principles of 1938, in the Act of Chapultepec of 1945 and other

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international instruments. Several representatives emphasized the inter-American contribution to the development of the principle, which culminated in the Charter of the Organization of American States and the Pact of Bogota of 1948.

215. Differences of opinion appeared in the Special Committee as to the extent the Charter of the United Nations governed the general question of non-intervention by States in the affairs of other States.

216. The majority of representatives who pronounced themselves on the matter said that, while the Charter contained no provision dealing explicitly with the principle of non-intervention by States, that principle must be regarded as implicit in it. One representative stated that it was extremely dangerous to try to prove that the principle of non-intervention was not implicitly contained in the United Nations Charter, for it would then have to be assumed that since intervention was not prohibited under the Charter, it was permissible. Several representatives suggested that the embodiment of the principle clearly followed from the fact that, by proclaiming the sovereign equality of States, the Charter prohibited one State from interfering in the affairs of another State and protected the second State against such interference. In customary law sovereign equality was the foundation of the duty of non-intervention, and sovereign equality would be meaningless if States were entitled to intervene in the domestic affairs of other States. Thus the legal concept of non-intervention, as between States Members of the United Nations, could be regarded as springing from the concepts of respect for the personality and political independence of the State, as well as from its juridical equality, which concepts constituted elements of sovereign equality. Several representatives who advocated the above interpretation of the United Nations Charter said that, since Article 2, paragraph 7, prohibited intervention by the Organization in the domestic affairs of Member States, that prohibition should extend a fortiori to Member States in their relations with other States. It was also stated that the principle of non-intervention was a corollary of the principle of respect for the territorial integrity and political independence of States, protected by Article 2, paragraph 4 of the Charter, which postulated implicitly the free and unhampered development of States as an aspect of their national independence. Some delegates observed, moreover, that intervention was entirely contrary to the spirit underlying Article 2, paragraph 7, to the purposes

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of the United Nations set forth in Article 1, paragraph 2, and to other provisions of Chapter I of the Charter. The Charter was an instrument to promote peace through progress, co-operation, equality and non-intervention. The right to self-determination of peoples also clearly implied the principle of non-intervention, as did the obligation of States to respect the political and social systems chosen by each people. Moreover, it was also suggested by one representative that the principle constituted an obligation not to oppose peoples struggling for their independence, who had the inalienable and sovereign right to establish their national government without any outside interference and were free to establish political, economic and cultural relations with other States and, if necessary, to replace an obsolete economic and social system.

217. It was further maintained that, under General Assembly resolution 1966 (XVIII) of 16 December 1963, the Committee was to study principles of international law and, as the debates and documents in the General Assembly clearly showed, the principle of non-intervention came within the framework of international law in general. While the Charter was to be the basis of the Committee's work, the Committee was none the less free to take into consideration new elements which had arisen since the signing of the Charter.

218. Several representatives submitted that the various Charter provisions, mentioned above, had to be interpreted both individually and in combination. One representative, who shared the view that the Charter imposed the duty of non-intervention both on the United Nations and on States, stated that the introductory sentence of Article 2 could not be interpreted as meaning that some of the principles applied to the Organization and others to the Member States. The provisions of that Article should not be interpreted too restrictively, and both the Member States and the Organization should act in conformity with all the principles in question.

219. One representative stressed, on the other hand, that Article 2 (7) of the Charter was explicitly concerned only with non-intervention by the United Nations, and declared that there were no grounds for supposing that that provision extended to States the prohibition imposed upon the Organization. It was clear by application of the principle expressio unius est exclusio alterius that, in the matter of intervention, Article 2, paragraph 7, was not concerned with the actions of States. State intervention was dealt with in Article 2, paragraph 4,

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which involved only the threat or use of force and could not be stretched to encompass all sorts of extraneous standards of conduct, whether or not they might be desirable in themselves. Apart from Article 2, paragraph 4, the drafters of the Charter had not dealt separately and expressly with intervention by States. He warned that it might be dangerous, and to some extent unrealistic, to give too broad an interpretation to the notion of non-intervention. The limited character of the Charter's concern with State intervention was evidenced, inter alia, by the fact that less than three years after the drafting of the Charter a substantial group of Member States had felt it necessary to enter into additional multilateral treaty commitments regarding non-intervention by States, and the travaux préparatoires of the San Francisco Conference did not support the interpretation that Article 2, paragraph 7, was even by implication applicable to intervention by States. When the authors of the Charter had meant in that paragraph to refer to States, they had done so explicitly.

220. Another representative recalled the travaux préparatoires relating to the principle of non-intervention, and stated that, in the light thereof, the meaning of the present Article 2, paragraph 7, of the Charter was, firstly, that each State had entire liberty of action in matters essentially within its domestic jurisdiction, and secondly, that the United Nations might only intervene in such matters provided they fell definitely within the purview of the enforcement measures envisaged in Section B of Chapter VIII of the Report of Rapporteur of Committee I/1 to Commission I of the San Francisco Conference on International Organization. He observed, however, that the principle established in Article 2, paragraph 7, had now become a general rule of law regulating the relations between States.

221. Disputing the limited concept of Article 2, paragraph 4, of the United Nations Charter described above, one representative stated that much of the classic conception of non-intervention had been absorbed by the prohibition of the threat or use of force contained in that provision. While the threat or use of force undoubtedly represented the most obvious case of intervention, that form of intervention constituted a special legal category because it came under special legal rules, not applicable to other acts of intervention. There was a correlation between Article 2, paragraph 4, and Article 51. The gradual

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inclusion of acts distinct from the use of force in the category covered by Article 2, paragraph 4, tended to strengthen the trend to use acts distinct from armed attack in order to justify the exercise of the right of self-defence, i.e. in the last analysis, in order to legitimize preventive war. The General Assembly itself, in laying down the Committee's terms of reference, had distinguished between the prohibition of the use of force and the principle of non-intervention. His delegation had therefore omitted the prohibition of the use of force from its proposal, while including everything else covered by the traditional concept, i.e. acts of intervention stricto sensu which did not constitute a use of force.

222. Another representative stated that even if allowance were made for the interpretation of Article 2, paragraph 4, as meaning only the prohibition of armed force, the context of Article 2, paragraph 7, was wider than that of Article 2, paragraph 4, since the latter referred not only to armed intervention but also to acts of economic, political and other intervention.

223. In the view of one representative, the two basic elements of the classic definition of non-intervention were contained in Article 2, paragraph 4: the prohibition of coercion of the will of another State by the threat or use of force, and the prohibition of attempts by such means on the territorial integrity or political independence of another State. In his view "territorial integrity" and "political independence" belonged to the reserved sphere of competence of States, which included all questions essentially within their domestic jurisdiction.

224. Another representative observed that the reference to territorial integrity and political independence in Article 2, paragraph 4, could not be of much assistance in determining either the existence or the scope of the duty of non-intervention, since that paragraph was not expressly concerned with the duty of non-intervention, but only incidentally touched on it in connexion with the general prohibition of the use of force.

225. Many representatives referred to various international instruments concluded subsequent to the Charter, or decisions of international organs, which embodied the principle of non-intervention. Some of the examples cited were - apart from the Pact of Bogota (American Treaty on Pacific Settlement) and the Charter of the Organization of American States - the Pact of the League of Arab States, the Declarations adopted at Bandung in 1955 and at Belgrade in 1961, the Charter of

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the Organization of African Unity, 1963, the Warsaw Treaty, 1955, the Vienna Convention on Consular Relations, 1963, the Vienna Convention on Diplomatic Relations, 1961, General Assembly resolutions 290 (IV) of 1 December 1949 and 380 (V) of 17 November 1950, and various other decisions by the United Nations relating to non-intervention. These instruments and decisions showed, it was said, that the principle of non-intervention was a fundamental rule of international law recognized by all States.

226. Some representatives maintained that the inter-American concept of non-intervention should be universally applicable. It had been endorsed by many States, and its strict injunctions were consistent with the interests of most members of the international community. It was difficult to see why certain activities which were unlawful from any objective point of view should be prohibited in relation to some States and permitted in relation to others. Other representatives thought that the principle of non-intervention in regard to relations between States must be laid down in explicit and precise terms on the basis of article 15 of the Charter of the Organization of American States (see para. 239 below) and having regard to Article 2, paragraph 7, of the United Nations Charter.

227. Another representative recalled, however, that article 15 of the Charter of the Organization of American States was broader than any principle of State conduct found in the United Nations Charter. It was the United Nations Charter and not the Charter of the Organization of American States which the Committee was considering.

3. The question of intervention in internal and external affairs

228. Some representatives favoured prohibiting intervention in the external as well as the internal affairs of States, on the basis of the collective experience of the American States as reflected in Articles 15 and 16 of the Charter of the Organization of American States. They considered that external independence was an attribute of sovereignty just as much as internal independence, and that certain forms of interference in the external affairs of States might amount to direct or indirect intervention in their domestic affairs, or vice versa.

229. Some other representatives took the position that no valid distinction could be made between intervention in internal and in external affairs. They considered

that it was not easy in practice to distinguish between internal and external affairs, and that, moreover, many questions which had led to intervention had both external and internal aspects which could not be separated. Internal and external affairs embraced all the activities of a State in the exercise of its sovereignty.

4. The question of the desirability of defining activities considered to constitute intervention

230. Several representatives believed that the principle of non-intervention required a new formulation which would take into account the recent developments that had occurred in its application and the practice both of the United Nations and of States that had evolved in the light of Charter and other treaty principles and of the present-day needs of the international community. It was also stressed that strict compliance with the principle in the daily practice of all States without exception must be ensured. These representatives agreed that it was impossible to enumerate all the possible forms of intervention and that a more complete codification should be attempted in the future; but, in their view, the absence of such a codification at the present time should not prevent the Committee from illustrating what it meant by intervention. They favoured a categorical statement prohibiting intervention, supplemented by an enumeration of the main types of actions which, in fact, constituted intervention. One representative stated that it was not enough to draw implications from the various provisions of the Charter; rather, the great juridico-political principles of non-intervention should be given express formulation. He considered that the subject offered an excellent example of the kind of task which the General Assembly had entrusted to the Special Committee. What the Committee had to deal with was a principle which was implicit in the Charter without being stated expressly in it. The Committee would thus not be establishing a principle which did not appear in the Charter, neither would it be revising or repeating the Charter's provisions; it would be stating that principle in the light of the historical experience and practice of States and of the United Nations, and in the light of treaties and of the present-day needs of the international community. The codification and progressive development of international law were, in the present instance, in his view, inseparably linked.

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231. In the view of other representatives, however, it was unwise and unprofitable for the Committee to define intervention, because extending it would stultify the growth of international co-operation, and restricting it would leave States without protection against very real dangers. It was not possible, in their opinion, to turn every apparently useful political idea into a legal formula or to foresee all the possible conflicts which might arise. They opposed the tendency to try to draw up texts too detailed to be applied effectively. Instead, they preferred that international organs should in each case decide what constituted a lawful act and what constituted unlawful intervention. Any attempt at definition, they believed, was doomed to failure, as intervention was an extremely fluid concept and the competent international organs would always be able to determine in each instance whether or not intervention had taken place.

232. One representative considered that a definition of intervention, which was both precise enough and broad enough to be adequate, would represent a major step forward in general international law, and at the same time would be the best means of eliminating one of the principal sources of international conflict. However, he was uncertain whether such a definition was possible, for neither the authors of the Charter nor, before them, those of the Covenant of the League of Nations, had tried to define intervention or its necessary corollary, domestic jurisdiction. Although the American States had made efforts to do so, article 15 of the charter of the Organization of American States, which would remain a classic text in that regard, did more to emphasize than to solve the problem of the definition of intervention, and article 16 of that text immediately raised the question where the line of demarcation lay between what a State could or could not legitimately do in its normal relations with another State. With regard to the draft instrument prepared by the Inter-American Juridical Committee, he felt that that method perhaps pointed the way to the future, and deserved comparison with the attempt made by the International Law Commission in article 2 of its Draft Code of Offences against the Peace and Security of Mankind, and with the definition of the reserved sphere attempted by the Institute of International Law in 1954.

233. One representative considered that too rigid a formulation of the rules of non-intervention might lead to serious contradictions when the Special Committee

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came to study the principle of equal rights and self-determination of peoples. However, those difficulties did not necessarily rule out any detailed formulations. 234. Another representative believed that the duty of non-intervention could not be stated in detailed terms except possibly through the formulation of proposals de lege ferenda. The lex lata could provide only a highly generalized statement of that duty and there was some utility in attempting to spell out the general rule. However, by trying to specify the prohibition of intervention in too much detail, the Committee would run the risk of reaching the absurd position where States would scarcely be able to take any action in their international relations if some other State objected. Some criteria must therefore be found for limiting to matters really domestic the prohibition on intervention. His delegation also experienced real difficulties, in regard to the duties of States, in accepting concepts which were too broad and too vague.

5. The meaning of "domestic jurisdiction"

235. One representative observed that the principle of non-intervention simply protected the freedom of choice without which an independent State could not exist as such, a freedom frequently termed the "domestic jurisdiction" of a State. That freedom had both internal and external aspects and consisted, inter alia, in a State's right to choose what should be its own political, social, economic and legal system, provided, of course, that it respected human rights and fundamental freedoms; whether to entertain diplomatic relations with another States; whether to enter into agreements; and whether to participate in regional and other international organizations. That being generally accepted, the difficulty was to judge whether a State's conduct was a necessary implication of the right of choice it had exercised. In any event, a State could not invoke its sovereignty in order to justify a violation of the rights of another State, nor could a protest or a demand for reparations from such other State be considered illicit intervention. It therefore seemed legally incorrect to equate freedom of choice with the sovereign will of a State, since the latter, too, covered all the activities of a State. If, however, the freedom of choice was limited to the essential matters to which he had referred, it could be said that in principle a State should be protected against any action by another State designed to impose a particular choice upon it.

236. Some representatives, when referring to the rules of international law on the question of domestic jurisdiction, recalled that, apart from the Corfu Channel case and that of the Nationality Decrees issued in Tunis and Morocco, the only fundamental text in the matter was the Advisory Opinion of the Permanent Court of International Justice relating to the interpretation of Article 15 (8) of the Covenant of the League of Nations. It was noted that the Court, referring to the relative nature of the concept of domestic jurisdiction, had envisaged one exception only - the case where such jurisdiction was restricted by obligations undertaken by one State towards other States. The substitution, in the Charter, of the formula "matters which are essentially within the domestic jurisdiction" of States for that of the Covenant which had referred to matters "solely" within their jurisdiction, had in no way detracted from that interpretation. If anything, the reserved sphere was even more extensive in the Charter than in the Covenant.

237. The definition of domestic jurisdiction formulated in the Tunis and Morocco Nationality Decree case meant that the question whether a proposed exercise of power was within a State's domestic jurisdiction could not be determined until all its obligations bearing on a situation had been examined. The development of communications, transport and travel across national boundaries had given each State a very real interest in what occurred in the territory of other States, so that from the standpoint of actual interest few questions could be regarded as wholly domestic; and if the law were to reflect actual conditions it must give protection to those actual interests, recognizing a State's claim to reparation for injuries to itself or its nationals and to reasonable access to trade, information, cultural exchanges and transit in the territory of other States. Such rights had developed either by custom or by treaty, and the domestic jurisdiction of States in the legal sense had been continually reduced as the real interest of States in the territory of others had been recognized and given legal protection.

6. The meaning of "intervention"

238. Apart from general formulations submitted to the Special Committee in writing and reproduced in the first part of the present chapter, several representatives offered definitions or expressed their understanding of the term "intervention".

239. Several representatives recalled the provisions of Article 15 of the Charter of the Organization of American States, which provided that: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements."

240. One representative considered that an accurate definition of the concept might be as follows: it was the coercive nature of an act of interference which made that act "intervention", whether the act in question involved the use of force or merely economic or political pressure. Interference must manifest itself by action or inaction, or by a threat of a hostile nature or deemed to be hostile if the State in question did not yield to it. That did not mean that to constitute intervention the act of interference must in fact force the victim State into compliance. Even if that State refused to be coerced or intimidated by threats, there might be an intention on the part of the intervening State to coerce the sovereign will of the other State. According to the general principles of law, the intention of the agent could be presumed from the nature of the act performed. According to Calvo, the form which the intervention took did not in any way change its nature. Intervention could be practised by processes of diplomacy. It could be more or less direct, more or less overt. It could be directed against the internal or external affairs of the State. According to some authorities, such as Westlake, intervention meant exclusively intervention in internal affairs. However, that position failed to take account of the fact that external independence was an attribute of sovereignty just as much as internal independence. Lastly, intervention presupposed the existence of a state of peace between the States concerned.

241. Another representative, differentiating between "permissible" and "impermissible" intervention, stated that impermissible intervention was the dictatorial exercise of influence over the internal affairs or foreign policy of a State, aimed at destroying its markets, violating its laws, damaging its prestige and reputation, controlling its policy or subverting its government. It included such activities as propaganda, espionage, infiltration, bribery,

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assassination, assistance to guerrillas, and peremptory diplomatic demands. However, it was only when such activities were carried out by agents of a Government with a view to controlling or subverting the Government of another State that they contravened the principle under consideration. Propaganda or subversive activity short of military expeditions undertaken by private individuals or enterprises were not usually regarded as intervention unless there was government complicity.

242. In the view of another representative any attempt to define intervention must cover, in addition to respect for sovereignty, the idea of coercion, namely of abnormal or improper pressure exercised by one State on another State in order to force it to change its internal structure in a direction favourable to the interests of the State applying such coercion. However, he did not think that such an attempt was possible in the present state of international relations. For the last two decades the idea of intervention, which was itself connected with the increase in the number of sovereign States, had been undergoing an inflation, and the concept of sovereignty had undergone a similar inflation. The idea of intervention had been applied to the most diverse situations, and today reference was commonly made to economic or ideological intervention with or without such improper coercion, which he regarded as the true criterion of intervention.

243. One representative said he believed in the dynamic nature of the Charter and considered that it should be interpreted so as to give it its fullest effect. But he rejected interpretations the derivation of which were at best dubious, particularly when such interpretations were not necessary to the effective functioning of the Organization or when they watered down rules clearly stated in the Charter, and, moreover, particularly when such interpretations would carry no weight with countries which were accustomed to take little notice of those rules.

244. Taking a similar position, another representative expressed the view that any attempt to spell out the various activities constituting intervention was a task which, for purely practical reasons, was beyond the scope of the Special Committee. He said that it must always be remembered that the principle of non-intervention operated within the framework of the flexible Charter system and that allegations

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of unlawful intervention, particularly if they gave rise to a dispute or a situation whose continuance would endanger international peace and security, could always be brought before a competent organ of the United Nations for decision. It was in that flexible and pragmatic manner, which was natural to countries applying the common law system, that the content of the law relating to intervention should continue to be developed.

7. The question of permissible intervention

245. Some representatives distinguished between "permissible" and "impermissible" intervention. It was said that, in the present-day world, States were increasingly interdependent, and that tendency was bound to become more pronounced. Thus the risk must be avoided of seeming to thwart progress by categorizing as intervention what was in fact part of normal diplomatic activities. Without wishing to defend all forms of political, economic or material pressure, some representatives were of the opinion that certain forms of pressure promoted rather than hindered progress and could be advantageous to States.

246. One representative suggested that States should recognize as mandatory the rules of international law, agree to limit their freedom of action in certain fields under multilateral agreements, and, above all, transfer some of their powers to the appropriate organs of the United Nations. It was important to realize that any progress made by the United Nations must reflect in some degree a surrender of national sovereignty, and that such a process was in the interests of peace and stability. When the Organization had undertaken the task of maintaining law and order in the Middle East and in Africa, and of speeding the process of decolonization, individual Powers had been obliged to recognize a limitation on their freedom of action in those spheres. The authority of the United Nations as a body must take precedence over that of its individual Member States.

247. Another representative drew the conclusion, from the case concerning the Tunis and Morocco Nationality Decrees, that the principle of non-intervention could not be invoked with respect to such questions as apartheid in the Republic of South Africa, the oppression of Africans in Central Africa, the denial of the right of self-determination, and other colonialist and neo-colonialist practices which had been the subject of many resolutions in the General Assembly. He also

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observed that, in formulating proposals on the principle of non-intervention, the Special Committee should take into consideration the exceptions provided for in Articles 11, 14, 36, 37, 39, 55 and 73 of the United Nations Charter, which gave the Organization itself extensive power to make decisions or recommendations in certain circumstances.

248. One representative recalled that, although the illegality of intervention was acknowledged to be a general rule by most authorities, the view had also been advanced that some exceptions should be made to that rule because there were certain rights which should take precedence over the right to independence and that therefore intervention was lawful when its purpose was to defend a higher right. While intervention, in such cases, was not a right in the ordinary legal meaning of the term international practice recognized certain exceptions to the rule of non-intervention. Those who denied the lawfulness of intervention, or the existence of a right of intervention, based their argument on the nature of the right to independence and sovereignty: if there was a right of intervention, that right would violate another right. The same representative said that in exceptional cases there could be lawful interventions, such as measures taken in self-defence or as sanctions, or with the consent of the State which was the victim of the intervention.

249. Other representatives could not support any attempt to make a distinction between "lawful" or "unlawful" intervention. In their view, such a distinction would only serve to justify one category, so-called lawful intervention.

8. Acts prohibited under the principle of non-intervention

- (i) Activities aimed against the political, economic and social system of a State and imposition or attempt to impose on a State a specific form of organization or government

250. Proposals characterizing activities of the nature indicated in the present sub-heading as unlawful intervention were submitted by Czechoslovakia (A/AC.119/L.6, para. 1 (see para. 203 above)), by Yugoslavia (A/AC.119/L.7, paras. 2 and 3 (see para. 204 above)), jointly by Ghana, India and Yugoslavia (A/AC.119/L.27, para. 1, (see para. 209 above)) and by Mexico (A/AC.119/L.24, para 2, sub-para. (5) (see para. 208 above)).

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251. It was explained that these proposals had been dictated by the consideration that any interference aimed at infringing the right of a State to decide the course of its own political, social or economic development could cause international friction that might endanger peace, and that any external pressure exercised against the right of a State freely to choose a particular social system or political regime should therefore be unconditionally prohibited. This point needed particular stress in view of the present division of the world into opposing ideological camps and differing political and economic systems and it was also of special importance to States which had recently attained independence. It should be formulated so as to prohibit not only armed intervention, but all other forms of direct or indirect intervention in the internal or external affairs of States, more especially intervention of a political or economic nature and political or economic pressure aimed at preventing peoples from choosing their social system or from taking economic measures to further their interests in their own countries.

252. However, one representative could not agree to broad formulations of the foregoing nature. If adopted, such formulations would make it unpermissible for other States to interfere when a State's social or political order was characterized by the systematic suppression of political or other human rights; these other States would be unable even to express condemnation of such situations as apartheid, colonialism or totalitarianism, since that might be considered pressure aimed at changing the existing order in another State. The same representative said that the Charter did not include either expressly or by necessary implication such restrictions on the freedom of action of States.

(ii) Acts aimed against the personality, sovereign equality and rights enjoyed by other States in accordance with international law and against their territorial integrity and inviolability

253. Proposals to include some or all acts of the nature indicated in this sub-heading as acts of intervention were submitted by Czechoslovakia (A/AC.119/L.6, para. 2 (see para. 203 above)), Yugoslavia (A/AC.119/L.7, para. 2 (see para. 204 above)), the United Kingdom (A/AC.119/L.8, para. 2 (see para. 205 above)), Guatemala (A/AC.119/L.25, para. 1 (see para. 206 above)), and Mexico (A/AC.119/L.24, para. 1 (see para. 208 above)).

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254. Representatives advocating a provision along these lines stated that the prohibition of the use of force laid down in Article 2, paragraph 4, of the Charter implied a correlative right on the part of States to political independence and territorial integrity. Any act, manifestation or attempt directed against the territorial integrity or inviolability of a State was not only an invasion of its sovereignty but also prejudicial to peaceful relations among States. Once the right to political independence and territorial integrity was accepted, the conditions under which States could exercise that right must be established. This could be done by imposing on States the duty to respect the rights enjoyed by other States in accordance with international law. Some representatives felt that reference should also be made, in this context, to the right of every State to free and organic development. The object was to ensure that every State freely enjoyed all its rights under international law and was able to assert its personality as a State.

255. In support of inclusion of some formulations along the foregoing lines it was said that provisions in similar terms were to be found in the Charter of the Organization of American States and in many multilateral, regional and bilateral treaties.

256. One representative, referring to the Czechoslovak proposal, said that it was intended, apparently, to prohibit acts not involving the threat or use of force, for otherwise it would be redundant. But what exactly were "manifestations" not amounting to the threat or use of force, "aimed at a violation of the territorial integrity or inviolability" of a State, and what reason would such elusive and ephemeral conduct give any State to fear for the actual integrity of its territory? The territorial integrity of States was already amply protected by Article 2, paragraph 4; only harm could result from the proliferation of rhetoric having no purpose but variety.

(iii) Acts against the self-determination of peoples

257. Apart from the discussion of the basis of the principle of non-intervention, in which it was said that the principle of self-determination implied, inter alia, the principle of non-intervention, certain remarks on self-determination of peoples were also made in connexion with acts constituting unlawful intervention.

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258. Some representatives stated that, since the principle of non-intervention, as stated in particular in Article 2, paragraph 7, of the Charter, had repeatedly been invoked against the interests of colonial peoples fighting for independence, that principle should be so formulated as not to hinder the self-determination of colonial peoples, and so as to protect the sovereignty and independent development of new States against external interference. It was recalled, in this connexion, that the Heads of State or Government of the non-aligned countries had given special attention to the principle of non-intervention at the Belgrade Conference in 1961 and had in their final communiqué expressed their determination that "no intimidation, interference or intervention should be brought to bear in the exercise of the right of self-determination of peoples, including their right to pursue constructive and independent policies for the attainment and preservation of their sovereignty."

259. One representative believed that efforts should be made to solve the colonial problem through peaceful procedures, a broader interpretation of Chapter XI of the Charter, the development of the right of petition and the right of the United Nations to intervene under Article 2, paragraph 7, and more effective action by the Security Council, particularly by non-exercise of the right of veto.

260. Another representative pointed out that the self-determination referred to in Article 1, paragraph 2, of the Charter was the self-determination of peoples, a concept which might not always coincide with the concept of self-determination of States, and which left open the possibility of orderly change.

(iv) Coercive measures of a political or economic nature to force the sovereign will of another State in order to obtain advantages of any kind

261. Proposals containing elements of the above formulation were submitted by Yugoslavia (A/AC.119/L.7, para. 3 (a) (see para. 204 above)), Mexico (A/AC.119/L.24, para. 2 (1) (see para. 208 above)) and Guatemala (A/AC.119/L.27, para 2 (see para. 206 above)).

262. Several representatives emphasized that there was a definite need to provide for the prohibition of both direct and indirect intervention by one State in the affairs of another, which would also include political, economic and other kinds of interference, pressure or intervention which could infringe upon the sovereignty

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of a State and its political independence. The nuclear age made it an absolute necessity that States should adopt a higher standard of conduct in these respects. 263. One representative, advocating the inclusion of the words "coercive measures of an economic or political nature" in any formulation which might be adopted, recognized that the interplay of mutual influences and the exercise of certain pressures were a part of international relations. That was clear enough, for example, from the bilateral negotiations connected with the conclusion of any trade treaty, and particularly the way in which concessions were granted. But there were also many types of economic pressure a State might resort to in the exercise of its sovereignty which were plainly unlawful, and which would be difficult to reconcile with the United Nations Charter, particularly Articles 55 and 56 and Article 2, paragraph 2, and with the general principle of law which condemned certain actions as "abuses of rights". The same was true at the political level. What the Committee should be concerned with was not the influence that States normally exerted on each other, but solely with cases of manifestly unlawful pressure. It had been argued that it was impossible to draw up in advance a general definition of the term "unlawful pressure", and that reference to such pressure was therefore undesirable. That argument was hardly convincing. There were many juridical concepts, even basic ones, which did not lend themselves to precise definition. The difficulties which would face the organs that would have to apply the concept of "coercive measures of an economic or political nature" would be the same as those resolved every day by courts all over the world and by the political organs in all countries which applied juridical rules. Those rules should be interpreted in a reasonable way, taking account of the times, the environment and political, economic, social and juridical trends. Furthermore, the words "coercive measures of an economic or political nature" already appeared in multilateral treaties signed by a great many States, which had had no difficulty in accepting them. In any event, the difficulty of defining certain terms precisely could not be used as an argument to demolish the principle that some kinds of pressure were unlawful and constituted intervention. To fail to brand such kinds of pressures as intervention, on the pretext that it was difficult to define them, would be tantamount to legalizing them.

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264. Some representatives, however, did not share the foregoing views. It was pointed out, in this connexion, that the principle of non-intervention had its inherent limits and could never be invoked to bar the exercise, by another State, of its fundamental freedom of choice in essential matters, or in order to declare illegal the measures which a State might take to counteract a violation of its rights. Even if such countermeasures could be considered as a form of "pressure", they could not be characterized as unlawful intervention in matters within the domestic jurisdiction of another State. In an interdependent world, it was inevitable and desirable that States should try to influence the actions and policies of other States. It was not the purpose of international law to prohibit such activities, but rather to ensure that they were compatible with the sovereign equality of States and the self-determination of peoples. Moreover, while some concepts could be used within the legal system of a State, since there were tribunals which were particularly well equipped to give an authorized interpretation of them, there was no such general and automatic resort to tribunals within the international system. Without some body authorized to give a binding interpretation, there were no effective means of resolving the wide differences of opinion which would arise if a formulation of the nature here under consideration were to be adopted.

(v) The threat to sever diplomatic relations in order to compel one State not to recognize another State and making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages

265. Proposals characterizing as intervention acts of the nature indicated in the present sub-heading were submitted by Czechoslovakia (A/AC.119/L.6, para. 3 (see para. 203 above)) and by Mexico (A/AC.119/L.24, paras. 2 and 3 (see para. 208 above)).

266. Representatives supporting the inclusion of a provision along these lines stressed that the establishment or severance of diplomatic relations, like the recognition or non-recognition of a State, were manifestations of sovereignty and that the exercise by a State of its sovereign rights should not be subject to any pressure whatever, since any pressure so exercised constituted intervention. It was also said that the use of such tactics prevented third States from exercising

their inalienable right to participate in international relations, thereby weakening the concept of universality on which contemporary law was founded.

267. Explaining the reasons for the adoption of such a formulation, one representative stated that every State, as a corollary to its sovereignty, had the right to decide freely and without pressure whether a new State fulfilled the conditions for recognition as a subject of international law. It was nevertheless important that decisions on recognition should be in keeping with reality, in order to avoid confused situations in which potential aggressors might be tempted to use force against States which they did not recognize as such. In according or refusing recognition, States were performing what had been called a quasi-judicial function as members of the international community. That function must not be performed arbitrarily, nor must its performance be the subject of pressure by third States. He believed that such pressure constituted a violation of international law - as did similar pressure used to compel a State to vote in a particular way in an international organization. The prohibition of the kind of pressure to which he referred was not expressly contained in any instrument of positive international law, but he considered that it followed from the general principles of international law. In international law, it was an abuse of rights (abus de droit) to exercise rights in such a way as to interfere in matters within the competence of other Governments. The same representative contended that, although States had the right to recognize other States and decide the extent of their relations with them - thus, for example, they could refrain from establishing diplomatic relations with certain States and maintain only commercial relations with them - they were not entitled to abuse that right by threatening to sever diplomatic relations in order to compel other States to recognize or refrain from recognizing new States or Governments, for such action constituted illegal intervention in the external affairs of sovereign States. The Hallstein doctrine adopted by the Federal Republic of Germany was not a doctrine of simple non-recognition but a programme of non-recognition involving the exercise of pressure on third States.

268. Several representatives, on the other hand, disagreed with the foregoing position. They stressed that the act of recognizing States or Governments was a highly political one, and, although it was governed to an important extent by

norms of international law, those norms allowed States considerable discretion. The decision whether to recognize a State, or whether to seek to induce others to recognize it or refrain from doing so, could at present only be left to individual States. Every sovereign State enjoyed a perfectly legitimate exercise of the right to be the sole judge of the way it chose to conduct its diplomatic relations. The decision of the Federal Republic of Germany in following the Hallstein doctrine was a decision which was exclusively within its domestic jurisdiction and did not constitute a direct or indirect intervention in the external affairs of other States. Moreover, the Hallstein doctrine operated only in relation to one very special case, namely, the de facto political division of Germany. It should also be recalled that the maintenance or severance of diplomatic relations was a matter entirely within the discretion of the sending States; if the threat to sever diplomatic relations was conceived of as a means of unlawful pressure, it should not be confined to a threat with one particular purpose in mind. Everybody knew that a State could try to exert pressure on another State, with which it had a dispute, by threatening to sever, or by actually severing, diplomatic relations. While such action was likely to be self-defeating, it could not be disputed that a State was perfectly entitled to decide with which other States it wished to maintain diplomatic relations.

(vi) Organization or training of land, sea or air forces of any type having as their purpose incursions into other States

269. A proposal formulating the duty of every State to refrain from carrying on and permitting, in the areas subject to its jurisdiction, or from promoting or fomenting anywhere, the activities described in the present heading was submitted by Mexico (A/AC.119/L.24, para. 2 (2) (see para. 208 above)). It was not, however, the subject of any discussion within the present context.

(vii) Subversive or terrorist activities against another State or interference in civil strife in another State

270. Proposals characterizing as intervention subversive activities and interference in civil strife were submitted by Yugoslavia (A/AC.119/L.7, paragraph 3 (c), (d) (see para. 204 above)), by Mexico (A/AC.119/L.24, paragraph 2 (c) (see para. 208 above)), and by Ghana, India and Yugoslavia (A/AC.119/L.27, paragraph 2 (a) (see para. 209 above)). It was indicated

that the text of the latter three-Power draft was inspired by the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee.

271. One representative stressed that in the world of today, subversion was perhaps the most common and most dangerous form of intervention, whether it consisted of hostile propaganda, or of incitement to revolt or to the violent overthrow of the established order. Such forms of subversion, which were themselves ancient, had come to characterize the ideological struggle which divided the world today. Their goal was no longer to overthrow a rival or hostile government, but to change completely the political, economic and social structure of another State in the name of supposedly superior ideological principles. That ideological struggle was now assuming so violent a character that it presented, in the atomic age, enormous risks.

272. The very purpose of the principle of non-intervention was to halt the ideological struggle at a time when it was taking on certain political aspects which endangered the peace of the world. The instrument of that struggle being par excellence subversion, it was necessary to prohibit subversive activities as categorically as possible.

273. Speaking on the forms of subversive or terrorist acts with support from outside as the most typical cases of violation of the principle of non-intervention, another representative pointed out that such forms included not only the organization, training and preparation on the territory of one State or groups of individuals who would then infiltrate into another State for purposes of subversion and terrorism. They also included encouragement, material aid, provocation and any support of whatsoever kind given by a State to seditious minority groups operating in another State against the established order and seeking to overthrow the Government and the political and social system freely chosen by the inhabitants.

274. In the view of one representative, the principle of non-intervention should be formulated so as to place Governments or States under the obligation to prevent their territories from being used by non-governmental organizations to prepare subversion against other States. In addition, further consideration should be given to the neo-colonialist practice of extracting consent for the establishment

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of military bases or for other concessions in the territory of a colonial country as a condition for the granting of independence. Such practices constituted quasi-intervention, and compromised from the outset the territorial integrity of the future State. Furthermore, mutual defence treaties between colonial Powers and their former colonies had been used on occasion as pretexts both for interfering in the latter's internal affairs and for buttressing unpopular regimes in the new States.

(viii) Contribution, supply or provision of arms or war materials to be used for promoting or aiding a rebellion or seditious movement in any State

275. A proposal characterizing the above activities as intervention was submitted by Mexico (A/AC.119/L.24, para. 2 (2) (b) (see para. 208 above)). It was not discussed at any length in the Special Committee.

(ix) Interference with or hindrance of the promulgation or execution of laws in regard to matters essentially within the domestic jurisdiction of any State

276. A proposal characterizing acts of the above nature as intervention was submitted jointly by Ghana, India and Yugoslavia (A/AC.119/L.27, para. 2 (b) (see para. 209 above)). This draft was to be based upon the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee.

277. One representative expressed some doubts about this formulation, saying that the domestic jurisdiction of States was not a water-tight compartment, and that certain measures taken by a State might have full effect only if they were recognized or even supported by other States.

(x) Prevention or attempt to prevent a State from freely disposing of its natural wealth and resources

278. Proposals on the above subject were submitted by Yugoslavia (A/AC.119/L.7, paragraph 3 (e) (see para. 204 above)) and by Mexico (A/AC.119/L.24, paragraph 2 (4) (see para. 208 above)).

279. One representative stressed that the condemnation of intervention in this sphere would represent a step forward in the progressive development of the principle that States had the right to dispose of their natural riches and

resources, a right proclaimed by the General Assembly in resolutions 626 (VII) of 21 December 1952 and 1803 (XVII) of 14 December 1962. However, it was not enough simply to proclaim legal norms; efforts must be made to ensure their actual application, bearing in mind the level of development of international law and more particularly the possibilities of practical action by the United Nations. The latter factor was linked, in turn, to the degree of interdependence of States, and it was the rapid rate at which that interdependence was growing that would do most to promote the elaboration of new norms of international law governing friendly relations and co-operation among States.

280. Another representative, however, expressed a different view. He said that if any formulation on the right to dispose freely of natural wealth and resources was intended to deal only with acts involving force, it was superfluous, since such acts were already ruled out by Article 2, paragraph 4. If it went beyond that Article, as he assumed was the intention in the present instance, it raised the following question: when did an act become one hindering the free disposition of wealth and resources and cease to be merely a move in the process of free bargaining by which sovereign States endeavoured to accommodate their mutual interests? The drafts before the Committee might well be invoked to forbid import restrictions, measures of currency control, international agreements for the exploration or development of natural resources, commodity exchange agreements and the like, whether they were fair or not, for they did not indicate how fair arrangements were to be distinguished from unfair ones. Either the provision would prohibit a great variety of normal and useful transactions among States or it would prohibit none, leaving each State free to brand as illegal "interference with the free disposition of natural wealth" any action which on a particular occasion it might find distasteful or contrary to its interests. Some representatives pointed out that the General Assembly had adopted resolution 1803 (XVII) of 14 December 1962, which contained a carefully worded and reasonably balanced treatment of the subject of permanent sovereignty over natural resources, and the matter might well be left there.

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(xi) Imposition or attempt to impose on a State concessions to foreigners of a privileged situation going beyond the rights, means of redress and safeguards granted under the municipal law to nationals

281. A proposal characterizing as intervention acts of the nature indicated in the present sub-heading was submitted by Mexico (A/AC.119/L.24, para. 2 (6) (see para. 208 above)).

282. One representative observed that this proposed provision would appear to alter established international law, which provided for a minimum standard in the treatment of aliens, and would substitute for that pillar of progressive international law the flexible standard of national treatment. The clause would prohibit only "imposing or attempting to impose" on a State the observance of a minimum standard, but that raised the question of what was "imposing or attempting to impose". He asked whether requesting or requiring a State to submit to international adjudication its failure to treat aliens in accordance with the minimum standard of international law was illicit imposition. In his view, the difficulty raised by the broad phraseology of the clause became plain in the light of such questions.

(xii) The use of duress to obtain or maintain territorial agreements or special advantages of any kind

283. A proposal to characterize as intervention duress to obtain or maintain territorial agreements was submitted jointly by Ghana, India and Yugoslavia (A/AC.119/L.27, paragraph 2 (c) (see para. 209 above)).

284. This proposal was stated to be based upon the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee. It was not the subject of any individual comment in the Special Committee.

(xiii) The recognition of territorial acquisitions or special advantages obtained by duress of any kind by another State

285. A provision on the above matter was proposed jointly by Ghana, India and Yugoslavia (A/AC.119/L.27, paragraph 2 (d) (see para. 209 above)). It was not the subject of any discussion in the Special Committee.

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(xiv) Prohibition of intervention by the United Nations

286. The United States submitted a formulation on the prohibition of intervention by the United Nations as an amendment (A/AC.119/L.26 (see para. 207 above)) to the proposal of the United Kingdom.

287. One representative stated that the Committee could not adequately discharge its responsibility if it overlooked that portion of the duty of non-intervention which was expressly laid down in the Charter and related to the duty of the United Nations not to intervene in matters within the domestic jurisdiction of States.

288. Another representative believed that a distinction should be made between the sovereignty of States in their mutual relations and the limited sovereignty of States in their relations with the United Nations. While he considered the principle of non-intervention as fully applicable in relations between States, this did not apply to legitimate collective measures taken by the United Nations in the common interest for the defence of peace. There was nothing to prevent the United Nations from taking up questions of international concern, even if they did not relate directly to the maintenance of peace and security.

289. One representative remarked that the United States amendment merely reproduced in slightly different terms the ideas set forth in Article 2, paragraph 7, of the Charter and that from the point of view of the development of the principle of non-intervention, it introduced few new elements and merely served the purpose of recognizing in a document the fact that the principle already existed.

290. As indicated in the first section of the present Chapter, some representatives considered that the Committee's task was to emphasize the duty, not of the United Nations, but of States not to intervene in the internal affairs of other States, and to consider principles of international law concerning friendly relations and co-operation among States, no doubt in accordance with the Charter, but nevertheless among States. These representatives considered that it would be unfortunate for the Special Committee to embark upon the discussion of the scope and significance of Article 2, paragraph 7, of the Charter in relation to the activities of United Nations organs, although the relevance of that provision to the principle of non-intervention had been recognized.

291. One representative noted that the report of the Sixth Committee (A/5671) on the item which led to the establishment of the Special Committee showed that the Sixth Committee had considered that both Article 2, paragraph 7, as applied to the United Nations, and the duty of non-intervention, as applied to States in their relations inter se, were properly included within the Special Committee's mandate. The work of the Sixth Committee therefore afforded no grounds for excluding from the Special Committee's work the duty of non-intervention as between States or the duty of non-intervention as applied to the Organization itself.

C. Decision of the Special Committee on the recommendation of the Drafting Committee

292. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee Paper No. 9):

"PRINCIPLE C i.e. the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter"

"The Committee was unable to reach any consensus on the scope or content of this principle.

- (a) For proposals and amendments, see annex A.
- (b) For views expressed during the discussion, see annex B."

"ANNEX A

"Proposals and amendments concerning which no consensus was reached

Proposal by Czechoslovakia (A/AC.119/L.6)

(reproduced in paragraph 203 of the report)

Proposal by Yugoslavia (A/AC.119/L.7)

(reproduced in paragraph 204 of the report)

Proposal by the United Kingdom (A/AC.119/L.8) and amendments thereto by Guatemala (A/AC.119/L.25) and the United States (A/AC.119/L.26)

(reproduced in paragraphs 205, 206 and 207 of the report, respectively)

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Proposal by Mexico (A/AC.119/L.24)

(reproduced in paragraph 208 of the report)

Proposal by Ghana, India and Yugoslavia (A/AC.119/L.27)

(reproduced in paragraph 209 of the report)"

"ANNEX B 9/

"Views expressed in the discussions, concerning which no consensus was reached

"1. Relation of the principle of non-intervention to the Charter

Delegations referred to the following provisions of the Charter:

Preamble

Yugoslavia (SR.25, p. 7) considered that the Preamble was one of the relevant provisions.

Article 1

India (SR.32, p. 9) referred to Article 1, paragraph 1; Yugoslavia (SR.25, p. 7) and USSR (SR.28, p. 11) referred to Article 1, paragraph 2; and Mexico (SR.30, p. 6) referred to Article 1, paragraph 2 and other provisions of Chapter I.

Article 2, paragraph 1

Czechoslovakia (SR.25, p. 5), Yugoslavia (SR.25, p. 7, SR.31, p. 11), Romania (SR.26, p. 7), Mexico (SR.30, p. 5, SR.32, p. 22), Canada (SR.31, p. 8) and Australia (SR.32, pp. 11-12) referred to this paragraph.

Article 2, paragraph 4

Yugoslavia (SR.25, p. 8, SR.31, p. 11) United Kingdom (SR.26, p. 5), USSR (SR.30, pp. 18-19), Ghana (SR.32, p. 24), USA (SR.29, p. 8), Mexico (SR.30, pp. 6-7), Guatemala (SR.32, p. 5) and Czechoslovakia (SR.32, p. 29) referred to this paragraph. India (SR.29, p. 13): the principle of non-intervention is a direct corollary of the principle of respect for the territorial integrity and political independence of States.

USA (SR.29, pp. 8-12, SR.32, pp. 25-27): intervention by States is dealt with in the Charter only in Article 2, paragraph 4, and only in so far as the threat or use of force is involved.

9/ The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

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Mexico (SR.30, p. 7): the threat or use of force should not be dealt with under intervention. Australia (SR.32, pp. 12-13): Article 2, paragraph 4 cannot be of much assistance in determining the existence or the scope of the duty of non-intervention; the threat or use of force should be dealt with only under Principle A.

Article 2, paragraph 7

Yugoslavia (SR.25, p. 8, SR.31, p. 12), Romania (SR.26, p. 7), USSR (SR.28, p. 11, SR.30, pp. 18-19), Ghana (SR.29, p. 4, SR.32, p. 23) Mexico (SR.30, pp. 5-6, SR.32, pp. 21-22), Burma (SR.31, pp. 4-5) and Australia (SR.32, pp. 10-12): Article 2, paragraph 7 prohibits intervention by States as well as by the United Nations.

Czechoslovakia (SR.25, p. 5) mentioned Article 2, paragraph 7, as prohibiting intervention by the United Nations. United Kingdom (SR.26, pp. 4-5, SR.32, pp. 19-20) recognized the relevance of the provision to Principle C, and found some value in a reference to it in connexion with the United Nations itself. France (SR.28, p. 9): Article 2, paragraph 7, concerns only the obligation of the United Nations not to intervene, but international law imposes that obligation on States.

USA (SR.29, p. 8, SR.30, p. 23, SR.32, pp. 25-28): Article 2, paragraph 7 is not concerned with actions of States.

UAR (SR.30, p. 21): the area excluded from intervention by States is broader than the area excluded from intervention by the United Nations under Article 2, paragraph 7.

Article 55

Yugoslavia (SR.25, p. 7): Article 55 is relevant.

"2. Desirability and possibility of defining intervention

Czechoslovakia (SR.25, p. 4), Yugoslavia (SR.25, pp. 8-9), Poland (SR.25, p. 10), Romania (SR.26, p. 8), USSR (SR.28, p. 16, SR.30, p. 19), and Mexico (SR.30, p. 6): desirable and possible to define intervention.

Argentina (SR.28, pp. 4-5), Mexico (SR.30, p. 11, SR.32, p. 19), Burma (SR.31, p. 5), Canada (SR.31, p. 9), Guatemala (SR.32, p. 4) and Venezuela (SR.32, pp. 14-17): the definition of intervention in the inter-American system, in particular in article 15 of the Charter of the Organization of American States, should be taken as a model.

United Kingdom (SR.26, p. 5, SR.32, pp. 18-19): unwise and unprofitable to attempt to define intervention. France (SR.28, pp. 8, 10): desirable to define; any attempt must cover idea of coercion - i.e. abnormal or improper pressure exercised by one State on another State in order to force it to change its internal structure in a direction favourable to the interests of

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the State applying the coercion; but such an attempt is not possible in the present state of international relations. Lebanon (SR.30, p. 16) and UAR (SR.30, p. 21): impossible to define. USA (SR.30, p. 23): let international organs be judges of what is unlawful intervention.

"3. Intervention in internal and external affairs

Czechoslovakia (SR.25, p. 6), Yugoslavia (SR.25, p. 8), Poland (SR.25, p. 10), United Kingdom (SR.26, p. 4), Romania (SR.26, p. 7), Argentina (SR.28, p. 5), USSR (SR.28, p. 12), Nigeria (SR.28, p. 18), Mexico (SR.30, p. 10) and Netherlands (SR.30, p. 13): interference in internal affairs or domestic jurisdiction of another State is illegal.

Czechoslovakia (SR.25, p. 6) Yugoslavia (SR.25, p. 8), Poland (SR.25, p. 10), Argentina (SR.28, p. 5), USSR (SR.28, p. 15), Nigeria (SR.28, p. 18) and Mexico (SR.30, pp. 10-11): interference in external affairs of another State is also illegal.

Netherlands (SR.30, p.13), Guatemala (SR.32, p. 7) and United Kingdom (SR.32, p. 17): difficulties with the expression 'internal and external affairs'. Australia (SR.32, p. 13): the domestic jurisdiction of a State does not extend to all its internal and external policies.

"4. The question of permissible intervention or pressure

Argentina (SR.28, pp. 6-7): in exceptional cases - e.g. measures taken in self-defence, as sanctions, or with the consent of the victim - intervention is lawful. Ghana (SR.29, p. 6): intervention may be permissible or impermissible.

United Kingdom (SR.26, p. 6): inevitable and desirable that States will seek to influence the actions and policies of other States; certain forms of pressure can promote and not hinder progress. France (SR.28, p. 10): the criterion of intervention is improper coercion. USA (SR.29, pp. 10-11): pressure is lawful where there is a systematic suppression of political or other human rights. Netherlands (SR.30, p. 15): pressure is not illegal when used by a State in order to counteract a violation of its rights.

Romania (SR.26, p. 8): all intervention is unlawful.

"5. Acts prohibited under the principle of non-intervention

(a) Activities against the political, economic and social system of a State and imposition or attempt to impose on a State a specific form of organization or government

Czechoslovakia (SR.25, p. 5), Yugoslavia (SR.25, pp. 8, 9), Poland (SR.25, p. 10), USSR (SR.28, pp. 11, 12, 15), Nigeria (SR.28, p. 18) and Burma (SR.31, p. 4): such acts are unlawful intervention. India (SR.29, p. 15):

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any form of interference or attempted threat against the personality of a State or against its political economic or cultural elements is prohibited.

Netherlands (SR.30, p. 13): a State has a right to choose its own political, social, economic and legal system, provided it respects human rights and fundamental freedoms.

USA (SR.32, p. 27): prohibition of "interference" in the right of a State to choose and develop its own political, economic and social order is too broad.

(b) Acts aimed against the personality, sovereign equality and rights enjoyed by other States in accordance with international law

Yugoslavia (SR.25, p. 8), Poland (SR.25, p. 10), United Kingdom (SR.26, p. 5) and Romania (SR.26, p. 8) referred to a right of political independence; United Kingdom (*ibid.*) to the rights enjoyed by States in accordance with international law; Nigeria (SR.28, p. 18) to sovereign rights; and India (SR.29, p. 15) to the personality of a State or its political, economic and cultural elements.

Netherlands (SR.30, p. 14): a State cannot invoke its sovereignty in order to justify violation of the rights of another State.

Madagascar (SR.31, pp. 6-7): there should not be an excessive concern for the preservation of national sovereignty.

UAR (SR.30, p. 22) proposal to prohibit interference with rights enjoyed by States in accordance with international law gives rise to difficulties of interpretation.

(c) Acts aimed against the territorial integrity or inviolability of States

Czechoslovakia (SR.25, p. 6), Yugoslavia (SR.25, p. 8), Poland (SR.25, p. 10), United Kingdom (SR.26, p. 5), Romania (SR.26, p. 8) and Guatemala (SR.32, p. 6): such acts are unlawful.

United Kingdom (SR.32, p. 17): any "act" or "attempt" aimed at violation of territorial integrity would be a threat or use of force, and should be dealt with under Principle A.

(d) Acts against the self-determination of peoples

Poland (SR.25, p. 10) and USSR (SR.28, pp. 11-12): such acts are forbidden by the Charter. Ghana (SR.29, p. 7): illegal to extract consent for military bases as a condition for granting independence, or for a former colonial Power to use a mutual defence treaty as a pretext for interfering in internal affairs of a former colony or for buttressing an unpopular regime.

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(e) The threat to sever diplomatic relations in order to compel one State not to recognize another State, and making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages

Czechoslovakia (SR.25, p. 6), Poland (SR.25, pp. 10-12, SR.31, pp. 9-11, SR.32, pp. 28-29) and USSR (SR.28, p. 17): the threat to sever diplomatic relations in order to compel one State not to recognize another is illegal.

Nigeria (SR.28, p. 19): exercise of the sovereign rights to establish and sever diplomatic relations should not be subject to pressure.

Mexico (SR.30, pp. 10-11) and Poland (SR.31, pp. 10-11): no State may make its recognition of another Government contingent on the conclusion of a treaty granting its nationals privileges or exemptions.

France (SR.28, pp. 10-11), USA (SR.29, p. 11), Netherlands (SR.30, pp. 13, 14), Lebanon (SR.30, p. 16) and United Kingdom (SR.32, pp. 17-18): States have discretion regarding recognition of and maintenance of diplomatic relations with other States, and no provision restricting them in those respects should be included.

Canada (SR.31, p. 8): a potential conflict between proposals for the non-recognition of situations brought about by the use of force and proposals concerning the recognition of States.

(f) Organization or training of forces having the purpose of incursions into other States, subversive or terrorist activities, interference in civil strife in another State, or provision of arms or war materials for promoting rebellion or sedition

Ghana (SR.29, p. 6): propaganda, espionage, infiltration, bribery, assassination, assistance to guerrillas etc., carried out by agents of a Government with a view to controlling the Government of another State, are illegal (SR.29, p. 7): States have the obligation to prevent their territories from being used to prepare subversion against other States.

Mexico (SR.30, pp. 12-13, SR.32, p. 23): subversive activities, hostile propaganda, incitement to revolt or to violent overthrow of the established order, with the aim of changing the political, economic and social structure of another State in the name of ideological principles, are illegal.

Venezuela (SR.32, p. 16): organization, training and preparation on the territory of one State of groups to infiltrate into the territory of another State for purposes of subversion and terrorism, and any support of seditious minority groups operating in the territory of another State against the established order, are illegal. USA (SR.32, p. 28): subversive acts are prohibited by the Charter.

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United Kingdom (SR.32, p. 17): many of these activities fall primarily under Principle A.

(g) Interference with or hindrance of the promulgation or execution of laws in regard to matters essentially within the jurisdiction of any State

Netherlands (SR.30, p. 15): doubts about such a provision.

(h) Preventing or attempting to prevent a State from freely disposing of its natural wealth and resources

Yugoslavia (SR.25, p. 8, SR.31, p. 12): a provision on the subject would be a step in progressive development.

USA (SR.29, pp. 9-10): such a provision would go beyond the Charter and would be superfluous.

(i) Imposition or attempt to impose on a State the concession to foreigners of a privileged situation compared with nationals

USA (SR.29, p. 12): provision would alter existing international law, which provides a minimum standard for treatment of aliens.

(j) The use of duress to obtain or maintain territorial agreements or special advantages

India (SR.29, p. 16) and UAR (SR.30, p. 22) supported such a provision.

"6. Non-recognition of territorial acquisitions or special advantages obtained by duress

India (SR.29, p. 16), UAR (SR.30, p. 22) and Guatemala (SR.32, p. 6) supported such a provision.

Canada (SR.31, p. 8): a potential conflict between proposals for the non-recognition of situations brought about by the use of force and proposals concerning the recognition of States.

"7. Prohibition of intervention by the United Nations

USA (SR.29, pp. 8-9), Australia (SR.32, pp. 10-11) and United Kingdom (SR.32, pp. 19-20): the point should be covered.

Guatemala (SR.32, p. 5): the Committee is not required to examine the relations of States with the United Nations, which come under Article 2, paragraph 7, of the Charter.

India (SR.32, p. 8): non-intervention by States, individually or collectively, rather than by the United Nations, should be stressed."

CHAPTER VI

THE PRINCIPLE OF SOVEREIGN EQUALITY OF STATES

A. Written proposals

293. Four written proposals concerning the principle of sovereign equality of States were submitted by Czechoslovakia (A/AC.119/L.6), by Yugoslavia (A/AC.119/L.7), by the United Kingdom of Great Britain and Northern Ireland (A/AC.119/L.8) and jointly by Ghana, India, Mexico and Yugoslavia (A/AC.119/L.28). On the submission of the latter joint proposal, Yugoslavia withdrew its original proposal. The texts of the foregoing proposals are set out below in the order of their submission to the Special Committee.

294. Proposal by Czechoslovakia (A/AC.119/L.6)

"The principle of Sovereign equality of States

"1. States are sovereign and as such are equal among themselves, as subjects of international law they have equal rights and duties, and reasons of a political, social, economic, geographical or other nature cannot restrict the capacity of a State to act or assume obligations as an equal member of the international community.

"2. Each State shall respect the supreme authority of each other State over the territory, including territorial waters and air space of the latter State, and shall also respect its independence in international relations.

"3. Each State shall have the right to take part in the solution of international questions affecting its legitimate interests, including the right to join international organizations and to become party to multilateral treaties dealing with or governing matters involving such interests.

"4. The sovereignty of a State is based on the inalienable right of every nation to determine freely its own destiny and its social, economic and political system, and to dispose freely of its national wealth and natural resources. Territories which, in contravention of the principle of self-determination, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power."

295. Proposal by Yugoslavia (A/AC.119/L.7)

"Sovereign equality

"1. All States shall have the right to sovereign equality, which shall include:

- (a) the right to their territorial integrity and political independence,
- (b) the right to determine their political status, to select their social, economic and cultural systems and to pursue the development thereof, and to conduct their foreign policy, without outside intimidation or hindrance,
- (c) the free disposal of their natural wealth and resources,
- (d) the right to legal equality and to full and equal participation in the life of the community of nations and in the creation and modification of rules of international law.

"2. They shall be entitled to every assistance on the part of the international community in making such equality effective, particularly in the economic field."

296. Proposal by the United Kingdom (A/AC.119/L.8)

"Sovereign equality

"Statement of principles

"1. The principle of the sovereign equality of States includes the following elements:

- (a) that States are juridically equal;
- (b) that each State enjoys the rights inherent in full sovereignty;
- (c) that the personality of the State is respected, as well as its territorial integrity and political independence;
- (d) that the State should, under international order, comply faithfully with its duties and obligations.

"2. The principle that States are juridically equal means that States are equal before the law.

"3. Every State has the duty to conduct its relations with other States in conformity with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law."

"Commentary

"(1) Article 2, paragraph 1, of the Charter of the United Nations declares that 'the Organization is based on the principle of the sovereign equality of all its Members'. The concept of 'sovereign equality' was first enunciated in paragraph 4 of the Four-Power Declaration on General Security adopted at the Moscow Conference on 1 November 1943. During the course of the San Francisco Conference in 1945, the phrase 'sovereign equality' was subjected

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to careful analysis. The Conference eventually accepted that the notion of 'sovereign equality' comprehended the four elements set out in paragraph 1.

"(2) Paragraph 2 expressed what is meant by the concept of juridical equality. The thought underlying this paragraph has been expressed in numerous declarations adopted by non-governmental bodies as well as in article 5 of the Draft Declaration on the Rights and Duties of States adopted by the International Law Commission in 1949.

"(3) Juridical equality connotes equality before the law; it does not preclude States, in the exercise of their sovereignty, from entering freely into treaty or other conventional arrangements whereby the contracting parties undertake certain obligations either towards each other or more generally, notwithstanding that the future freedom of action of the Contracting Parties may be qualified by the terms of the agreement in question.

"(4) Paragraph 3 expresses one of the most fundamental principles of international law relevant not only to the doctrine of sovereign equality but to the whole corpus of principles concerning friendly relations and co-operation among States. The principle embodied in paragraph 3 is directly relevant to the doctrine of sovereign equality in the sense that, while States are entitled to enjoy and exercise the rights inherent in full sovereignty, they must equally comply with their duty to respect the supremacy of international law."

297. Proposal by Ghana, India, Mexico and Yugoslavia (A/AC.119/L.28)

"The principle of sovereign equality of States

"1. All States have the right to sovereign equality, which among others, includes the following elements:

- (a) that each State enjoys the rights inherent in full sovereignty;
- (b) that the personality of a State is inviolable as well as its territorial integrity and political independence;
- (c) the right to determine their political status, to choose their social, economic and cultural systems and pursue their development as they see fit and to conduct their internal and external policies without intervention by any other State; and
- (d) the right to the free disposal of their natural wealth and resources.

"2. Correspondingly, every State has the duty to discharge faithfully its international obligations especially to live in peace with other States."

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B. Debate

1. General comments

298. Some representatives recalled that the principle forming the subject of this chapter had been enunciated for the first time in the Declaration of the 1943 Moscow Conference. It had thereafter been embodied in the Dumbarton Oaks Proposals, and ultimately in Article 2, paragraph 1, of the United Nations Charter. It was pointed out that it was also referred to in Article 78 of the Charter. It was further said that, since the signing of the Charter, the principle of sovereign equality had been stated and restated in many bilateral and multilateral agreements and had found its place in official declarations and in the practice of States. The principle must therefore be considered as a generally binding rule of contemporary international law.

299. A number of representatives stressed the importance of the principle of sovereign equality as a legal foundation for friendly relations and co-operation among all States and some of them emphasized the importance of the principle for peaceful coexistence. It was characterized as a touchstone of proper relations between all States of the world and as an expression both of the recent evolution of the notion of State sovereignty under the influence of the increasing interdependence of States, and of the growing trend towards the democratization of international life. In these circumstances the concept of sovereignty had been conditioned by the concept of equality within a new form of diplomacy based on collective security and international co-operation. It was further observed that, if all nations were equal in size and power, the principle of sovereign equality of States would be less important than it in fact was. However, it was an objective of the international community that existing disparities should, so far as possible, not be allowed to create injustice or to place a State in an adverse position in its dealings with other States. Some representatives considered that the events of the period since the adoption of the Charter had demonstrated not only the validity, usefulness and significance of this principle, but also a need for its development. New aspects had emerged in the two past decades, which required codification in order to ensure that the principle was more fully and effectively applied. One representative remarked that the principle of sovereign equality of States in inter-State relations was as sacrosanct as the principle of racial equality in individual human relations.

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300. Some representatives considered the sovereignty of States as the corollary of the right of nations to self-determination; it was recalled that the Charter of the United Nations in its Preamble spoke of the equal rights of men and women and of nations large and small, while the principle of equal rights, together with that of self-determination of peoples, was stated in Article 1, paragraph 2, and Article 55.

301. Several representatives drew the attention of the Special Committee to the component elements of the concept of sovereign equality adopted by the San Francisco Conference, namely the juridical equality of States, the enjoyment by each State of the rights inherent in full sovereignty, respect for the personality of the State, as well as its territorial integrity and political independence, and the faithful compliance by the State with its international duties and obligations. They favoured the definition approved by the San Francisco Conference as the only satisfactory statement of the lex lata and considered that its omission from any statement on sovereign equality adopted by the Special Committee would be a retrogressive step.

302. Several other representatives, however, took the view that appropriate changes should be incorporated in the San Francisco text and that it was not suitable merely to reiterate that interpretation. They thought that the San Francisco interpretation required development in the light of the current needs of the world community, taking into account the progress achieved since 1945 in international law and in decolonization.

303. Apart from written proposals and amendments containing statements or formulations of the principle, reproduced in part A of the present chapter, the oral suggestions set out in the remainder of this section of the report were submitted in the course of debate for the consideration of the Special Committee.

304. One representative suggested that a statement on the principle of sovereign equality might incorporate the following points: States, irrespective of their size, population, resources, wealth, form of government or time of accession to independence, were entitled equally to enjoy the rights inherent in full sovereignty and were thereby equally entitled to the rights conferred by international law; they were juridically equal and equal before the law, being entitled to the impartial application of the rules of international law in the

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settlement of disputes which were referred to the United Nations, and to the International Court of Justice and other international tribunals; they were equally entitled to full respect for their personality, as well as their territorial integrity and political independence; and were equally obliged, under international order, to comply faithfully with their international duties and obligations; accordingly, the sovereignty of the State should be exercised in accordance with, and not in defiance of, law; limitations on State conduct flowed naturally from the community relationship of States and from special obligations freely assumed by them; such limitations were not incompatible with the sovereign equality of States; on the contrary, they enabled equal and independent sovereign States to exist; and such freely assumed obligations constituted an expression of sovereignty.

305. Another representative suggested the following formulation:

"(1) The sovereign equality enjoyed by all States implies the right to their territorial integrity and political independence, the right to the free disposal of their wealth and natural resources, the right to self-determination and the right to equal legal and economic opportunity.

"(2) All States shall enjoy equal rights and have equal duties."

306. One representative thought that the statement of the principle of sovereign equality should include the following provisions: that States had the obligation to respect the political independence and territorial integrity of other States and their right to establish their political status, to choose their economic and cultural systems, to continue their development and conduct their foreign policies without foreign intervention or intimidation, and to dispose of their natural wealth and resources; that States had equal rights and duties in international life; that their juridical capacity could under no circumstances be limited; and that States had the obligation to respect the right of other States to participate in international life.

307. One representative, speaking on the concepts of sovereignty and equality in the Charter, said that, in his view, a State's sovereignty consisted in its absolute right to complete internal autonomy and complete external independence. The principle of sovereignty was not limited by a State's acceptance of certain

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legal limitations imposed by the Charter; on the contrary, the acceptance of those limitations was the consequence of the application of the principle of sovereignty. The two component elements of that principle, juridical equality and sovereignty, were fully sanctioned by the Charter; the inequality of the system of voting in the Security Council was, in his view, merely the result of the political circumstances following the Second World War.

2. Equal rights and duties of States

308. Written proposals referring to the equal rights and duties of States were submitted by Czechoslovakia (A/AC.119/L.6, para. 1 (see para. 294 above)), Yugoslavia (A/AC.119/L.7, para. 1 (see para. 295 above)) and the United Kingdom (A/AC.119/L.8, paras. 1 and 2 (see para. 296 above)).

309. A number of representatives understood sovereign equality not as equality of power but rather juridical equality of all States irrespective of their size, strength, wealth, economic or military power, volume of production or social and economic structure, degree of development or geographical location. That would mean, in the view of these representatives, that all States, large and small, were equal before the law and that no State could claim special treatment or advantages on any pretext, or seek to dominate other States. Having equal rights and duties under international law, States should enjoy equal opportunities to exercise their rights and fulfil their duties.

Consequently, any discrimination aimed at impairing the sovereign rights of States amounted to a violation of the principle of sovereign equality.

310. One representative stated that the Charter, following the example set by the Moscow Declaration of 1943, had brought together in Article 2, paragraph 2, two different principles, that of equality and that of sovereignty. He said that the principle of equality should, of course, be understood to imply juridical equality, i.e. the equal rights reaffirmed by the Preamble to the Charter, respect for which was, according to Article 1, paragraph 2, the basis for friendly relations among peoples. Juridical equality was not otherwise defined in the Charter and he felt that the Committee was entitled to define the concept more precisely if it saw fit. Unfortunately, it was in the nature of things that juridical equality was not always accompanied by de facto equality, but it was characteristic of the spirit of the age that efforts were

being made by States, individually and collectively, to minimize de facto inequalities through economic, technical, scientific and cultural co-operation.

311. It was recalled that the Charter of the Organization of African Unity did not confine itself to affirming the principle of sovereign equality but added the specific statement, in article 5, that all its Member States enjoyed equal rights and had equal duties. The Declaration adopted by the Bandung Conference also affirmed the equality of all races and nations, while the Charter of the Organization of American States stressed the importance of respect for the personality, sovereignty and independence of States.

312. Some representatives emphasized that the concept of juridical equality was, of course, an integral part of the concept of sovereign equality. The trend of developments had, however, focused attention on another aspect of equality, namely economic equality. One representative expressed the view that the economically advanced countries were under the obligation to do what they could to narrow the gap between themselves and the under-developed countries.

313. Another representative recalled that the recent United Nations Conference on Trade and Development had adopted, as General Principle One, a statement that economic relations between countries should be "based on respect for the principle of sovereign equality of States, self-determination of peoples and non-interference in the internal affairs of other countries". Similarly, the joint declaration made by the seventy-seven developing countries at the conclusion of the Conference stated that: "The developing countries attach cardinal importance to democratic procedures which afford no position of privilege in the economic and financial, no less than in the political sphere".

3. Respect for the personality, territorial integrity and political independence of States

314. The concept of the inviolability of the personality, territorial integrity and political independence of States was considered by some representatives as an element forming part of the principle of sovereign equality. Proposals to this effect were submitted by Yugoslavia (A/AC.119/L.7, para. 1 (a) (see para. 295 above)), by the United Kingdom (A/AC.110/L.8, para. 1 (see para. 296 above)) and jointly by Ghana, India, Mexico and Yugoslavia (A/AC.119/L.28, para. 1 (b) (see para. 297 above)).

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315. One representative suggested that the formulation of the concept in question should make it clear that no State was entitled to conduct any experiment or resort to any action which was capable of having harmful effects on other States or endangering their security. The Moscow Test-Ban Treaty and General Assembly resolutions 1884 (XVIII) of 17 October 1963 and 1962 (XVIII) of 13 December 1963 marked important progress in that direction. So far as concerned the concept of territorial integrity, any formulation of the principle should in his view state that that concept could not be invoked by colonial Powers for the purpose of perpetuating their rule over other territories and peoples.

316. Another representative suggested that the concept of political independence might be developed, perhaps on the basis of article 9 of the Charter of the Organization of American States, which laid down that the State had the right to provide for its preservation and prosperity and consequently to organize itself as it saw fit, subject only to the rights of other States under international law. As was obvious, that principle was closely related to the principle of respect for the personality of the State.

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

317. Proposals concerning the right of States to choose their social, political and economic system were submitted by Czechoslovakia (A/AC.119/L.6, para. 4 (see para. 294 above)), by Yugoslavia (A/AC.119/L.7, para. 1 (b) (see para. 295 above)) and jointly by Ghana, India, Mexico and Yugoslavia (A/AC.119/L.28, para. 1 (c) (see para. 297 above)).

318. Some representatives suggested that sovereign equality implied the right of each State freely to establish the political, social and economic structure, without external interference or intimidation, which was best suited to the interests of its people. It was said that the independence of the State implied an independent domestic policy, namely independence in political, social and economic organization and in cultural, political and economic life. Internationally, the sovereignty of the State was manifested in its independence in the conduct of foreign policy. Reference was made in this respect to the Declaration of the Bandung Conference and the Belgrade Declaration.

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319. One representative expressed some reservations on the four-Power proposal contained in sub-paragraph (c) of document A/AC.119/L.28 and said that it would provide a better basis for agreement if it were worded on the following lines: "The right to determine their political status, to choose their social, economic and cultural systems and freely pursue their development in accordance with international law". In connexion with the corollaries of the principle of sovereign equality, one representative said that consideration should be given to the possibility of including in the principle two further clauses contained in the Charter of the Organization of American States: the principle that the fundamental rights of States might not be impaired in any manner whatsoever (article 8) and the principle that the right of each State to protect itself and to live its own life did not authorize it to commit unjust acts against another State (article 11).

5. The right of States to participate in the solution of international problems, and in formulating and amending the rules of international law, to join international organizations, and to become parties to multilateral treaties affecting their legitimate interests

320. The right formulated in the above sub-heading was considered by certain representatives as a very important feature of the principle of sovereign equality of States, or as a corollary to this principle. Proposals containing a provision regarding it were submitted by Czechoslovakia (A/AC.119/L.6, para. 3 (see para. 294 above)) and by Yugoslavia (A/AC.119/L.7, para. 1 (d) (see para. 295 above)).

321. It was said that in the modern world, which formed one international community and in which international law was consequently universal in character, each State, by virtue of the principle of sovereign equality, had the right described in the sub-heading. The old rules of international law were being adapted to meet the needs of the modern community of States or replaced by new ones, and the newly established States had the right to play their part in that process. Any attempt to impede the achievement of universality in international life, the arbitrary refusal of certain States to recognize new States and attempts to exclude them from the exercise of their rights as sovereign subjects of international law, were incompatible with respect for the principle of sovereignty and for the rights of other States, constituted discrimination and were contrary to the principle of equality.

322. Other representatives, however, could not accept the foregoing views. They said that Article 4 of the Charter reserved to the Organization the right to determine which States met the requirements of admission to membership and that the formulation of a "right to join international organizations" therefore caused considerable difficulties. Similarly, they pointed out that it was customary to reserve to the parties to multilateral treaties the right to determine the scope of participation therein. Furthermore, the practice of the United Nations served to confirm that multilateral conventions were not automatically open to all States.

6. The right of States to sovereignty over their territory

323. A proposal dealing with the right of States to sovereignty over their territory was submitted by Czechoslovakia (A/AC.119/L.6, para. 2 (see para. 294 above)). Some representatives felt that such a right should include an express provision to the effect that the jurisdiction of States, within the limits of their territory, was exercised equally over all the inhabitants, whether nationals or aliens and over its territory, including its territorial waters and air space. It was said that the principle of sovereign equality prohibited any encroachment upon the authority of the State in these respects.

324. Some representatives considered that this right included also the right of a State to dispose freely of its natural wealth and resources. This point is dealt with in the following section of the present chapter of this report.

325. It was suggested that the principle here considered could be based either on article 12 of the Charter of the Organization of American States or on article 2 of the Draft Declaration on Rights and Duties of States prepared by the International Law Commission, and that it should also be laid down that aliens could not claim rights superior to those enjoyed by nationals.

326. Some representatives stated that equality of rights, under modern international law, must be recognized not only to States but also to nations moving towards independence. Accordingly, territories under colonial domination must not be regarded as part of the territory of the colonial Power. Other representatives, however, found no basis for such a position in the Charter. One of them stated that he could only understand the position to mean that

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Chapters XI, XII and XIII of the Charter were no longer part of international law. Moreover, the idea that territories under colonial rule did not form part of the territory of the colonial Power seemed to him to be inconsistent with paragraph 6 of General Assembly resolution 1514 (XV) of 14 December 1960. 327. Another representative suggested that the principle included the right of a State to require the removal of any foreign troops or military bases from its territory. This point was particularly relevant to countries whose accession to independence had been conditioned upon the presence of such troops or bases. The presence in certain countries of military bases and foreign troops contrary to the expressed will of the countries concerned, gave rise to tensions which threatened international peace and security and rendered ineffective the rules of international law, which were based on the sovereign consent of the States making up the international community. The same representative recalled that the Belgrade Declaration had stated that the establishment and maintenance of foreign military bases in the territories of other countries was a violation of the latters' sovereignty.

7. The right of States to dispose freely of their natural wealth and resources

328. Proposals on the right of States to dispose freely of their natural wealth and resources were submitted by Czechoslovakia (A/AC.119/L.6, para. 4 (see para. 294 above)), by Yugoslavia (A/AC.119/L.7, para. 166) (see para. 295 above)) and jointly by Ghana, India, Mexico and Yugoslavia (A/AC.119/L.28, para. 1 (d) (see para. 297 above)).

329. This right was considered by some representatives as one of the great achievements of the post-Charter era and they believed that it should be properly included in the formulation of the principle of sovereign equality. Some of them understood the right to mean that every State might suspend or terminate any agreement with respect to the disposal of natural wealth and resources, subject only to its liability at law to make compensation. In the view of these representatives no provisions of international law, or of treaties which might no longer correspond to current requirements, could be invoked to justify interference with a nation's right to dispose of its resources.

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330. Other representatives, while not disputing the proposition that States had the right to the free disposal of their natural wealth and resources, felt that as a statement of a legal principle it should be balanced by a reference to General Assembly resolution 1803 (XVII) of 14 December 1962. Moreover, the Committee should be wary of enumerating as legal principles concepts which were partly or even essentially political or economic in character.

331. One representative, saying that a statement of the principle should respect the requirements of international law and economics, suggested the following formulation: "the right, subject to international law and to terms of agreements entered into by the State, to the free disposal of its natural wealth and resources."

8. The duty of States to comply faithfully with international duties and obligations

332. Provisions formulating a duty of States to comply faithfully with international duties and obligations were contained in the proposals submitted by the United Kingdom (A/AC.119/L.8, para. 1 (see para. 296 above)) and by Ghana, India, Mexico and Yugoslavia (A/AC.119/L.28, para. 2 (see para. 297 above)).

333. Several representatives were in favour of the inclusion of express mention of this duty of States within a statement on the principle of sovereign equality. It was said that equality of rights implied the performance of duties. One representative observed that a balanced draft should give greater emphasis to duties, as did the Charter, which was replete with duties complementing rights.

334. One representative considered that it should be borne in mind that the International Law Commission's Draft Declaration on Rights and Duties of States had represented in its entirety an attempt to establish a comprehensive balance in relations between States, and that it had not been adopted. Moreover, everyone recognized that international law still suffered from a number of basic defects: firstly, it did not cover several vital areas of international relations; secondly, it remained vague with respect to several other areas; thirdly, it had not yet abolished some of the methods still advocated by certain States with a view to the retention of unjust privileges; and, finally, there was no central body to interpret and apply its rules.

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9. The relationship between State sovereignty and international law

335. Proposals bearing in certain respects upon the relationship between State sovereignty and international law were submitted by Czechoslovakia (A/AC.119/L.6, paras. 1 and 4 (see para. 294 above)), Yugoslavia (A/AC.119/L.7, para. 1 (see para. 295 above)), by the United Kingdom (A/AC.119/L.8, paras. 1 and 3 (see para. 296 above)) and jointly by Ghana, India, Mexico and Yugolsavia (A/AC.119/L.28, para. 1 (see para. 297 above)).

336. Several representatives stated that the sovereignty of each State was subject to the supremacy of international law. The principle of equality of States, by its very nature, presupposed a community of States organized in accordance with an international juridical order. Equality, sovereign or otherwise, was simply inconceivable without the supremacy of law. It was said that the Charter refrained from defining the principle of sovereignty, but it did not impose on sovereignty any limitations other than those resulting from the obligations accepted by Members in subscribing to the Charter, i.e., those deriving from international law. It was not sovereignty which limited international law but international law which limited sovereignty, in the full exercise of which each State accepted the rules necessary for the conduct of international relations. It was hard to see, it was said, how peace and security could be maintained in the modern world if the supremacy of international law were not accepted.

337. Several representatives, however, took a different position. On the one hand, they refused to adhere to the theory of absolute sovereignty prevailing in the past two centuries, as it had been the negation of international law. On the other hand, they also refused to subscribe to the theory of "world law" and a "world government". It was said that the theory of the super-State was incompatible with the sovereignty and equality of States, and could lead to violations of the rights of small States and of peoples fighting for their independence, and to interference in the domestic affairs of States. Respect for the sovereignty of the State was, in the view of these representatives, a basic condition for the maintenance of world peace and for co-operation among States. It was the foundation of contemporary international law, which reflected the voluntary agreement of States. Sovereign States were both the creators of the rules of international law and the entities to which those rules

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were addressed, in other words, the entities which were bound to comply with them. Furthermore, it was the sovereign States of the world themselves, which, in the last analysis, guaranteed the application of international law. Any abridgement of sovereignty, and any attempt to assert the supremacy of international law, was incompatible with the present order of international life, and steadfast respect for international law and State sovereignty, a cornerstone of international law, was an essential factor in the development of friendly relations among States, meeting the needs of all States, particularly those which had only recently won their independence. Sovereignty was the basis and raison d'être of international law: entities existed with exclusive jurisdiction over particular territories; simultaneously there was a normative order which those entities had voluntarily established. Certainly, international law imposed limitations on State sovereignty, but international law, in its turn, was limited in those spheres which the national State reserved to itself.

338. One representative stated that, according to classical theory, the concept of sovereignty had a positive aspect (the right to give orders) and a negative aspect (the right not to take orders); that doctrine had been criticized by the realistic school as being anti-juridical in nature and uncertain in content. Modern theory had attempted to remove those objections by advancing the concept of limited sovereignty, which was in contradiction with the distinguishing characteristic of sovereignty, i.e. its absoluteness. There had also been a parallel trend towards identifying that concept with the concept of independence, which implied that national jurisdiction was exclusive. Despite those difficulties and contradictions, however, international jurisprudence held the sovereignty of States to be an axiom of international life which was not open to discussion.

C. Decision of the Special Committee on the recommendation of the Drafting Committee

1. Decision

339. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee Paper No. 7/Rev.1):

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"PRINCIPLE D /i.e. the principle of sovereign equality of States/

"I. The points of consensus

"1. All States enjoy sovereign equality. As subjects of international law they have equal rights and duties.

"2. In particular, sovereign equality includes the following elements:

- (a) States are juridically equal.
- (b) Each State enjoys the rights inherent in full sovereignty.
- (c) Each State has the duty to respect the personality of other States.
- (d) The territorial integrity and political independence of the State are inviolable.
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems.
- (f) Each State has the duty to comply fully and in good faith with its international obligations, and to live in peace with other States.

"II. List itemizing the various proposals and views on which there is no consensus but for which there is support

"1. The question whether or not reasons of a political, social, economic, geographical or other nature can restrict the capacity of a State to act or assume obligations as an equal member of the international community.

- (a) For relevant proposal, see annex A, paragraph 1.
- (b) For relevant views, see annex B, paragraph 1.

"2. The question whether States have the right to take part in the solution of international questions affecting their legitimate interest, including the right to join international organizations and to become parties to multilateral treaties dealing with or governing such interest.

- (a) For relevant proposal, see annex A, paragraph 2.
- (b) For relevant views, see annex B, paragraph 2.

"3. The question whether States have the right to dispose freely of their natural wealth and resources.

- (a) For relevant proposals, see annex A, paragraph 3.
- (b) For relevant views, see annex B, paragraph 3.

"4. The question whether territories which, in contravention of the principle of self-determination, are still under colonial domination can be considered as integral parts of the territory of the colonial Power.

- (a) For relevant proposal, see annex A, paragraph 4.
- (b) For relevant views, see annex B, paragraph 4.

"5. The question whether every State has a duty to conduct its relations with other States in conformity with the principle that the sovereignty of each State is subject to the supremacy of international law.

- (a) For relevant proposal, see annex A, paragraph 5.
- (b) For relevant views, see annex B, paragraph 5.

"6. The questions whether the jurisdiction of a State is exercised equally over all inhabitants, whether nationals or aliens, and whether aliens can claim rights superior to those of nationals.

For relevant view, see annex B, paragraph 6.

"7. The principle that the fundamental rights of States may not be impaired in any manner whatsoever.

For relevant view, see annex B, paragraph 7.

"8. The principle that the right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.

For relevant views, see annex B, paragraph 8.

"9. The question whether economically advanced countries have the obligation to do what they can to narrow the gap between themselves and the less developed countries.

For relevant view, see annex B, paragraph 9.

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"10. The question whether a State has the right to remove any foreign troops or military bases from its territory.

For relevant view, see annex B, paragraph 10.

"11. The question whether a State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States or endangering their security.

For relevant views, see annex B, paragraph 11.

"12. Reference to the objective (in the Preamble of the Charter) of establishing conditions under which justice and respect for obligations under international law can be maintained.

For relevant view, see annex B, paragraph 12."

"ANNEX A

"Proposals concerning which no consensus was reached

"1. Czechoslovakia (A/AC.119/L.6)

"1. ... reasons of a political, social, economic, geographical or other nature cannot restrict the capacity of a State to act or assume obligations as an equal member of the international community.

"2. Czechoslovakia (A/AC.119/L.6)

"3. Each State shall have the right to take part in the solution of international questions affecting its legitimate interests, including the right to join international organizations and to become party to multilateral treaties dealing with or governing matters involving such interest.

"3. (a) Czechoslovakia (A/AC.119/L.6)

"3. The sovereignty of a State is based on the inalienable right of every nation to ... dispose freely of its national wealth and natural resources ...

(b) Ghana, India and Yugoslavia (A/AC.119/L.28)

"1. All States have the right to sovereign equality, which among others, includes the following elements:

....

(d) the right to the free disposal of their natural wealth and resources.

"4. Czechoslovakia (A/AC.119/L.6)

"4. ... territories which, in contravention of the principle of self-determination, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power.

"5. United Kingdom (A/AC.119/L.8)

"3. Every State has the duty to conduct its relations with other States in conformity with ... the principle that the sovereignty of each State is subject to the supremacy of international law."

"ANNEX B ^{10/}

"Views expressed in the discussions, concerning which no consensus was reached

"1. The question whether or not reasons of a political, social, economic, geographical or other nature can restrict the capacity of a State to act or assume obligations as an equal member of the international community

Czechoslovakia (SR.33, p.5), Romania (SR.33, p.14) and Poland (SR.35, p.4) favoured a provision that the capacity of a State could not be so restricted.

United Kingdom (SR.35, pp.7-8): no objection to the concept, but as formulated it would give rise to political controversy.

"2. The question whether States have the right to take part in the solution of international questions affecting their legitimate interests, including the right to join international organizations and to become parties to multilateral treaties dealing with or governing such interests

Czechoslovakia (SR.33, p.5), Romania (SR.33, p.12), Poland (SR.35, p.4), USSR (SR.35, p.18) and Ghana (SR.35, p.22) favoured a provision recognizing such a right.

10/ The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened in the present annex to mention of the summary record number only.

Mexico (SR.33, p.7): difficult to speak of such a right at the present time. France (SR.35, p.6): the Special Committee should not deal with the problem. United Kingdom (SR.35, p.8) and Australia (SR.35, pp.23-24): difficulties in view of Article 4 of the Charter and United Nations practice in regard to multilateral conventions.

"3. The question whether States have the right to dispose freely of their natural wealth and resources

Czechoslovakia (SR.33, p.5), Mexico (SR.33, p.9), Yugoslavia (SR.33, p.10), Romania (SR.33, p.14), UAR (SR.35, p.10), India (SR.35, p.16), USSR (SR.35, pp.17-18) and Nigeria (SR.35, p.20) favoured a provision recognizing such a right; Ghana (SR.35, p.21) believed States had such a right, subject only to their liability at law to make compensation.

United Kingdom (SR.35, p.9): agree in principle, but should be balanced by a reference to General Assembly resolution 1803 (XVII). United States (SR.35, p.13) redraft: "the right, subject to international law and to the terms of agreements entered into by the State, to the free disposal of its natural wealth and resources". Japan (SR.35, p.22): reference unnecessary and inappropriate. Australia (SR.35, p.24): wondered whether there were exceptions to the principle.

"4. The question whether territories which, in contravention of the principle of self-determination, are still under colonial domination can be considered as integral parts of the territory of the colonial Power

Czechoslovakia (SR.33, p.6) and UAR (SR.35, p.11) favoured a provision that such territories cannot be so considered.

United Kingdom (SR.35, p.8) and Australia (SR.35, p.24): such a provision would be unacceptable.

"5. The question whether every State has a duty to conduct its relations with other States in conformity with the principle that the sovereignty of each State is subject to the supremacy of international law

Netherlands (SR.34, p.6), France (SR.35, p.6), United Kingdom (SR.35, p.7), and Japan (SR.35, p.22) favoured a provision to that effect.

Mexico (SR.33, p.8): great difficulty in accepting such a provision. Romania (SR.33, pp.12-14, SR.35, pp.24-25), UAR (SR.35, p.12), USSR (SR.35, p.19) and Ghana (SR.35, p.22): opposed to such a provision.

"6. The questions whether the jurisdiction of a State is exercised equally over all inhabitants, whether nationals or aliens, and whether aliens can claim rights superior to those of nationals

Mexico (SR.33, p.7) expressed the view that aliens could not claim rights superior to those of nationals.

"7. The principle that the fundamental rights of States may not be impaired in any manner whatsoever

Mexico (SR.33, p.9) suggested the inclusion of the principle.

"8. The principle that the right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State

Mexico (SR.33, p.9) suggested the inclusion of the principle.

"9. The question whether economically advanced countries have the obligation to do what they can to narrow the gap between themselves and the less developed countries

UAR (SR.35, pp.9-10) stated that there was such an obligation.

"10. The question whether a State has the right to remove any foreign troops or military bases from its territory

UAR (SR.35, p.10) stated that there was such a right.

"11. The question whether a State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States or endangering their security

UAR (SR.35, p.11) and India (SR.35, p.16) favoured a provision that States have no such rights.

"12. Reference to the objective (in the Preamble of the Charter) of establishing conditions under which justice and respect for obligations under international law can be maintained

Australia (SR.35, p.23) suggested such a reference."

2. Explanations of vote

340. The representatives of the USSR, Italy, Czechoslovakia, Romania, the United Kingdom, the United Arab Republic, Yugoslavia, Canada, Australia, India and Nigeria made statements, explaining their position on the above text.

341. The representative of the Union of Soviet Socialist Republics said that the principle could be fully covered only if it took into account a number of points such as the rights of States to determine freely their social, economic and political system and to dispose freely of their natural wealth and resources. He agreed with the points set out in section I of the recommendation of the Drafting Committee,

but considered that those points did not exhaust the content of the principle, and that the number of the points in section II would need to be included in the formulation if the principle of sovereign equality was to be fully embraced.

342. The representative of Italy accepted (d) and (e) of paragraph 2 of section I on the understanding that nothing in those sub-paragraphs was to be interpreted as prejudicial to the powers and functions conferred upon the United Nations by the Charter in any field.

343. The representative of Czechoslovakia accepted the recommendation of the Drafting Committee with the understanding that the elements in section I did not exhaust all the constituent elements of the principle. In particular, he considered that the principle included as constituent parts the elements contained in paragraphs 1, 2, 3 and 4 in annex A.

344. The representative of Romania considered that an adequate formulation of the principle should contain other elements, such as those suggested by his delegation.

345. The representative of the United Kingdom approved the text on the understanding that this and other texts formulating the area of consensus would be the subject of further study by Governments before the next General Assembly session. There was one point in section II to which his delegation attached importance.

346. The representative of the United Arab Republic regarded the elements in section I as some of the elements which should be included in the formulation of the principle. He reserved his delegation's rights to press in the General Assembly for the inclusion of other important elements, including the right of States to economic equality, and the point covered by paragraph 4 in annex A.

347. The representative of Yugoslavia accepted the formulation in section I, but declared that he still adhered to the views expressed by his delegation regarding other elements which should be included in any formulation of the principle of sovereign equality.

348. The representative of Canada reserved the right to propose more detailed rules at a later stage if in the light of the study of the principles as a whole, a more detailed formulation seemed necessary.

349. The representative of Australia accepted the formulation in section I on the understanding that it represented the area within which consensus had been reached in the Committee's discussions, and that the other part contained proposals which had been considered but which had not obtained a consensus, all points being open for further consideration in the General Assembly.

350. The representative of India shared the reservations expressed by Yugoslavia.

351. The representative of Nigeria recalled that his delegation had proposed a number of points, including the right of States to dispose freely of their national wealth and resources, the right of self-determination, and the right to equal economic opportunity. Although those points were not included in section I, he supported that section in a spirit of compromise and would press for the inclusion of the points he had mentioned at a later stage.

352. Speaking upon the occasion of the adoption of the Special Committee's report, the representative of Poland said that he wished to place on record that, while accepting section I of the Drafting Committee's recommendation, his delegation none the less remained of the view that that section did not exhaust all the constituent elements of the principle of sovereign equality, and should also have contained provisions relating to the right of States to participate fully in international conferences and general multilateral agreements.

CHAPTER VII

THE QUESTION OF METHODS OF FACT-FINDING

A. Written proposals

353. A working paper concerning the question of methods of fact-finding was submitted to the Special Committee by the Netherlands (A/AC.119/L.9), which also proposed a draft resolution (A/AC.119/L.29) for adoption by the Committee. A further draft resolution was proposed by India, the United Arab Republic and Yugoslavia (A/AC.119/L.30). The texts of these documents are as follows:

354. Working paper by the Netherlands (A/AC.119/L.9)

"The question of methods of fact-finding

"In order to channel and facilitate the discussion on agenda item 6.II, Consideration of the Question of Methods of Fact-finding in accordance with General Assembly resolution 1967 (XVIII) of 16 December 1963 11/ the Netherlands delegation deems it useful to submit in advance the following views and considerations.

"1. Both in the field of the settlement of disputes and in the framework of intergovernmental organization and multilateral treaties, a distinction should be made between:

(a) decision-making functions;

(b) inquiry, by a person or a body of recognized standing and the highest reliability and imparitality;

(c) technical collection and examination of factual evidence by experts in the field.

Any international fact-finding organ or centre should comprise function (b) and (c), with (c) subordinated to (b).

"2. It follows from the foregoing that any fact-finding body should never have decision-making functions and should always be an auxiliary or subsidiary body either to higher, decision-making organs or to the parties in a dispute. It could never operate unless under the authority of such a higher organ or on the request of the parties. Consequently, a fact-finding body could never encroach upon the authority of organs like the General Assembly or the Security Council.

11/ Report of the Secretary-General (A/5694 and Add.1 and 2.)

"3. In the view of the Netherlands delegation an international fact-finding body should not supersede the existing schemes in so far as those are specially adapted to the requirements of one particular organization or convention. Furthermore, the services of a fact-finding body should be subject to voluntary acceptance by the decision-making parties or body.

"4. In view of the fact that, owing to the lack of time, the study prepared by the Secretary-General (A/5694) does not deal with international inquiry, as envisaged in some treaties as a means of ensuring their execution or within the framework of international organizations, and in view of the rather limited number of comments received from Governments, the Netherlands delegation will not in the present working paper submit concrete proposals to the Committee.

It wishes, however, to give an outline of several modalities, possibilities and particular aspects of establishing a special organ for fact-finding which might be considered.

"A. Procedures for establishing a special organ

(a) Departing from existing arrangements or frameworks.

1. Revision of The Hague Treaty of 1907;
2. Revision of the General Act of 1949;
3. Revision of resolution 268 D (III) establishing a Panel of Enquiry and Conciliation.

(b) Establishment of a new organ which would not confine its activities to fact-finding as a means of settlement of disputes.

1. By a resolution of the General Assembly on the recommendation of the Sixth Committee and in pursuance of Articles 7, paragraph 2, and/or 22 of the Charter.
2. Through a diplomatic conference on the basis of a text prepared by the ILC, the Sixth Committee or an ad hoc body.

"B. Relationship and subordination to the United Nations and in particular the General Assembly, the Security Council, the Secretary-General and the International Court of Justice

"C. Terms of reference of a special fact-finding organ

1. Investigation of facts, events, situations and circumstances on behalf of the United Nations and its organs, the specialized agencies and other international organizations for the purpose of policy-planning, programming and decision-making.

/...

2. Investigation of facts, events, situations and circumstances in the area of treaty compliance on behalf of the parties or the international organizations concerned.
3. Investigation of facts, events, situations and circumstances in the area of peaceful settlement of disputes and matters of peace and security on behalf of the parties concerned and international organizations and particularly the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice or international arbitral tribunals.
4. Other possibilities.

"D. The composition of a special organ for fact-finding

1. Permanent secretariat under the Secretary-General.
2. (a) Panel of highly regarded and qualified persons, appointed by the Secretary-General, who would be readily available and who could utilize the services of individual experts or investigators;
(b) Council for fact-finding, composed of X members and an equal number of alternate members, both elected for a certain number of years by the General Assembly; this council could utilize the services of individual experts or investigators;
(c) Other possibilities."

355. Draft resolution by the Netherlands (A/AC.119/L.29)

"The Special Committee,

"Having considered the item The Question of Methods of Fact-finding,

"Having studied the Report of the Secretary-General,

"Having heard the views expressed by its members,

"Believing that the Report of the Secretary-General clearly shows the value of and the need for impartial fact-finding in the settlement of international disputes,

"Considering, however, that further study is required on 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 or to the authority of any organ of the United Nations to choose other means of fact-finding,

/...

"Recommends the following draft resolution for adoption by the General Assembly:

'The General Assembly,

'Recalling its resolutions 1967 (XVIII) on the question of methods of fact-finding,

'Having considered the report of the Special Committee established under General Assembly resolution 1966 (XVIII),

'Noting the report of the Secretary-General and the comments submitted by Governments pursuant to operative paragraphs 1 and 2 of resolution 1967 (XVIII),

'Considering that the question of Methods of Fact-finding requires further study,

'1. Requests the Secretary-General to complete his study on the relevant aspects of the problem and in particular with regard to fact-finding not relating to the settlement of international disputes and to report to the General Assembly at its twentieth session;

'2. Invites Member States to submit in writing to the Secretary-General, before July 1965, any views or further views they may have on this subject in the light of the reports of the Secretary-General and the report of the Special Committee established under General Assembly resolution 1966 (XVIII) and in particular on the following aspects:

- (a) the need for international fact-finding in general.
- (b) existing arrangements for fact-finding and their effectiveness,
- (c) the need for new machinery for fact-finding, its composition and its terms of reference;

'3. Requests the Secretary-General to transmit these comments to Member States before the beginning of the twentieth session.'"

356. Draft resolution by India, United Arab Republic and Yugoslavia (A/AC.119/L.30)

"The Special Committee,

"Having considered the item 'The Question of Methods of Fact-finding', together with the report of the Secretary-General,

"Being unable, due to lack of time, to discuss in detail and to formulate any conclusions on the item,

"1. Congratulates the Secretary-General on his excellent report on this subject;

"2. Recommends to the General Assembly to take note of the part of that report concerning this item, and to invite Member States which have not submitted their comments in writing to do so at an early date with a view to determining the desirability of further consideration of this item by the appropriate organ of the United Nations."

B. Debate

1. General comments

357. In their general comments on the question of methods of fact-finding many representatives stressed the need for further study before any definite decisions could be arrived at. An insufficient number of Governments had so far submitted written comments on the question; and the Special Committee had not been able to devote, within the limited time available to it, a sufficient number of meetings to conduct a full review. A number of representatives also felt that the report of the Secretary-General on the question of methods of fact-finding (A/5694) should be supplemented to cover the aspects of inquiry not related to the settlement of international disputes before any firm recommendation could be made.

358. Certain representatives drew attention to various questions which they believed required an answer before substantive action with respect to methods of fact-finding could be decided upon. For example, why were the existing means inadequate to needs of the world community? To the extent that they had been unsuccessful, what were the reasons for their failure? What grounds were there for thinking that a specialized organization to which recourse would be optional would succeed where previous attempts had failed or given less than satisfactory results? Was the method of fact-finding possible without the simultaneous determination of the political content of the facts, and was it reconcilable with the almost universal refusal of States to submit their political disputes to judgement?

359. A number of representatives stressed the importance which their Governments attached to the establishment of the true facts of international disputes. Such establishment was of cardinal importance if international peace and security were to be preserved. There should be no reluctance among States to accept the investigation of facts. Whenever the facts were in dispute, States unfortunately tended to interpret the situation so as to suit their own ends. Greater resort to the procedure of fact-finding was therefore necessary.

360. One representative stated that the development of methods of fact-finding, with the development of all United Nations enforcement and settlement procedures, was among the few real answers to the problem of making the Charter and its principles more effective with a view to ensuring friendly relations among States. It was therefore regrettable that while the Special Committee had been able to debate at relative length the formulation of mere principles, or rules of conduct, it was not to have an opportunity to devote itself seriously to the study of fact-finding methods. However much they might need clarification and development, the basic rules of the Charter were already available for Member States and United Nations bodies to apply; it was in the field of institutions that improvements were most urgently needed. The adoption of more adequate methods of fact-finding would be an important part of that process of improvement. The same representative expressed the belief that the attitude of Governments towards the institutionalization of fact-finding procedures would in the long run prove a far more decisive test of goodwill in international relations than any degree of enthusiasm for the proliferation of general principles of rules of conduct. It was very easy to formulate rules; the difficulty lay in their application, and only international organs could effectively deal with that problem.

361. On the other hand, a number of representatives stressed that care must be taken not to undermine, through the creation of any new organ or in any other way, the existing arrangements provided for in the United Nations Charter or to infringe the rights of the principal organs of the United Nations, particularly the Security Council. The task of the Special Committee was to concentrate on the elaboration and development of principles of international law, not to prepare new procedures overlapping existing United Nations arrangements and encroaching on the right of States to choose freely and in conformity with the Charter the means of settling their disputes. Furthermore, as the Secretariat had already made a thorough study of the question of methods of fact-finding it was not necessary for it to undertake any further work in this respect. The fact that very few States had submitted comments in response to the request contained in General Assembly resolution 1967 (XVIII) showed that most States did not attach great importance to the matter. The Special Committee should not submit a draft resolution on methods of fact-finding, but could simply state in its report that it had discussed the matter.

2. Historical development of the institution of international inquiry or fact-finding

362. Some representatives referred to the historical development of the institution of international inquiry or fact-finding. It was said, in this respect, that the institution of international inquiry had evolved from an independent means of settlement of disputes into a procedure subsidiary to other means. The Hague Conventions of 1899 and 1907 had contained detailed provision for inquiry, and some disputes had been solved satisfactorily under the procedures established. The Bryan treaties of 1913-1915 had provided for permanent commissions of inquiry, but they had not been effective in practice, probably because they had made recourse to the commissions of inquiry binding and because the commissions were entitled to initiate action. Under the League of Nations, inquiry procedure had become an instrument of preliminary investigation available to the Council and the Assembly as central organs of conciliation. However, it had been little used. The General Act for the Pacific Settlement of International Disputes of 1928, revised in 1949, as also numerous bilateral treaties concluded during the same period, provided for commissions of conciliation and inquiry. One representative stated that in the post-war period inquiry had taken on more and more the character of a subsidiary institution enabling organs of the United Nations to choose the course of action that should be followed in the light of prevailing circumstances.

363. Referring to the report of the Secretary-General on methods of fact-finding (A/5694), one representative stated that it showed that while there had been relatively frequent recourse to commissions of inquiry or conciliation before and immediately after the First World War, such bodies had been little used in recent years. During the present century States had had at their disposal three different systems of inquiry and conciliation - the systems of The Hague Conventions, the League of Nations and the United Nations. In addition, more than 200 treaties provided for inquiry procedures had been concluded between States between 1919 and 1940.

364. Another representative outlined the experience of the Inter-American system with methods of fact-finding. He said that under the system established by the Organization of American States, members had at their disposal various means of establishing the facts of a dispute. Thus, under the Inter-American Treaty of Reciprocal Assistance, the Organ of Consultation had appointed committees of

inquiry in almost all the cases in which that instrument had been invoked, and the information thus obtained had made it possible to settle the disputes in question. Yet that very success highlighted one of the greatest deficiencies in the Inter-American system - the lack of truly effective provision for establishing adequate procedures for the pacific settlement of disputes and determining the appropriate means for their application. The requisite instrument existed - the American Treaty on Pacific Settlement (Pact of Bogota) - but it had so far been ratified by only nine States. The successes of the Inter-American community in the peaceful solution of conflicts had been achieved in spite of that deficiency, which should be remedied by a larger number of ratifications, with the smallest possible number of reservations, of the American Treaty on Pacific Settlement. That Treaty provided for procedures of investigation and conciliation, the purpose of which was to clarify the points at issue and try to bring the parties to agreement in conditions acceptable to both or all of them. If, in the view of the parties, the controversy related exclusively to questions of fact, the committee making the inquiry limited itself to investigating those questions. In any case, the conclusions of the committee of investigation and conciliation were not binding with respect to either questions of fact or questions of law, but were simply recommendations submitted to the parties to facilitate a peaceful settlement. Mention should also be made of the Inter-American Peace Committee, one of whose major functions was to investigate the facts underlying international disputes. That Committee acted at the request of any State directly interested in a dispute, but only with the consent of the other party or parties, and it required the express consent of States to carry out investigations in their territory. The Committee's conclusions, which were not binding on the parties, were set forth in a report submitted not only to the higher organs of the Organization of American States, but also to the United Nations Security Council. It should be stated in conclusion that the successes achieved by the Inter-American system in relation to fact-finding were due in large measure to the flexibility which the present system allowed.

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3. Accession to the Revised General Act for the Pacific Settlement of Disputes and participation in the Panel for Inquiry and Conciliation available under General Assembly resolution 268 D (III)

365. Some delegates stated that consideration should be given to the General Assembly addressing an appeal to Member States to accede to the Revised General Act for the Pacific Settlement of Disputes and to participate in the Panel for Inquiry and Conciliation available under General Assembly resolution 268 D (III) of 28 April 1949. In this respect, attention was drawn to the fact that only six States were parties to the Revised General Act. One representative stated, furthermore, that before any decision were made in favour of such an appeal by the General Assembly, consideration should be given to ways of making both the General Act and the Panel more effective fact-finding instruments. He noted that inquiry combined with conciliation had not worked satisfactorily and thought that the Panel of Inquiry and Conciliation had probably never been used for the following reasons:

- (1) too much stress was laid on conciliation;
- (2) the rules of procedure were rather scant and unclear;
- (3) the Panel did not provide sufficiently for the need of technical fact-finding by experts in the field; and
- (4) the articles relating to its use did not make it clear whether the report of a Commission chosen from the Panel was binding or not.

4. Establishment of a permanent fact-finding body and the review of existing machinery for fact-finding

366. Some representatives stated that, while the position of their Governments could only be established after further study of the question of methods of fact-finding, there would already appear to be sufficient evidence to warrant very serious consideration of the possibility of establishing a permanent fact-finding body. The mere existence of some new international fact-finding machinery might in itself result in greater resort to the procedure of fact-finding, and would probably lead to higher standards in the presentation of their cases by States. Furthermore, the independent and impartial determination of the facts might assist the settlement of disputes through negotiations or lead the parties to agree on some further third-party procedure. Such machinery would also serve to accord fact-finding a more important place in international affairs.

367. The United Nations was in a better position than it had been even only five years ago both to assess the need for international fact-finding machinery in general and to determine what features should be incorporated in any new machinery that might be set up. Much experience in the use of fact-finding procedures had been accumulated both within and outside the United Nations, and that invaluable body of empirical evidence should be taken into account.

368. The question of fact-finding machinery had characteristically been raised in connexion with the types of circumstances envisaged in Chapters VI and VII of the Charter. Obviously, those were not the only circumstances in which international organizations were concerned with the determination of facts, and it would be worth while to explore the question whether new machinery or the increased use of existing procedures might be needed to perform the fact-finding function in spheres other than that relating to the settlement of disputes. Perhaps the improvement of fact-finding techniques in areas where national interests did not clash so sharply would serve to increase the international community's confidence in fact-finding procedures to be employed in connexion with disputes falling under the provisions of Chapters VI and VII.

369. One representative expressed the view that the establishment of impartial fact-finding machinery was in fact inevitable as it was part of the process of the elaboration of rules of international law, and responded to a need of the international community at the present stage of its development.

370. Another representative stressed that, if new fact-finding machinery were to be established, it should meet the following criteria, which he thought were reflected in United Nations experience:

- (1) Recourse to any fact-finding body should be based on voluntary acceptance;
- (2) The body in question should be a subsidiary one, in accordance with Articles 22 or 29 of the United Nations Charter or Article 50 of the Statute of the International Court of Justice;
- (3) It should be at the disposal of the parties to a dispute or to United Nations organs without prejudice to the right of the parties or the organs concerned to choose other means of fact-finding;
- (4) Its reports should not be binding, any final decision resting with the parties or the organ concerned;
- (5) It should be complementary to existing schemes for fact-finding;
- (6) It should combine fact-finding proper with technical investigation by experts in the field.

371. Other representatives, who supported in principle the idea of establishing new fact-finding machinery, expressed their broad agreement with such criteria. In particular, it was pointed out that, under the foregoing principles, fact-finding functions were kept separate from decision-working functions. Fact-finding must be recognized as a distinct operation if States were to be encouraged to resort to it, and it should not be regarded as a commitment to further procedures. One representative favoured the establishment of a new international body for fact-finding, to which all Members of the United Nations would automatically be parties, and which should have compulsory jurisdiction. He recognized, however, that voluntary acceptance of jurisdiction might be more practical.

372. Some other representatives stated that they would be unable to endorse the idea of establishing a new international fact-finding body. The parties to a dispute should have the widest possible choice of means of settlement; that was one of the reasons why many States had refused to recognize the compulsory jurisdiction of the International Court of Justice and would be likewise opposed to the setting up of new fact-finding machinery. The experience gained since the signing of The Hague Convention of 1899 and the Bryan Treaties showed that a permanent fact-finding body was unnecessary; the United Nations itself, as well as individual States, had at their disposal a great variety of means of obtaining information, and the establishment of a special international fact-finding body might encourage attempts to circumvent the United Nations organs, particularly the Security Council, and thereby undermine the Charter. From the practical standpoint, moreover, it was difficult to see how a permanent body could be set up which would be both capable of inquiring into the complicated circumstances of the manifold disputes characteristic of the present era and at the same time acceptable to all the parties. Under existing international law and practice, means of inquiry were available which allowed the parties the utmost flexibility in fixing conditions and procedures; a permanent fact-finding body, on the other hand, would not easily be able to adapt itself to the special circumstances of a particular case. Careful study of the question led to the conclusion that the idea of establishing such a body was both impractical and legally disputable, for it might well complicate rather than simplify the settlement of disputes and could in some instances infringe the sovereignty of the States parties. Finally, to consider the question of fact-finding would only divert the Special Committee from its main task, that assigned to it under General Assembly resolution 1966 (XVIII) of 16 December 1963.

373. Representatives who shared the foregoing view stressed that the real question was not the creation of a new machinery, but the more effective use of that which already existed. As regards the creation of new machinery it was further argued that it was wrong to suppose that the entire factual position connected with a particular dispute could be objectively assessed by an international fact-finding organ; in most disputes it would be very hard to separate the factual elements from legal and political issues. Disputes frequently centred not so much in points of fact as in questions arising from the moral or juridical implications of those facts; moreover, the wide variety of the ad hoc bodies which had been set up by the United Nations indicated the difficulty of establishing one body to deal with all contingencies. The ad hoc fact-finding bodies which had been established from time to time by the United Nations had formed part of the machinery of the peace-keeping system created under the Charter. The close inter-connexion between fact-finding and peace-keeping operations had helped to ensure the maintenance of international peace and security; it was undesirable that a separate international fact-finding body should duplicate the functions of United Nations organs in that respect. Moreover, an international fact-finding centre might not command the same respect as United Nations fact-finding bodies. The possibility of misuse of commissions of inquiry had been mentioned in the Security Council in 1946 by the Netherlands representative, who had pointed to the danger of setting up commissions of inquiry as a matter of course whenever one State lodged a complaint against another State, whether or not the complaint was adequately substantiated. It seemed evident that a permanent fact-finding body could be similarly misused.

374. On the other hand, representatives who favoured in principle the creation of a new fact-finding organ believed that it could be created with sufficient flexibility to meet all demands made upon it and to have available experts on the great variety of questions which might be put to it. Furthermore, if such an organ were created along the lines indicated in paragraph 370 above, it could not be said that States would be compelled to resort to it, this being purely voluntary. Finally, it could not be seriously maintained that such an organ would infringe upon or derogate from the responsibilities of United Nations organs, as it would be subsidiary to such organs.

C. Decision of the Special Committee

1. Decision

375. At the thirty-seventh meeting of the Special Committee it was decided, on the proposal of the Chairman, that a working group, composed of the representative representatives of Guatemala, the Netherlands (the sponsor of the draft resolution in document A/AC.119/L.29), and the United Arab Republic (representing the three sponsors of the draft resolution in document A/AC.119/L.30), should endeavour to draw up and submit to the Committee a draft resolution which would be acceptable to the sponsors of the two resolutions on the question of methods of fact-finding which had been previously submitted to the Special Committee (see paras. 355 and 356 above).

376. At the thirty-eighth meeting of the Special Committee, as the result of the meeting of the working group, a draft resolution was submitted by Guatemala (A/AC.119/L.33), in the light of which the sponsors of the two other resolutions before the Committee withdrew those resolutions. The Special Committee thereupon adopted the resolution submitted by Guatemala by 22 votes to none, with four abstentions. The resolution reads as follows:

"The Special Committee,

"Having considered the item 'The Question of Methods of Fact-Finding', together with the report of the Secretary-General,

"Noting that few Member States have as yet, submitted their views in response to General Assembly resolution 1967 (XVIII),

"Being unable, due to lack of time, to formulate conclusions on the item,

"Recommends that the General Assembly take note of that part of its report which concerns this item, bring to the attention of Member States the report of the Secretary-General and the relevant documents, and invite Member States to submit their comments in writing at an early date."

2. Explanations of vote

377. In explanation of vote, the representatives of Romania, Poland, the USSR and Czechoslovakia referred to their earlier statements on the question of methods of fact-finding both in the Sixth Committee and in the Special Committee and stated

that they were opposed to the idea underlying the question of methods of fact-finding and the creation of new machinery for fact-finding purposes. Nevertheless, as the draft resolution prepared by the working group was of a purely procedural character, they were able to abstain instead of voting against that resolution.

ANNEX

MEMBERSHIP OF THE SPECIAL COMMITTEE

COUNTRY	REPRESENTATIVE	ALTERNATES	ADVISERS
Argentina	Mr. Ricardo <u>Colombo</u>	Mr. Guillermo <u>Cash</u>	
Australia	Sir Kenneth <u>Bailey</u>	Mr. M.J. <u>Cook</u>	
Burma	Justice San <u>Maung</u>	U Ba <u>Thaung</u> U Tun Aung <u>Gyaw</u> U Hla <u>Thin</u>	
Canada	Mr. Pierre <u>Charpentier</u>		
Czechoslovakia	Mr. Vratislav <u>Pěchota</u>	Mr. Vladimír <u>Prusa</u> Mr. Jaroslav <u>Kubrycht</u>	
Dahomey	Mr. Louis <u>Ignacio-Pinto</u>		
France	Mr. Philippe <u>Monod</u>	Mr. Olivier <u>Deleau</u> Mr. Hugues <u>Homo</u>	
Ghana	Mr. E.K. <u>Dadzie</u>	Mr. W.W.K. <u>Vanderpuye</u>	
Guatemala	Mr. Roberto <u>Herrera</u> <u>Ibargüen</u>	Mr. Francisco <u>Linares</u> <u>Aranda</u> Mr. Horacio de <u>Cordoba</u>	
India	Mr. K. Krishna <u>Rao</u>	Mr. Brajesh C. <u>Mishra</u>	Mr. C. <u>Das</u> <u>Gupta</u>
Italy	Mr. Gaetano <u>Arangio Ruiz</u>	Mr. Giulio <u>Bilancioni</u> Mr. Alberto <u>Gnecco</u>	Mr. Gaetano <u>Granata</u>
Japan	Mr. Takeshi <u>Kanematsu</u>	Mr. Tadashi <u>Ohtaka</u> Mr. Ribot <u>Hatano</u>	
Lebanon	Mr. Antoine <u>Fattal</u>	Mr. Gilbert <u>Ghazi</u>	
Madagascar	Mr. Louis <u>Rakotomalala</u>	Mr. Henri Jux <u>Ratzimbazafy</u>	
Mexico	Mr. Alfonso <u>García Robles</u>	Mr. Jorge <u>Castañeda</u>	Miss Maria Emilia <u>Téllez</u>
		Mr. Carlos <u>Peón del</u> <u>Valle</u> Mr. Ismael <u>Moreno</u>	Mr. Sergio González <u>Gálvez</u> Mr. Alvaro <u>Carranco</u>
Netherlands	Mr. W. <u>Riphagen</u>	Mr. L.H.J.B. <u>van Gorkom</u>	

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COUNTRY	REPRESENTATIVE	ALTERNATES	ADVISERS
Nigeria	Mr. T.O. <u>Elias</u>	Mr. Idowu Olayimika <u>Agoro</u>	Mr. P.R. <u>Okpu</u> Mrs. M.E. <u>Ogunlami</u>
Poland	Mr. Remigiusz <u>Bierzanek</u>	Mr. Andrzej <u>Olszowka</u>	
Romania	Mr. Aurel <u>Cristescu</u>	Mr. Constantin <u>Nedelea</u>	Mr. Dan <u>Ciobanu</u>
Sweden	Mr. Hans <u>Blix</u>	Mr. Sven Fredrik <u>Hedin</u>	Mr. Bengt <u>Borglund</u>
Union of Soviet Socialist Republics	Mr. Oleg <u>Khlestov</u>	Mr. Vladimir <u>Fedorov</u> Mr. Boris H. <u>Kazantsev</u>	Mr. Guergui A. Shchuchkin Mr. Vladimir T. <u>Shpakevich</u>
United Arab Republic	Mr. Abdel Kader <u>Khalil</u>	Mr. El Sayed Abdel Raouf <u>El-Reedy</u>	
United Kingdom of Great Britain and Northern Ireland	Mr. I.M. <u>Sinclair</u>	Mr. E.H.B. <u>Gibbs</u>	
United States of America	Mr. Stephen M. <u>Schwebel</u>	Mr. William G. <u>Jones</u> Mr. John Lawrence <u>Hargrove</u>	
Venezuela	Mr. Rolando <u>Salcedo</u>	Mr. Tulio <u>Alvarado</u>	
Yugoslavia	Mr. Joze <u>Vilfan</u>	Mr. Milan <u>Sahović</u>	