or subject to a form of force not constituting armed attack to take reasonable measures for its security and the defence of its vital interests and without prejudice to its obligation immediately to report to the competent international authority the threat or pressure to which it has been subjected and the measures taken;

"(*h*) An exception to the principle set forth in Article 2, paragraph 4, of the Charter shall also be made in cases of the use of force by order of a competent organ of the United Nations or under its authority, or by a regional agency acting with the express authorization of the Security Council (Article 53)".

(v) *Italy, Netherlands* (A/AC.125/L.24)

"3. Nothing in the foregoing paragraphs affects the lawful use of force in conformity with the relevant provisions of the United Nations Charter".

III. 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[22]

A. Written proposals

157. In regard to the above principle four written proposals were submitted: one by Czechoslovakia; one jointly by Dahomey, Italy, Japan, Madagascar and the Netherlands; one jointly by Chile; and one jointly by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia. The texts of the foregoing proposals are given below in the order in which they were submitted to the Special Committee.

158. Proposal by Czechoslovakia (A/AC.125/L.16, part II):

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

"2. Having regard to the circumstances and the nature of the dispute, the parties to any international dispute shall first seek its just settlement by negotiation, and shall use, whenever appropriate and by common agreement, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, in strict accord with the Charter of the United Nations, or other peaceful means.

"3. International disputes shall be settled on the basis of the sovereign equality of States, in the spirit of understanding and without the use of any form of pressure.

"..."

159. Joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands (A/AC.125/L.25 and Add.1):

"1. The principle of the peaceful settlement of international disputes set forth in Article 2, paragraph 3, of the United Nations Charter, is a corollary of the prohibition of the threat or use of force, and, as such, the expression of a universal legal conviction of the international community.

"2. Accordingly,

"(*a*) All States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

"(*b*) The parties to any such dispute shall seek a solution by negotiation, inquiry, good offices or mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;

"(*c*) Failure to reach a solution by any of the above means does not absolve the parties from the duty of continuing to seek settlement of the dispute by peaceful means;

"(*d*) Recourse to or acceptance of a settlement procedure, including any obligation freely undertaken to submit existing or future disputes to any particular procedure, shall not be regarded as incompatible with sovereign equality.

"3. In order to ensure the more effective application of the foregoing principle:

"(*a*) Legal disputes should as a general rule be referred by the parties to the International Court of Justice, and in particular States should endeavour to accept the jurisdiction of the International Court of Justice pursuant to Article 36, paragraph 2, of the Statute of the Court.

"(*b*) General multilateral agreements, concluded under the auspices of the United Nations, should provide that disputes relating to the interpretation or application of the agreement, and which the parties have not been able to settle by negotiation, or any other peaceful means, may be referred on the application of any party to the International Court of Justice or to an arbitral tribunal, the members of which are appointed by the parties, or, failing such appointment, by an appropriate organ of the United Nations.

"(*c*) Members of the United Nations and United Nations organs should continue their efforts in the field of codification and progressive development of international law with a view to strengthening the legal basis of the judicial settlement of disputes.

"(*d*) The competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter in the field of peaceful settlement, with a view to ensuring that all disputes are settled by peaceful means in such a manner that not only international peace and security but also justice is preserved."

160. Draft resolution by Chile (A/AC.125/L.26):

"The Special Committee, bearing in mind:

"(*a*) That the Preamble of the Charter of the United Nations proclaims the need for States to practise tolerance and live together in peace with one another as good neighbours,

"(*b*) That Article 1, paragraph 2, of the Charter declares that one of the purposes of the United Nations is to develop friendly relations among nations,

"(*c*) That Article 2, paragraph 3, of the Charter declares that all Members of the United Nations shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

"*Declares*:

"1. That States are obliged to settle all their disputes whatsoever by such peaceful means as they deem appropriate, without prejudice to the provisions of the international agreements in force and of the generally recognized norms of international law;

"2. That, once a procedure for pacific settlement has been initiated, States have an obligation to refrain from changing the *de facto* situation which gave rise to the dispute and to take preventive measures against the creation or aggravation of any tension which might endanger peace;

"3. That any pacific settlement of an international dispute must be based on justice and must take into account the maintenance of international peace and security; and

"4. That, by virtue of Articles 52, paragraph 4, and 103 of the Charter of the United Nations, the right to have recourse to a regional agency in pursuit of a pacific settlement of a dispute does not preclude or diminish the right of any State to have recourse direct to the United Nations in defence of its rights."

161. Joint proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.27):

"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. States shall accordingly seek early and just settlement

[22] An account of the consideration of this principle by the 1964 Special Committee appears in chapter IV of its report (A/5746).

of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice, as may be appropriate to the circumstances and nature of each case and as agreed to by the parties concerned;

"3. States should, as far as possible, include in the bilateral and multilateral agreements to which they become parties, provisions concerning the particular peaceful means by which they desire to settle their differences;

"4. 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."

B. Debate

1. *General comments*

162. The principle of the pacific settlement of disputes was discussed by the Special Committee at its twenty-seventh to thirty-third meetings between 28 and 31 March 1966, and at its forty-ninth meeting on 21 April 1966. All the representatives who took part in the debate recognized that the principle, as embodied in the United Nations Charter constituted a fundamental principle of contemporary international law which was of universal application and expressed the hope that agreement would soon be reached on a statement of the principle acceptable to all.

163. Many representatives stressed the great importance of the principle of pacific settlement of international disputes which was the logical corollary of the prohibition of the threat or use of force in international relations, and recalled that the drafters of the Charter had endeavoured to establish a new international order in which change and adjustment could be effected only by peaceful means. The renunciation of the threat or use of force prescribed in the United Nations Charter had been predicated on the assumption that peace, security and justice would be assured by the application of peaceful means of settlement to the solution of international disputes. Rigorous observance of the principle of pacific settlement of disputes and universal application in concrete situations of the various means of peaceful settlement referred to in the Charter would help to bring about an international order in which the necessary change could be effected without destroying stability. Some representatives considered that while generally accepted machinery for the resolution of international conflicts existed in the Charter, it had not always been used to the best advantage and it was therefore urgently necessary to strengthen the will of the international community to settle international disputes by peaceful means.

164. It was pointed out that, unlike other principles, the purpose of which was to remove the causes of international disputes, this principle was concerned with what should be done to settle disputes once they had arisen. If it was not accepted and applied by all States, the other principles studied by the Special Committee would be short-lived. The international community and international law could not develop or survive if States were permitted to settle their disputes by force.

165. It was also emphasized that the principle of the pacific settlement of international disputes was closely related to other fundamental principles of the United Nations Charter. In addition to being a logical corollary of the principle of the prohibition of the threat or use of force, the principle of the pacific settlement of disputes was also linked to the principles of the sovereign equality of States and non-intervention. It was, therefore, of paramount importance for the promotion of friendly relations and co-operation among States, the strengthening of peaceful coexistence and the maintenance of international peace and security. Its application was especially important at the present stage because of the interdependence of States in the modern world and the development of weapons of mass destruction. In undertaking the formulations of the principle, therefore, the Committee must endeavour to strengthen it and to make sure that no one could evade the legal obligation that it established.

166. It was generally recognized that Article 2, paragraph 3, of the Charter constituted a legal and universal statement of the principle of peaceful settlement of international disputes. In formulating that principle, consideration should also be given to other Charter provisions, especially the Preamble, Article 1, paragraph 1, and Chapter VI. Nevertheless, during the debate, there were some differences of opinion as regards the most appropriate procedure and method for the formulation of the principle. Thus, while some representatives favoured a transcription of the relevant provisions of the Charter, supplemented by some additional elements, others, on the contrary, stressed that the Special Committee's task went beyond a mere repetition of Charter language. According to those representatives, the Special Committee should formulate the principle in conformity with the Charter, but should also take into consideration the need for progressive development of the principle and the need to maintain and strengthen international peace and security. On the other hand, a number of representatives preferred merely to state the material components of the principle, while others stressed the advisability of including in the statement certain general recommendations with a view to ensuring more effective application. The latter approach was thought by some representatives not to meet the methodological criteria used by the Special Committee in its work of codification and, at the same time, to be likely to complicate the preparation of a text acceptable to all. The meaning and scope of the principle should be stated without a detailed study of the general application of the principle itself or of each separate means of pacific settlement. Lastly, other representatives stated that they preferred that only rules of international law should be included in the formulation of the principle, but that they would not oppose the inclusion of recommendations *de lege ferenda* if that was acceptable to the majority.

167. One representative emphasized that, if the Special Committee was to come to an agreement on the way in which the principle of pacific settlement of disputes was to be stated, it had to examine the principle in a rather wider context than that of the Charter. Since the principle was applied in international affairs through the use of the various means of pacific settlement based on customary law and treaty law, it was obvious, in his opinion, that the Special Committee could not confine itself to repeating what was already established in the Charter. The Special Committee should take the Charter as a point of departure, but it must also establish subsidiary rules and find out how best to apply them. That would be fully in conformity with the resolutions of the General Assembly on the consideration of principles concerning friendly relations and co-operation among States. In conclusion, that representative suggested that the Special Committee should

follow the methods used by the International Law Commission.

168. Some representatives considered that the real problem involved in the principle of the pacific settlement of disputes lay, not in its statement or definition, but rather, and above all, in the application by States of the existing means of settling disputes. One of these representatives stated that, of the two tasks assigned to the Special Committee by General Assembly resolutions 1966 (XVIII), concerning, respectively, the problems involved in the more effective application of the rules of the Charter and those involved in the progressive development of those rules, it was mainly the former which was at issue in the present case and the Special Committee should try first to establish why, since the rules set forth in the Charter were not in dispute, they were not applied more effectively and consistently by States, and secondly to remedy that situation. In the view of this representative, the development of the Charter principles concerning the pacific settlement of disputes must follow and not precede a thorough study of the terms on which States applied the principle.

169. Some representatives recalled, as tangible proof of a contribution to the establishment of a harmonious and civilized international society, that their respective countries were parties to many treaties containing pacific settlement clauses or had offered to submit disputes to a given means of settlement. The signing of the Tashkent Declaration of 1966,[23] the agreement concluded between India and Pakistan for the settlement of their dispute concerning the Rann of Kutch,[24] the agreement between Argentina and Chile to submit to arbitration, pursuant to their 1902 General Treaty of Arbitration,[25] frontier problem on which a tribunal sitting in London would soon take a decision, and the agreement concluded at Geneva in February 1966 between Venezuela and the United Kingdom with a view to the pacific settlement of the dispute concerning the frontier of British Guiana[26] were cited as important recent examples of the practical application of the principle of pacific settlement of international disputes.

170. In the course of the debate, in addition to the United Nations Charter, the following were cited as examples of international instruments and documents in which the principle of pacific settlement of international disputes was recognized in one way or another: the Charter of the Organization of American States of 30 April 1948,[27] the Bandung Declaration,[28] the Belgrade Declaration,[29] the Programme for Peace and International Co-operation adopted by the Cairo Conference,[30] the Charter of the Organization of Central American States, signed at Panama City on 12 December 1962, establishing a new Central American Court of Justice,[31] the Protocol of Mediation, Conciliation and Arbitration adopted on 21 July 1964 by the Organization of African Unity,[32] and the Convention on the Settlement of Investment Disputes concluded on 18 March 1965 under the auspices of the International Bank for Reconstruction and Development. One representative also cited the Washington agreement of 1907 among the republics of Central America establishing a Court of Justice with very wide jurisdiction as an instrument which set a historic precedent in the matter of peaceful settlement.[33]

171. Finally, a number of representatives regretted that during the twentieth session of the General Assembly, the Special Political Committee had not had time for a detailed examination of the item "Peaceful settlement of disputes" and had therefore decided to remit consideration of that item to the twenty-first session of the General Assembly.[34] Those representatives emphasized that there was no conflict between the work of the Special Committee on this principle and the item "Peaceful settlement of disputes" discussed in the Special Political Committee of the General Assembly. They pointed out that the examination being carried out by the Sixth Committee and the Special Committee was directed towards the progressive development and codification of the principle of the peaceful settlement of disputes, while the Special Political Committee proposed to carry out a penetrating study of the question of the peaceful settlement of disputes in all its political and legal aspects and to consider the possibility of improving existing means or procedures of settlement with a view to adopting practical measures which would enable States to have greater recourse to such means. The Special Political Committee's examination of the item would be greatly facilitated if the Special Committee and the Sixth Committee could reach agreement as soon as possible on a formulation of the principle of peaceful settlement of international disputes defining the contents and scope of the principle.

2. *The obligation to settle international disputes by peaceful means*

172. The representatives who took part in the debate recognized the principle that States should settle their international disputes by peaceful means as a universal legal obligation established by contemporary international law and laid down in Article 2, paragraph 3 of the Charter. The four proposals submitted in connexion with the principle of peaceful settlement contained provisions stipulating that this general legal obligation was incumbent on all States. The proposals were in paragraphs 1 and 2 of the proposal submitted by Czechoslovakia; in paragraphs 1 and 2 (*a*) of the joint proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands; in the preamble and paragraphs 1 and 3 of the proposal submitted by Chile; and in paragraph 1 of the joint proposal submitted by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, United Arab Republic and Yugoslavia (see paras. 158-161 above).

173. Representatives who spoke in the debate supported the wording and the approach of one or other

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[23] *Official Records of the Security Council, Twenty-first Year, Supplement for January, February and March 1966,* document S/7221.

[24] *Ibid., Twentieth Year, Supplement for July, August and September 1965,* document S/6507.

[25] *American Journal of International Law* (Washington, D.C.), vol. I, Supplement, 1907.

[26] United Nations, *Treaty Series,* vol. 561.

[27] *Ibid.,* vol. 119.

[28] *American Foreign Policy, 1950-1955* (Washington, D.C., 1957), vol. II.

[29] *Journal of the Belgrade Conference,* No. 5, 6 September 1961.

[30] A/5763, mimeographed.

[31] *American Journal of International Law* (Washington, D.C.), vol. 58, 1964.

[32] *Resolutions and Recommendations of the First Session of the Assembly of Heads of State and Government and Third Session of the Council of Ministers.*

[33] *American Journal of International Law* (Washington, D.C.), vol. 2, Supplement, 1908.

[34] *Official Records of the General Assembly, Twentieth Session, Annexes,* agenda item 99, document A/6187.

of the proposals submitted and said that in general they reflected the relevant provisions of the Charter and would therefore be a firm basis on which the general obligation to settle international disputes by peaceful means could be formulated without great difficulty and in a manner acceptable to all. Nevertheless, some specific aspects of those proposals gave rise to a number of divergent comments. The main points on which comments were made are set forth below.

(a) *The settlement of international disputes by peaceful means as "the expression of a universal legal conviction of the international community"*

174. Paragraph 1 of the proposal submitted by Dahomey, Italy, Japan, Madagascar and Netherlands (see para. 159 above) stated that the principle set forth in Article 2, paragraph 3, of the United Nations Charter was " a corollary of the prohibition of the threat or use of force and, as such, the expression of a universal legal conviction of the international community". Some representatives had no objection to the inclusion of such a provision in the enunciation of the principle, while others considered it inappropriate and felt that it should be deleted. One of the latter indicated that the principle of peaceful settlement was related to several other principles and that it might be a mistake to single out the principle of the prohibition of the threat or use of force in that regard.

(b) *Category of disputes to which the obligation of peaceful settlement applies*

175. In the view of some representatives, while Article 2, paragraph 3, of the Charter was worded in general terms, Article 33 referred to any dispute "the continuation of which is likely to endanger the maintenance of international peace and security". Therefore, Members were required to submit to the methods of peaceful settlement specified in the Charter only disputes which endangered international peace and security. If no danger existed, nothing in the Charter obliged Members to seek an immediate solution. Their only obligation was to refrain from the use of force in seeking a solution. One representative stated that a minor dispute might thus remain unsolved and eventually be forgotten. He also noted that in that respect Article 2, paragraph 3, of the Charter was reminiscent of article 2 of the Briand-Kellogg Pact, in that under it the general duty to settle any international dispute by peaceful means was an imperfect obligation.

176. Other representatives, on the other hand, affirmed that the obligation to settle international disputes by peaceful means applied to all disputes. Although Article 33 of the Charter dealt specifically with disputes likely to endanger the maintenance of international peace and security, less serious disputes were covered by the more general provision in Article 2, paragraph 3, as was confirmed by the terms of the Preamble to the Charter proclaiming the desire of peoples to "live together in peace with one another" and by Article 1, paragraph 2, of the Charter which laid down that one of the purposes of the United Nations was to develop friendly relations among nations. These representatives were in favour of stressing in the formulation of the principle of the pacific settlement of disputes the fact that the obligation which it imposed applied to all international disputes.

177. Still other representatives felt that it would be wiser not to raise the question of the types of dispute covered in the Charter since that could give rise to differences of interpretation on the degree to which a particular dispute was dangerous. One representative felt that it could be deduced from a reading of the relevant provisions of the Charter that its authors distinguished between two types of dispute, depending on the degree to which they endangered international peace and security. He wondered what provision the Special Committee could make in that regard in view of the fact that disputes which did not appear to be serious could undoubtedly have dangerous repercussions.

(c) *Settlement of disputes "solely" by peaceful means*

178. Some representatives thought it desirable to stress in the formulation of the obligation that disputes should be settled "solely" by peaceful means, as in paragraph 1 of the proposal submitted by Czechoslovakia (see para. 158 above). In their view, the addition of the word "solely" was essential in order to emphasize that any non-peaceful mode of settlement would be a violation of the Charter. Other representatives, however, did not consider that that addition was necessary or appropriate, since it did not figure in the text of the Charter.

(d) *Settlement of disputes on the basis of the sovereign equality of States*

179. Several representatives emphasized that international disputes must be settled without the use of any form of pressure and on the basis of the sovereign equality of States. The sovereignty and independence of States parties to the dispute must in all cases be safeguarded and the mutual interests of the parties must be taken into account. That would help to remove the fears of small States regarding the use of certain means of settlement in the event of a dispute with more powerful countries. Paragraph 3 of the proposal of Czechoslovakia (see para. 158 above) contained a provision on these lines, which received the express support of a number of representatives.

(e) *Settlement of international disputes in conformity with the dictates of justice*

180. A number of representatives considered that justice was a fundamental element of the principle of the pacific settlement of disputes and pointed out that the authors of the Charter had used the word "justice" both in Article 1, paragraph 1, and in Article 2, paragraph 3, in order to underline the importance of the concept. If the principles of justice were not respected, there could be no lasting settlement of disputes and international peace and security would therefore continue to be threatened. These representatives considered that the pacific settlement of disputes should not be brought about at the expense of that fundamental element. It was stated in that connexion that medium and small States attached considerable importance to the concept of justice in connexion with the settlement of disputes and that the word "justice" should therefore be included in the statement of the principle. In the view of some of the representatives in question, justice was the *sine qua non* for the success of means of pacific settlement of disputes.

181. Paragraph 1 of the proposal of Czechoslovakia (see para. 158 above), paragraph 2 (*a*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above), preambular sub-paragraph (*c*) of the proposal of Chile (see para. 160 above), and paragraph 1 of the proposal of Algeria, Burma,

Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, United Arab Republic and Yugoslavia (see para. 161 above) reproduced the wording of Article 2, paragraph 3, of the Charter, which lays down that international disputes shall be settled in such a way that "international peace and security, and justice, are not endangered". Paragraph 2 of the last-mentioned proposal also stipulated that States were to "seek early and just settlement", and paragraph 2 of the proposal of Czechoslovakia said that States must "first seek [a dispute's] just settlement by negotiating". Paragraph 3 (*d*) of the five-Power proposal (see para. 159 above) also provided that the competent organs of the United Nations should avail themselves more fully of their powers and functions with a view to ensuring that all disputes were settled by peaceful means in such a manner that not only international peace and security but also justice was preserved.

182. Operative paragraph 3 of the proposal of Chile (see para. 160 above) provided that "any pacific settlement of an international dispute must be based on justice and must take into account the maintenance of international peace and security". The sponsor of that proposal recognized that this rule was subjective and therefore difficult to apply, but said that it was nevertheless true that the Charter gave justice a prominent place alongside the maintenance of international peace and security, treating both as essential elements in the peaceful settlement of international disputes. Some representatives said, however, that although they agreed that justice should prevail in the settlement of disputes the Chilean proposal was difficult for them to accept since the term "justice" could give rise to differing and even distorted interpretations. It was pointed out that Article 1, paragraph 1, of the Charter spoke of the "principles of justice and international law".

183. Lastly, other representatives stressed that the word "justice" should not be used in the statement of the principle of pacific settlement in such a way as to furnish a pretext for States which had agreed to submit a dispute to a particular means of settlement to reject the solution reached, or the judgement rendered, by simply claiming that it was unjust. Referring specifically to decisions of the International Court of Justice, one representative pointed out that a refusal by the parties to recognize those decisions would endanger international peace and security. Similarly, he added, even when the solution of a dispute had been obtained by non-judicial means, such as mediation or conciliation, and that solution was based on a freely accepted formula, the parties could not reject it on grounds of justice, since otherwise anarchy would reign and no one would have any certainty of achieving the settlement of a dispute through recourse to methods of pacific settlement.

(f) *The relationship between the general obligation to settle disputes peacefully and the provisions of international agreements in force and the generally recognized norms of international law*

184. Paragraph 1 of the proposal of Chile (see para. 160 above) laid down that States were obliged to settle their disputes by such peaceful means as they deemed appropriate "without prejudice to the provisions of the international agreements in force and of the generally recognized norms of international law". The sponsor of the proposal explained that, although States, in fulfilment of their obligation to solve disputes by peaceful means had complete freedom in the choice of those means, international agreements might indicate, in particular cases, that one means and not another was to be used. On the other hand, in the absence of a pre-existing treaty or agreement between the parties regarding the choice of a means of settlement, States could not allow the dispute to remain unsolved, since that would be contrary to the Charter. In such a case States were obliged to submit the dispute to one of the means recognized by international law and the procedures for the use of that means were also governed by international law.

185. Some representatives expressed doubts and misgivings regarding the inclusion of such a formula in the statement of the principle. One representative feared that it might be inferred that rights or obligations might arise from those agreements and norms which would be inconsistent with the general obligation of pacific settlement laid down in the Charter. Other representatives had no objection to the proposal.

3. *Means of peaceful settlement of international disputes*

186. Provisions relating to the means of settlement of disputes were set forth in paragraph 2 of the proposal submitted by Czechoslovakia; in sub-paragraph 2 (*b*) of the joint proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands; and in paragraph 2 of the joint amendment submitted by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see paras. 158, 159 and 161 above).

187. All representatives who spoke on the question recognized that both under the system of Chapter VI of the United Nations Charter and under general international law, and subject to their views on provisions of agreements regarding settlement and norms of general international law (see paragraphs 184-185 above, and paragraphs 192, 236-238 below), the States parties to a dispute were free to choose the method of peaceful settlement they believed most suitable or adequate for the resolution of the conflict. The common will of the parties, which would naturally be based on the nature of the dispute and the specific circumstances surrounding it, were decisive in the selection of the method of settlement.

188. It was stated that the Charter established a flexible and diversified system for the settlement of disputes by listing in Article 33, paragraph 1, a series of means and adding that parties could also seek a solution by "other peaceful means of their own choice". Many representatives pointed out that all the means of settlement had advantages and disadvantages and that it was accordingly not desirable to recommend any particular means in preference to another in a legal document. Indeed it was impossible, in the view of some representatives, to decide in advance which means States should employ in settling their differences, or to establish an order of priority among them; it was for the States concerned to make their own choice, in each specific case, of the method they deemed most appropriate for the solution of the particular conflict. Attempting to establish an order of preference of certain means over others would, in their opinion, disturb the technique of settlement of international disputes by introducing an element of rigidity that would clash with the flexible system provided in the Charter. Some representatives stated that an attempt to limit the freedom of States in choosing the methods of settlement they

considered most appropriate would be incompatible with the principle of the sovereign equality of States.

189. Several representatives stated that they could not support any proposal which would have the formulation of the principle stress the importance of one means of settlement over another, since that in their view would run counter to the Charter. Those representatives consequently preferred, on that point, the language of the five-Power proposal (see para. 59 above) or the ten-Power proposal (see para. 161) to that of the proposal of Czechoslovakia, reproduced above in paragraph 158. While recognizing that the Czechoslovak text was a considerable compromise effort intended to take account of views expressed at the Mexico City session of the 1964 Special Committee, those representatives held that the new text still had certain elements of ambiguity. Other members favoured the wording used in the proposal of Czechoslovakia. In their view neither Article 33 of the Charter nor international law gave rise to any objection to a text on the principle of the peaceful settlement of disputes stressing the practical importance of certain means of settlement over others, provided that the freedom of States to choose the means they thought best by common agreement was not impaired. One representative suggested that the two ideas were fully compatible, since the different means of peaceful settlement had developed as a result of the evolution of relations between States and international organizations. That evolution had occurred within the context of customary law, without direct connexion with the Charter.

(a) *Obligation of the parties to have recourse to one of the means of settlement listed in Article 33, paragraph 1, of the Charter before referring the dispute to the Security Council*

190. Several representatives stated that under the Charter States should choose the method they thought most likely to lead to a satisfactory solution before referring a dispute to any organ of the United Nations, and particularly the Security Council, but that they were not obliged to exhaust in the order in which they were listed in Article 33 of the Charter all the means of a settlement there enumerated. Their only duty was to seek a settlement by one or other of those means. If those means failed, the parties were then required, under Article 37, paragraph 1, to refer the dispute to the Security Council. The Council could then recommend methods of adjustment or such terms of settlement as it might consider appropriate and could also, if the dispute in question was a legal one, recommend that it should be referred to the International Court of Justice, but under the Charter all such recommendations were not binding on the parties. The same representatives did not consider it appropriate that the formulation of the principle should include provisions imposing on States legal obligations which went beyond the requirements of the Charter in that connexion.

191. One representative referred to the significance of the words "first of all" in Article 33, paragraph 1 of the Charter and to the dangers of including those words in formulæ that had a different context. According to the same representative, it was clear from the provisions of Chapter VI of the Charter that the words "first of all" in Article 33 meant that States should "as a first step" seek a solution by the means of peaceful settlement enumerated in that Article, and that only if they failed to reach a solution by one of those means should they then have recourse to the Security Council. Used in a formula outside the context of Chapter VI of the Charter the expression "first of all" was open to a very dangerous interpretation: namely that, once the means of settlement provided for in Article 33, paragraph 1, had been exhausted, the parties were entitled, if no agreement was reached, to resort to other than peaceful means.

(b) *Declaration by States, in general or special form, of their consent to the submission of a dispute to a particular means of settlement*

192. One representative indicated that States could declare their consent to the submission of a dispute to a particular means of peaceful settlement either generally, as for example by accepting the optional clause provided in paragraph 2 of Article 36 of the Statute of the International Court of Justice, or specially, in the form they deemed most appropriate, but that in the present state of international law it was necessary that their consent should be declared in some form or other.

(c) *Relationship between the kind of dispute and the means of settlement*

193. Some representatives pointed out that some disputes—those, for instance, in which changes in an existing juridical situation are demanded—could more appropriately be dealt with by negotiation, conciliation or mediation, but that there were others, relating to the interpretation and application of international law, which were more suitable for arbitration and judicial settlement. Another representative grouped the means of settlement in three categories according to the kind of dispute for which they seemed most appropriate: (*a*) quasi-judicial means, such as negotiation, inquiry, good offices, mediation and conciliation, which might be used in settling political disputes; (*b*) arbitration and judicial settlement, by which purely legal disputes could be settled; and (*c*) resort to regional agencies or arrangements, to settle regional or local disputes.

(d) *Questions relating to each of the recognized means of peaceful settlement of disputes*

194. Although the Special Committee did not study in detail all the problems relevant to each of the recognized means of peaceful settlement of disputes, some proposals submitted and opinions expressed in the course of the debate led to an exchange of views—which brought to light some differences—on the importance and merits of some of those means, the place they ought to occupy in any formulation of the principle of the peaceful settlement of disputes, how useful they would be for the practical solution of international disputes, and certain other matters relating to various aspects of application.

(i) *Negotiation*

195. As at the 1964 Special Committee's session in Mexico City, the debate on this means of settlement centred on the question of the necessity for or desirability of laying special emphasis on negotiation as against the other means of pacific settlement set forth in the Charter. Since paragraph 2 of the proposal submitted by Czechoslovakia (see para. 158 above) tended to emphasize negotiation and to raise it above the other means of pacific settlement, it was used as a point of departure by representatives who spoke on this question.

196. Some representatives stressed that negotiation was the most useful and important means of peaceful settlement, and that the Charter, by listing it first in Article 33, paragraph 1, recognized its primacy. They therefore supported the above-mentioned provision of the proposal submitted by Czechoslovakia. At the same time, they said that they had no intention of minimizing, disregarding or denying the role played by the other means of settlement or the freedom of the parties to choose the means they preferred, but wished merely to put on record the undeniable fact that in their international affairs, including legal disputes, States had recourse to negotiation more frequently than to any other means of settlement. That was due to the intrinsic nature of negotiation, a direct, prompt and flexible means of settling all kinds of disputes. In most cases, negotiation would be most conducive to positive and lasting results. It was stated that the paramount role played by negotiation had been consecrated in many and diverse international instruments and that the history of international relations abounded in examples of settlement arrived at through negotiations.

197. The above-mentioned representatives were unable to accept the interpretation that it was by chance that the authors of the Charter had given negotiation first place in Article 33, but thought it must be assumed that in so doing they had wished to mark their approval of the undeniable tendency of States to resort in the first place to negotiation in seeking to settle international disputes. The sponsor of the proposal concerned emphasized in part II of the proposal that Article 33 should not be considered in isolation, but rather as a prologue to Chapter VI of the Charter; the interpretation must therefore be that the Charter gave first place to negotiation as a means of settlement. He believed that that was perfectly proper, negotiation being a method which could not be unilaterally renounced. The sponsor of the above-mentioned proposal added that, since it nevertheless was the parties to a given dispute who were better placed than anyone else to judge whether it should be settled by a means other than negotiation, the list of those means was preceded, in the proposed text, by the phrase "and shall use, whenever appropriate and by common agreement".

198. In addition, those who believed that the role played by negotiation in the peaceful settlement of disputes deserved to be stressed pointed out that, since in their view the choice of a means of peaceful settlement could not be imposed upon States nor decided on beforehand, in order for the parties to a given dispute freely to select by common agreement the means of settlement they wished to use, having regard to the nature of the dispute and the relevant circumstances, they would necessarily have to resort to negotiation. One of those representatives considered it self-evident that the parties to a dispute must first seek a settlement by negotiation before having recourse to judicial settlement, a principle which seemed to be borne out by most bilateral treaties concerning the peaceful settlement of international disputes and which had recently been included in the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly at its twentieth session (resolution 2106 (XX) of 21 December 1965).

199. Another of those representatives stated that if negotiation was really to be a means of peaceful settlement, it must conform, like any other means of settlement, to the principles of contemporary international law, especially the equality of rights of the parties, strict respect for their sovereignty and their mutual interests, and non-intervention in internal affairs. Lastly, one representative rejected the argument that negotiation favoured the stronger party since, under international law, an agreement concluded by coercion or fraud would not be legally binding.

200. Other representatives recognized the importance of negotiation as one of the means of settlement but thought that it was neither appropriate nor desirable to give it primacy by ascribing to it special importance as compared with the other means. They were of the opinion that the Charter did not give priority to negotiation and that there was no legal basis, nor would it be desirable to recommend the inclusion of a provision to that effect in the formulation of the principle of peaceful settlement as a statement *de lege ferenda*. It was pointed out that the very concept of "negotiation" was ambiguous as it could have more than one meaning. It might refer simply to negotiations designed to define or determine the issues on which the parties were divided. It could also mean that the parties should settle their disputes by making mutual concessions. But when a State considered that it was faced with an unjustified demand presented by another State, the method of negotiation, in so far as it could be said to involve mutual concessions, might in fact result in injustice. While major international questions, such as disarmament, could be resolved only by a patient process of negotiation, other problems did not necessarily yield to that kind of treatment, particularly when a dispute arose between two States differing in power and size. In that case, the smaller State might be put at a disadvantage by the use of that procedure. Thus, in given circumstances, negotiation could sometimes be the most difficult means for the parties to use, and hence the weaker party should not be prevented from resorting to means entailing the participation of third parties.

201. Where the parties to a dispute entered into negotiations a settlement might ensue, but in practice that did not always happen. If the two parties to a dispute were obviously equally powerful the negotiations might prove unfruitful and the dispute might remain unsettled for a long time, which might create constant friction and sometimes even lead to a breach of the peace. The intervention of third Powers or of international bodies was therefore becoming increasingly important and it was a method which was frequently used, particularly when negotiations had failed. Moreover, there was nothing to prevent the use of both procedures simultaneously. In addition, it should be possible to have recourse to a third party or to an international body at any stage of the settlement of the dispute. All those elements of ambiguity implicit in the concept of negotiation would become more marked if special importance was given to that particular form of peaceful settlement in formulating the principle of the peaceful settlement of disputes. It was also stated that the growing importance of other means of settlement, such as mediation, good offices and arbitration, was becoming increasingly apparent. Consequently, the representatives in question considered that the lessons to be learnt from the recent practice of States showed that: (*a*) a certain latitude should be allowed in the choice of means of settlement; (*b*) negotiation was not always the most effective means; (*c*) certain types of disputes particularly lent themselves to an arbitral or judicial solution.

202. With regard to the proposal of Czechoslovakia, a number of representatives observed that the changes made in the text submitted by that same country to the 1964 Special Committee (see A/5746, para. 129) at Mexico City were a considerable improvement but that even now they were not fully consistent with the provisions of the Charter. The changes which those representatives regarded as improvements were the following: (*a*) the transposition of the phrase "having regard to the circumstances and the nature of the dispute" to the beginning of the paragraph, since it would thus apply both to negotiation and to the other means of settlement; (*b*) the replacement of the words "shall enter first into direct negotiation" in the Mexico City text by the words "shall first seek its just settlement by negotiation"; and (*c*) the replacement of the words "may also use by common agreement" by the phrase "shall use, whenever appropriate and by common agreement". The deletion of the word "direct" which qualified "negotiation" appeared to be an improvement, since in the view of some of those representatives it was sometimes difficult to enter into "direct negotiations" as a first step, there were negotiations which were not direct, such as those in which recourse was had to the intervention of third parties, and Article 33 of the Charter mentioned "negotiation" without any qualification. It was also noted with approval that the word "just" had been inserted to describe the settlement to be achieved through negotiation. In conclusion, it was noted that, while the text submitted by Czechoslovakia at the Mexico City session used the word "shall" in connexion only with negotiation and used the word "may" in connexion with the use of other means of settlement, the new text seemed to prescribe two duties: first, the duty to seek a settlement by negotiation, and secondly, the duty to use, by common agreement, other means. Nevertheless, the representatives in question felt that they could not support the new text because it still implied a primary and prior legal obligation to negotiate, while the choice of the other means of settlement was made dependent on "common agreement" thereby depriving the parties of an option which the Charter left open and differentiating between mandatory and optional means of settlement which could lead to many difficulties. Thus, for example, one representative pointed out that, if a State refused to enter into bilateral negotiations with another State and preferred to use another means of settlement, it might be alleged that it had violated its international obligations.

203. There was no doubt, according to some of those representatives, that the settlement of a dispute must be preceded by some sort of preliminary negotiation to determine the means to be used, but the proposal of Czechoslovakia would make negotiation the principal means for the actual settlement of the dispute, for which there was no justification whatever in the light of Article 33, paragraph 1, of the Charter. The two types of negotiation were very different. In the first case negotiation was mandatory, whereas in the second there was nothing which bound parties to make use of that means of settlement first. Neither negotiation as a means of settlement nor any other means should be imposed on the parties.

204. A third group of representatives considered that, as the parties were free to choose the means of settlement, having regard to the nature and the circumstances of the dispute, it was inadvisable to single out negotiation from the other means even though in practice it might be the means most often used by States. That would not be realistic and it might lead to disregard for the sovereignty of the parties. One of those representatives said that it was not to be inferred from the words "first of all" in Article 33, paragraph 1, that negotiation was in all cases the most appropriate means and the means which should always be used first. Those words simply meant that the Charter prescribed the duty of the parties to seek a solution first of all by any of the means enumerated in that Article before having recourse to the Security Council. Another pointed out that a formulation which gave preference to negotiation might give rise to abuses, since a party which did not wish to reach a settlement could deliberately opt for negotiation knowing that the subject of the dispute did not lend itself to negotiation. Finally, it was emphasized that negotiation should be entered into in good faith, without pressure of any kind, and that in no case could the legitimate interests of a third State or people be placed in jeopardy since those interests must not be affected by the settlement negotiated.

205. The representatives who were opposed to giving any preference to negotiation in the enumeration of the means of peaceful settlement, or considered it inappropriate to do so, were in favour of basing that enumeration on the text of Article 33 of the Charter. For that reason, they advocated basing the wording of that provision of the principle of the peaceful settlement of disputes on paragraph 2 (*b*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above) or on paragraph 2 of the proposal of Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 161 above).

206. Lastly, one representative felt that, as far as that question was concerned, the proposal of Czechoslovakia (see para. 158 above) reflected the practice of States and general international law more exactly than the other texts submitted to the Special Committee, which did not recognize the pre-eminence of negotiation and its place as *primus inter pares* among the means of peaceful settlement of disputes. Without wishing to minimize the role of the other means of settlement, he favoured the adoption of a text which would emphasize the important role of negotiation in terms similar to those of the proposal submitted to the Special Committee at its 1964 session at Mexico City by Ghana, India and Yugoslavia (A/AC.119/L.19) (see also A/5746, para. 129).

(ii) *Inquiry, mediation and conciliation*

207. In paragraph 2 of the proposals submitted by Czechoslovakia; in sub-paragraph 2 (*b*) of the proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands; and in paragraph 2 of the proposal submitted by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see paras. 128, 159 and 161 above), inquiry, mediation and conciliation were mentioned among the means of peaceful settlement. During the discussion, mediation and conciliation were mentioned as being especially appropriate for the settlement of non-legal disputes. However, one representative pointed out that non-judicial means of settlement, such as inquiry, mediation and conciliation, might fail if the parties involved maintained their original positions and refused to compromise. Even if the parties were disposed

to do so, many disputes remained unsettled because of the inherent difficulties of these methods.

(iii) *Arbitration*

208. Paragraph 2 of the proposal submitted by Czechoslovakia; sub-paragraph 2 (*b*) of the joint proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands; and paragraph 2 in the joint proposal submitted by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see paras. 158, 159 and 161 above) all included arbitration among the means of peaceful settlement of disputes. Some representatives stressed the suitability of this means for the solution of legal disputes.

209. Paragraph 3 (*b*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above), also mentioned recourse to arbitral tribunals in connexion with disputes relating to the interpretation or application of conventions (see para. 242 below).

(iv) *Judicial settlement*

210. This means of settlement was included among those listed in paragraph 2 of the proposal of Czechoslovakia (see para. 158 above), in sub-paragraph 2 (*b*) of the joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above) and in paragraph 2 of the joint proposal submitted by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 161 above).

211. During the discussion a number of representatives stressed the advantages of this means, especially for the settlement of legal disputes. The debate centred on the question whether, in the formulation of the principle of the peaceful settlement of disputes, mention should or should not be made of the role of the International Court of Justice and whether it was advisable to recommend that States should accept the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of its Statute.

212. Some representatives said that no formulation of the principle of the peaceful settlement of disputes would be complete unless the International Court of Justice was mentioned. The Court was a principal organ of the United Nations and all Member States were *ipso facto* parties to its Statute; the provision appearing in Article 36, paragraph 3, of the Charter should also be taken into account. Those representatives felt that, if the aim was to encourage the judicial settlement of disputes, it was necessary to strengthen the role of the International Court of Justice. In that connexion, the attention of the members of the Special Committee was drawn to General Assembly resolution 171 (II) of 14 November 1947 which recommends "as a general rule that States should submit their legal disputes to the International Court of Justice". Those representatives expressed satisfaction that certain new States, such as Kenya and Nigeria, had accepted the compulsory jurisdiction; they expressed the hope that their example would be followed and that those States which had accepted the compulsory jurisdiction of the Court with reservations would withdraw those reservations at least in part. On that point, the representative of Japan mentioned the proposal (A/AC.119/L.18 and Corr.1) (see also A/5746, para. 136) made by his country during the 1964 Special Committee's session in Mexico City. The representative of Nigeria recalled that his country had accepted the compulsory jurisdiction of the International Court of Justice on the sole condition of reciprocity.

213. Some of those representatives pointed out that it was imperative to study seriously the criticisms and reservations made by certain new States with respect to the International Court of Justice and its function in the peaceful settlement of disputes. Those representatives stated that the membership of the Court and the fact that international law was still insufficiently developed gave rise to certain misgivings. Nevertheless, one representative observed that the codification and development of international law was inevitably a slow process and that, moreover, the interpretation of codifying conventions could create difficulties. He added that it should not be forgotten that the Court itself played an important part in the process of developing and establishing norms of international law. In his opinion, the strengthening of the Court's role would make it easier for legal disputes between States to be resolved in conformity with legal norms.

214. Those representatives who sought to include, in the formulation of the principle of the peaceful settlement of disputes, a reference to the role played by the Court supported the provision contained in paragraph 3 (*a*) of the proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above) which stipulated that as a general rule legal disputes "should" be referred to the International Court of Justice and that States should endeavour to accept the jusrisdiction of the International Court of Justice pursuant to Article 36, paragraph 2, of the Statute of the Court. Similarly, paragraph 3 (*b*) of the same proposal stated that general multilateral agreements concluded under the auspices of the United Nations should provide that disputes relating to the interpretation or application of the agreements which the parties had been unable to settle by other peaceful means, might be referred to the International Court of Justice or to an arbitral tribunal on the application of any party (see paragraph 242 below). In paragraph 3 (*c*) of the proposal, the sponsors also recommended that the efforts undertaken in the field of codification and progressive development of international law should be continued with a view to strengthening the legal basis of the judicial settlement of disputes (see paragraphs 246 and 247 below). The sponsors explained that the substance of the proposal was derived directly from the provisions of the Charter and the Statute of the Court, in particular Article 36 of the latter. They added that they were not trying to impose any line of conduct on States but only to make the principle of the peaceful settlement of disputes more effective. In their opinion, the principle would be greatly strengthened if more States had recourse to the Court. For that reason, they explained, they had confined themselves to such terms as "should" instead of "shall", had omitted the word "compulsory" before the word "jurisdiction", had used the expression "should endeavour to accept the jurisdiction", and had made no reference to the problem of the reservations which sometimes accompanied acceptance of the compulsory jurisdiction of the Court. Finally, in order to convince the States which had expressed doubts of the desirability of mentioning the role of the Court, they had included in their proposal the provision relating to the codification of international

law which appeared in paragraph 3 (*c*). One of the sponsors pointed out that it was desirable to develop and extend the judicial settlement of disputes for, while other United Nations organs, such as the Security Council, played a leading role in the non-judicial settlement of disputes, it should not be forgotten that such organs often remained virtually paralysed because of serious conflicts of interest between the parties or through lack of agreement among the permanent members of the Council.

215. By contrast, other representatives opposed or did not consider appropriate or useful any specific reference to the International Court of Justice in the enunciation of the principle or any recommendation for the general acceptance of its jurisdiction and in particular of its compulsory jurisdiction. Those representatives recognized that the Court constituted one of the principal organs of the United Nations and played an important role in the development and application of international law. Nevertheless, they stressed that, although it had been set up for the peaceful settlement of international disputes of a purely legal character, the Court suffered from defects which must be remedied if it was to perform fully the function for which it had been established. In that respect, it was pointed out that the legal and political realities of international life must not be lost sight of. If States rarely had recourse to the International Court of Justice and preferred other means of peaceful settlement, it was said they did so because they had strong reasons. Moreover, they stated, in the formulation of the principle, priority should not be given to judicial settlement over the other means of peaceful settlement. In that connexion, it was pointed out that the Special Committee should avoid formulating provisions of an institutional character and should rather concentrate on enumerating the basic norms underlying the principle. The Charter did not debar Member States from setting up, by means of treaties, permanent tribunals distinct from the Court and from submitting their disputes to them. Article 95 of the Charter expressly recognized that right. Consequently those representatives, while admitting that the reference in Article 33 of the Charter to "judicial settlement" meant a settlement by the International Court of Justice, felt unable to support paragraph 3 (*a*) of the five-Power proposal (see para. 159 above).

216. According to one representative a revision of the Statute of the Court would help to eliminate those factors which now reduced the efficiency of that organ as a means of settling international disputes. Another representative stressed that the proposal in question, while perfectly acceptable to his delegation, raised the difficult problem of drawing a clear line of demarcation between legal and political disputes. In his opinion, the term "legal disputes" should be regarded as applying only to those which were purely legal in character.

217. With regard to the usefulness or advisability of adopting general declarations urging or recommending States to accept the compulsory jurisdiction of the International Court of Justice, a number of representatives set forth the reasons which, in their opinion, explained the reluctance of many States to accept such jurisdiction. The main arguments put forward by one or other of those representatives were the following: recent international practice did not justify attempts to extend the compulsory jurisdiction of the Court; the need to take into account the freedom of the parties to settle each specific dispute by the means which they considered most appropriate; the need for more equitable representation in the membership of the Court; the still vague and fragmentary state of international law.

218. Some representatives recalled that the San Francisco Conference had rejected the inclusion in the Charter of the compulsory jurisdiction of the International Court of Justice; they maintained that its widespread acceptance seemed unlikely at present. That was confirmed by the Geneva Conference of 1958 on the law of the sea and by the Vienna Conferences of 1961 and 1963 on diplomatic relations and consular relations respectively, at which the principle of the compulsory jurisdiction of the Court had not been accepted. It was also stated that, although the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (General Assembly resolution 1763 (XVII) of 7 November 1962) provided that disputes could be referred to the International Court of Justice, it specified, in addition, that that could only be done at the request of all the parties to the dispute, if they did not agree to another means of settlement. Similarly, it was observed, the negative attitude of most States towards the draft articles on arbitral procedure,[35] prepared by the International Law Commission, was due specifically to the inclusion in that draft of the concept of compulsory jurisdiction. Finally, it was pointed out that many States which had accepted the compulsory jurisdiction of the Court had attached reservations which deprived their acceptance of any real value.

219. With regard to the membership of the International Court of Justice, it was affirmed that, if it was desired that States should be less reluctant to have recourse to the Court and to accept its compulsory jurisdiction, it was essential to ensure a more equitable representation of the main forms of civilization and of the principal legal and social systems of the present-day world. Several representatives likewise insisted, for the same reasons, on the need to accelerate the progressive development of international law and its codification under Article 13, paragraph 1 (*a*), of the Charter. States feared that they would be subject to customary rules of international law which they did not recognize and which they had played no part in framing. Others added that the codification and progressive development of international law would facilitate the elimination of out-dated and unjust treaties by which the colonial Powers were guaranteed advantageous positions and economic, political and military privileges and would thus strengthen the confidence of the new States in international law and in the legal settlement of disputes.

220. Finally, one representative considered that, even if it was not possible in the present circumstances to extend the compulsory jurisdiction of the International Court of Justice, the importance of its role should at least be indicated and should not be disregarded in the formulation of the principle of the peaceful settlement of disputes. The same representative also attached considerable importance to the advisory functions of the Court, particularly in areas where it was difficult to separate the juridical elements of a problem from the political elements.

(v) *Resort to regional agencies or arrangements*

221. Resort to regional agencies or arrangements was among the means of settlement listed in paragraph

[35] *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9.*

2 of the proposal submitted by Czechoslovakia (see para. 158 above), in sub-paragraph 2 (*b*) of the joint proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above) and in paragraph 2 of the joint proposal submitted by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 161 above). On the other hand, paragraph 4 of the proposal of Chile (see para. 160 above) provided that the right to have recourse to a regional agency did not preclude or diminish the right of any State to have recourse direct to the United Nations in defence of its rights.

222. Some representatives referred in their statements to the merits of the method in question for the settlement of disputes and favoured the development of all the possibilities offered thereby. In that connexion, certain representatives pointed out that regional organizations were often better qualified than world organizations to settle certain types of disputes arising within their own region.

223. Other representatives emphasized that recourse to regional agencies or arrangements should be in conformity with the United Nations Charter and subject to observance of the provisions of Articles 52 to 54 of the Charter. Such emphasis seemed necessary in view of the attitude adopted by certain countries towards the interpretation of Chapter VIII of the Charter. That viewpoint was reflected in the proposal of Czechoslovakia in which the words "in strict accord with the Charter of the United Nations" were inserted in the portion dealing with resort to regional agencies. That insertion did not appear necessary to one representative, who felt, moreover, that it created a certain ambiguity since it could be interpreted as applying not only to regional agencies or arrangements but also to the means of settlement which preceded them in the list.

224. The sponsor of the proposal mentioned above (for text see para. 160) pointed out that paragraph 4 of his proposal was not intended to disavow or derogate from Article 52, paragraph 3, of the Charter, but rather to make it clear that the right in question could not prevent any party, should it deem it necessary, from having direct recourse to the Security Council or the General Assembly of the United Nations. The right to have such recourse, according to that representative, followed clearly from Article 52, paragraph 4, of the Charter, in conjunction with Articles 34 and 35. He added, further, that no regional agreement could deny such a right and lay down an obligation to settle disputes exclusively at the regional level, since such an obligation would be invalid under Article 103.

225. Some representatives expressly supported the proposal just mentioned, or parts of it, while pointing out that some regional situations could endanger world peace, and that consequently no State should be precluded from having direct recourse to the United Nations. Nevertheless, one representative considered that there was no conflict—as the proposal seemed to imply—between the provisions of the Charter regarding peaceful settlement and the provisions describing the functions and powers of the Security Council and the right of Member States to have recourse to it. The fact that a particular procedure for peaceful settlement had been initiated could not alter the legal right of a Member State to have recourse to the Council in defence of its rights; the same was true, however, for all methods of peaceful settlement and there was no reason why only one such method should be singled out for mention. Moreover, the selection of that particular method, namely, recourse to regional agencies, seemed to suggest a derogation from Article 52, paragraph 2, of the Charter, which enjoined Members to make every effort to achieve pacific settlement of local disputes through regional arrangements or regional agencies before referring them to the Security Council.

(vi) *Resort to the competent organs of the United Nations*

226. Paragraph 3 (*d*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above), with a view to ensuring that the principle of peaceful settlement would be applied in a more effective manner, provided that the competent organs of the United Nations "should avail themselves more fully of the powers and functions conferred upon them by the Charter in the field of peaceful settlement, with a view to ensuring that all disputes are settled by peaceful means in such a manner that not only international peace and security but also justice is preserved".

227. The sponsors of the proposal explained that they had sought to take into account the general desire to develop the exercise of the powers and functions relating to the peaceful settlement of disputes conferred upon the competent organs of the United Nations by the Charter. The States Members of the United Nations should avail themselves more fully of the means of settlement thus offered to them, not only in order to avoid resort to force but also to ensure the settlement of the dispute itself. Consequently, that proposal indicated that, while the settlement should favour the maintenance of international peace and security, it should also serve the interest of "justice".

228. Some representatives considered that resort to international agencies would best ensure the improvement of procedures for the peaceful settlement of disputes. Some expressly supported the proposal (A/AC.125/L.25). Others said that the formulation of the principle would be more complete if it contained a reference to resort to the organs of the United Nations. Lastly, some representatives declared that the development of the powers vested in the General Assembly by the Charter offered particularly important prospects in regard to peaceful settlement.

229. Commenting on the five-Power proposal (see para. 159 above) one representative welcomed the stress laid on the preservation of "justice" in that proposal, but considered that a reference to more use of the powers and functions of the competent organs of the United Nations should be included in a preambular paragraph which would cover all the principles in the future declaration. One of the sponsors was opposed to that idea and stated that the reference, which reflected a proposal (A/AC.119/L.22) submitted by Canada to the 1964 Special Committee (see also A/5746, para. 135) formed an essential part of the proposal.

(vii) *Good offices*

230. Some representatives considered that in the list of peaceful means of settlement to be included in the formulation of the principle, "good offices" should be expressly added to the means specified in Article 33 of the Charter. In that connexion, it was said that the usefulness of "good offices" had been demonstrated

anew at Tashkent in 1966. That viewpoint was adopted in the joint proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above): in paragraph 2 (*b*) "good offices" was listed among the peaceful means of settlement.

231. Other representatives did not consider it necessary to add a reference to "good offices" to the list of peaceful means of settlement. There were three main arguments advanced in favour of that position: (*a*) "good offices" was not a means of settlement in the strict sense of the term but merely a prelude to negotiation or to the application of any other peaceful means of settlement; (*b*) "good offices" was, in any event, covered by the expression "other peaceful means" which should come at the end of the proposed list of means of settlement, as it did in Article 33 of the Charter; (*c*) although it was possible, in theory, to distinguish between "mediation" and "good offices", it was difficult to do so in practice. One representative pointed out that in section II of the proposal (A/AC.125/L.16) submitted by his country, "mediation" should be interpreted as including "good offices".

4. *Other questions relating to the principle of peaceful settlement and its application*

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

232. This question was dealt with in paragraph 2 (*d*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above).

233. In order to remove uncertainties which sometimes existed in international relations, several representatives supported the inclusion in the formulation of the principle of a provision laying down that resort to means of peaceful settlement did not derogate from the sovereignty of States. It seemed to them that a provision of that nature would be useful and in conformity with the Charter and international law. The submission of a dispute to one or other of the procedures for peaceful settlement, according to these representatives, constituted a supreme manifestation of the sovereignty of the State since it was an act of its own free will. It was also observed by one representative that, in accepting the obligations imposed by the Charter, Member States had accepted its provisions even if such acceptance derogated slightly from their sovereignty. The sponsors of the proposal in question said that, when a third country proposed a particular mode of settlement to the parties to a dispute, that should not be regarded as impairing the sovereignty of the States concerned. One representative said, however, that he could not support the above proposal (for text see para. 159 above) since no express mention was made in the text of the fact that recourse to, and acceptance of, a settlement procedure must take place on the basis of mutual agreement between the parties.

(b) *The duty to continue to seek a settlement of a dispute*

234. Paragraph 2 (*c*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above) contained a provision to the effect that the failure of one means of settlement should not cause the parties to abandon their efforts to solve a dispute peacefully.

235. Some representatives supported this proposal. One representative felt that the provision as worded in the proposal was less comprehensive than Articles 25 and 37 of the Charter and suggested that the provision should be made more specific by bringing it in line with the Articles in question. In that regard, it was pointed out by the sponsors that their intention had been to cover the question of the reference of disputes to the Security Council in paragraph 3 (*d*) of their proposal and not in the provision concerning the duty to continue to seek a settlement. However, they recognized that paragraph 3 (*d*) was addressed only to the organs of the United Nations, and said that any suggestion which might improve the text in that regard would be welcomed. Another representative said that the idea behind the five-Power proposal was also contained in the proposal submitted by Czechoslovakia (see para. 158 above).

(c) *The duty to refrain from aggravating the situation*

236. Two of the proposals submitted contained provisions on the duty to refrain from aggravating the situation, namely paragraph 2 of the proposal of Chile (see para. 160 above) and paragraph 4 of the proposal of Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 161 above). Some representatives expressly supported the purposes of the relevant provisions of these proposals, and others said that a formula should be found which would combine both proposals.

237. The Chilean sponsor said that his intention was to ensure that while a means of peaceful settlement was being used the parties should not take action which might aggravate the dispute. That duty on the part of States would involve, according to this representative, two obligations: first, that of refraining from changing the *de facto* situation which had given rise to the dispute; secondly, that of taking preventive measures to avoid or lessen tensions. At the same time, he explained that the provision only related to the pacific settlement of international disputes, dealt with in Chapter VI of the Charter, and not to cases of a threat to the peace, breach of the peace, or act of aggression covered by Chapter VII of the Charter. In the latter case the situation would fall under the principle of the prohibition of the threat or use of force, so that his proposal in no way derogated from the powers of the Security Council, under Article 40 of the Charter, to take measures to prevent an aggravation of a situation of that nature. One representative, however, thought that the proposal could have unacceptable consequences if it was adopted as a statement of law. It might imply that the mere initiation of the procedure for peaceful settlement would oblige the aggrieved party immediately to acquiesce in the *status quo*—which in his view would not be in accord with the Charter. As written it would appear to prohibit changes which would diminish the dispute, as well as those which would enlarge it.

238. The sponsors of the proposal which appeared in paragraph 161 above also indicated that its purpose was to prevent any aggravation of a dispute which had arisen, stressing not only the duty of the parties to the dispute but also, and especially, the duty of third parties in that regard. These representatives said that external influences by third parties which were prejudicial to the solution of disputes must be condemned, since they could lead to the generalization of conflicts which were originally limited in character.

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

239. None of the proposals submitted to the Special

Committee contained any explicit reference to the duty to settle territorial and frontier disputes by peaceful means. In the course of the debate, however, certain representatives referred to the serious nature of this class of disputes and their dangers for international peace and security, stressing the importance for all States, and particularly for the new States, that such disputes should be resolved peacefully. One representative referred in that connexion to section VI of the Declaration adopted by the Cairo Conference in 1964 and urged that, in the formulation of the principle of the peaceful settlement of disputes, an express reference should be made to the duty of resolving solely by peaceful means disputes which arose from territorial and frontier questions, such a reference being based on paragraph 5 of the proposal submitted by Ghana, India, and Yugoslavia (see also para. 137, A/5746) at the session of the 1964 Special Committee.

(e) *Disputes relating to the application and interpretation of conventions*

240. Paragraph 3 (*b*) of the proposal of Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above) and paragraph 3 of the proposal of Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 161 above) dealt with the question of the inclusion in international conventions of clauses relating to the settlement of disputes.

241. Several representatives supported the basic idea of those proposals for including in the formulation of the principle of peaceful settlement of disputes a provision recommending that States should include in international agreements clauses concerning the settlement of disputes which arose between the parties with regard to such agreements. Some of these representatives expressed their preference for the wording in the five-Power proposal (see para. 159 above) while others preferred that used in the ten-Power proposal (see para. 161 above).

242. The sponsors of proposal A/AC.125/L.25 considered that, since the contents of general multilateral agreements resulted from efforts in which the entire international community participated, a State, if it acceded to those agreements, should not have the power to decide unilaterally on their interpretation or application; consequently, such agreements should include provisions on means of settlement such as arbitration, without prejudice to the provisions of Article 95 of the Charter, or recourse to the International Court of Justice. It was pointed out that a number of agreements already conferred jurisdiction on the International Court of Justice in respect of the interpretation and application of their terms, and it was added that this type of compulsory jurisdiction in a particular agreed field, although more restricted in range than the optional clause in the Statute of the Court, would help to widen the Court's compulsory jurisdiction and had the merit of being more acceptable to States. Moreover, the fact that one party could bring the matter before the Court and that the Court could render a binding judgement might, in the view of the sponsors, promote the negotiated settlement of a particular dispute.

243. The five-Power proposal, and in particular the reference to arbitral tribunals and to the jurisdiction of the International Court of Justice, was considered appropriate by some representatives, but others were opposed to the adoption in any form of a general statement urging States to accept the obligation to submit to the International Court of Justice disputes relating to the interpretation or application of treaties and conventions.

244. The sponsors of the ten-Power proposal considered that its text, which appeared in paragraph 161 above, was simply a reflection of international practice. It was frequent in international life for the contracting parties to mention, in the final clauses of treaties, the means by which they would settle any dispute which might arise between them in relation to the treaty in question. As that practice had brought positive results it would be good to encourage it and make it a rule. This did not imply any priority for one means of settlement over another, or the imposition of a particular means of settlement on the parties against their will, since the parties themselves, by mutual agreement, would lay down in the treaty the method or methods which they considered most appropriate for the settlement of possible future disputes. It was also pointed out that this type of clause helped considerably to promote the settlement of disputes since at the time of concluding a treaty the parties were more inclined to give their consent to a method of settlement than after a dispute had arisen. This approach received the support of a number of other representatives.

245. The five-Power proposal referred to "general multilateral agreements concluded under the auspices of the United Nations" whereas the ten-Power proposal was worded more generally, referring to "bilateral and multilateral agreements". One representative thought that the best solution would be to combine, in some manner, the provisions of the two proposals on this point.

(f) *Codification and progressive development of international law*

246. Some representatives stressed that the codification and progressive development of international law were of great importance as a means of obtaining general and unqualified acceptance of arbitration and the judicial settlement of disputes, and that, consequently, the work of codification undertaken within the framework of the United Nations and a number of other international organizations should be encouraged. That view was expressed in sub-paragraph 3 (*c*) of the proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands (see para. 159 above), which, on the basis of a proposal submitted by Ghana, India and Yugoslavia to the 1964 Special Committee (see also A/5746, para. 137) urged States Members of the United Nations and United Nations groups to continue their efforts in the field of codification and progressive development of international law.

247. Certain representatives also emphasized that the codification and progressive development of international law would help to dispel the misgivings of States, particularly the new developing countries, about the compulsory jurisdiction of the International Court of Justice. By participating in the formulation of contemporary international law through the process of codification and progressive development, the new States would be able to play a part in bridging the gap which sometimes existed between the present-day international legal order—which was the product of an era when their interests had not been considered—and justice. By way of example, it was mentioned that with regard to responsibility of States and to foreign invest-

ments many of the rules of traditional international law conflicted with the interests of the new economically weak States.

C. Decision of the Special Committee

1. *Recommendations of the Drafting Committee*

248. The Drafting Committee submitted the following recommendations (A/AC.125/6) to the Special Committee concerning the peaceful settlement of disputes:

I. Text

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

"2. States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute;

"3. The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them;

"4. States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations;

"5. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by the parties shall not be regarded as incompatible with sovereign equality;

"6. Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes."

II. Proposals and amendments submitted to the Special Committee on which the Drafting Committee reached no consensus

A. *Means of peaceful settlement of international disputes*

Czechoslovakia (A/AC.125/L.16, part II)

"2. Having regard to the circumstances and the nature of the dispute, the parties to any international dispute shall first seek its just settlement by negotiation...".

B. *Reference of legal disputes to the International Court of Justice*

Dahomey, Italy, Japan, Madagascar and the Netherlands (A/AC.125/L.25 and Add.1)

"3. In order to ensure the more effective application of the foregoing principle:

"(*a*) Legal disputes should as a general rule be referred by the parties to the International Court of Justice, and in particular States should endeavour to accept the jurisdiction of the International Court of Justice pursuant to Article 36, paragraph 2, of the Statute of the Court".

C. *Right of any State to have recourse direct to the United Nations*

Chile (A/AC.125/L.26)

"4. That, by virtue of Articles 52, paragraph 4, and 103 of the Charter of the United Nations, the right to have recourse to a regional agency in pursuit of a pacific settlement of a dispute does not preclude or diminish the right of any State to have recourse direct to the United Nations in defence of its rights".

D. *Exercise by the competent organs of the United Nations of the powers and functions conferred upon them by the Charter in the field of peaceful settlement*

Dahomey, Italy, Japan, Madagascar and the Netherlands (A/AC.125/L.25 and Add.1)

"3. In order to ensure the more effective application of the foregoing principle:

"...

"(*d*) The competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter in the field of peaceful settlement, with a view to ensuring that all disputes are settled by peaceful means in such a manner that not only international peace and security but also justice is preserved".

E. *Disputes relating to the application and interpretation of conventions*

Dahomey, Italy, Japan, Madagascar and the Netherlands (A/AC.125/L.25 and Add.1)

"3. In order to ensure the more effective application of the foregoing principle:

"...

"(*b*) General multilateral agreements, concluded under the auspices of the United Nations, should provide that disputes relating to the interpretation or application of the agreement, and which the parties have not been able to settle by negotiation, or any other peaceful means, may be referred on the application of any party to the International Court of Justice or to an arbitral tribunal, the members of which are appointed by the parties, or, failing such appointment, by an appropriate organ of the United Nations".

Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, United Arab Republic and Yugoslavia (A/AC.125/L.27)

"3. States should, as far as possible, include in the bilateral and multilateral agreements to which they become parties, provisions concerning the particular peaceful means by which they desire to settle their differences".

F. *Codification and progressive development of international law*

Dahomey, Italy, Japan, Madagascar and the Netherlands (A/AC.125/L.25 and Add.1)

"3. In order to ensure the more effective application of the foregoing principle:

"...

"(*c*) Members of the United Nations and United Nations organs should continue their efforts in the field of codification and progressive development of international law with a view to strengthening the legal basis of the judicial settlement of disputes".

249. The Chairman of the Drafting Committee introduced the above recommendations to the Special Committee at its 49th meeting on 21 April 1966. He said that the principle of peaceful settlement of disputes had been fully examined in the Drafting Committee's informal group deliberations. There, patience and persistence had succeeded despite the shortage of time. A compromise text (see para. 248 above) had emerged. He wished to make a few explanatory remarks concerning some paragraphs of that document. Paragraph 5 constituted an amalgam of paragraph 3 of the proposal by Czechoslovakia and paragraph 2 (*d*) of the five-Power proposal (see para. 248 above). The phrase "Recourse to, or acceptance of, a settlement procedure freely agreed to by the parties" was intended to cover not only recourse to or acceptance of a settlement procedure by the parties to an existing dispute, but also the acceptance in advance by States of an obligation to submit future disputes or a particular category of future disputes to which they might become parties to a specific settlement procedure. In paragraph 6, the phrase "provisions of the Charter" was intended to refer to the United Nations Charter as a whole. That made the meaning of the words "in particular" clearer.

2. *Discussion in the Special Committee on the recommendations of the Drafting Committee*

250. The recommendations of the Drafting Committee on the peaceful settlement of disputes were discussed by the Special Committee at its 49th meeting. In the course of that discussion a suggested change in paragraph 1 of the Drafting Committee's text was put forward, and later withdrawn. A number of representatives also explained the basis on which they were able to support the text on points of consensus recommended by the Drafting Committee. The discussion on these two matters is separately set out below.

(a) *Suggested addition to paragraph 1 of the text recommended by the Drafting Committee*

251. The representative of Algeria suggested that the word "all" should be inserted after the word "settle" in paragraph 1 of the text recommended by the Drafting Committee. That insertion would strengthen that paragraph by making it clear that every State should settle all, and not merely some of its international disputes by peaceful means. However, if his suggestion was likely to give rise to prolonged debate, he would withdraw it, as he did not wish to delay the work of the Special Committee.

252. The representative of India supported the suggestion of the representative of Algeria, since it would clarify the text. He thought it was the Drafting Committee's intention that all international disputes should be settled by peaceful means.

253. The representative of the United Kingdom said that he had some difficulty in accepting the suggestion made by the representative of Algeria; there were some international disputes which had been "frozen" for a certain period of time, as, for example, by the Antarctic Treaty of 1 December 1959.[36] He therefore appealed to the representative of Algeria not to press his suggestions at such a late stage.

254. The representative of the United States associated himself with the remarks of the representative of the United Kingdom concerning the suggestion made by the representative of Algeria. In that connexion, he pointed out that in the Drafting Committee some delegations had expressed the fear that the introduction of new language into provisions which were generally a repetition of Charter provisions might imply that they differed substantially from the terms of the Charter. The suggestion might therefore raise more problems than it would solve.

255. The representative of Algeria said that he would not press his suggestion. Nevertheless, it had been prompted by a desire to make the recommended text clear and more comprehensive. The representative of the United Kingdom had referred to some disputes which were "frozen"; in his delegation's view, however, inclusion of the word "all" in paragraph 1 would not imply that States were bound to solve their disputes by peaceful means immediately, but merely that they should use means of peaceful settlement to solve all their disputes. He wished to make it clear that his delegation interpreted paragraph 1 of the recommended text to mean that every State should settle all its international disputes, without exception, by peaceful means.

(b) *Explanations of vote*

256. Statements explaining the basis on which they could accept the text on points of consensus recommended by the Drafting Committee were made, in the order indicated, by the representatives of Italy, the USSR, Netherlands, Burma, United Kingdom, France, Japan, Czechoslovakia, Sweden, United States, Australia, Canada, Dahomey, Venezuela and Poland.

257. The representative of Italy said that, speaking very generally, he could not but welcome the fact that a certain measure of agreement had been reached on the principle of peaceful settlement. In a spirit of co-operation, his delegation had done its best—as it would in the future—to urge the acceptance of the text. He must make it clear, however, that his delegation did not consider the text to be a correct and complete legal definition and elaboration of the principle, as established in the relevant provisions of the United Nations Charter, by the general practice of States within and without the United Nations as well as before the establishment of the Organization, and finally by the practice of the United Nations itself, as compared to the needs of the international community in the field of peaceful settlement. The principal faults which his delegation found were the following. First, too much stress was put, in the text before the Special Committee, on *ad hoc* agreement. It was a long time since States had begun to accept obligations of peaceful settlement in advance of a dispute and the text did not reflect that important reality and the obvious exigencies that the practice in question was intended to meet. Secondly, little or no mention was made of the International Court of Justice, and particularly of ways and means of promoting judicial settlement. Thirdly, the general reservation concerning sovereignty in the last sentence of paragraph 5 was not specific enough in referring to the acceptance in advance of "third party" procedures. Fourthly, the reservation of the powers and functions of United Nations bodies contained in paragraph 6 was, to say the least, inadequate. It was necessary, in his delegation's view, to invite United Nations bodies and Members to make fuller use of such powers and functions. That need could not be met by a mere reservation saving such powers from derogation. His delegation had wanted a positive hortatory clause, not just a reservation; indeed, a reservation as such was superfluous, because obviously the Special Committee was not empowered to recommend amendments to the Charter. In conclusion, his delegation viewed the text recommended by the Drafting Committee (see para. 248 above) as just a step in the Special Committee's work on the principle of peaceful settlement: further steps were indispensable if a correct and complete legal enunciation of the principle was to be achieved. The Special Committee itself could not consider its mandate accomplished on that topic. His delegation expressed its agreement with the text only subject to the conditions and reservations he had indicated.

258. The representative of the USSR said that for his delegation the principle of peaceful settlement was one of the fundamental principles of international law concerning the peaceful coexistence of States having different political, economic and social structures. Its inclusion in the declaration that the Special Committee was preparing would contribute to the strengthening and development of peaceful relations among all States and therefore to the maintenance of international peace and security. The importance of the principle was stressed in many paragraphs of the text recommended by the Drafting Committee. Moreover, the text contained provisions aimed at securing a proper and just implementation of the principle in practice. First, the

[36] United Nations, *Treaty Series*, vol. 402.

text rightly reflected the fact that in settling their disputes States should be guided by the principle of free choice of means by agreement between the parties. The means of pacific settlement were listed in accordance with the general provisions of international law and, in particular, with the United Nations Charter. Negotiation headed that list as it did in the Charter; that was a reflection of the important position which it occupied in international relations. Secondly, the text reflected the fact that disputes must be settled on the basis of the sovereign equality of States. In that connexion, the first sentence of paragraph 5 was entirely correct. The second sentence of that paragraph was so clear and self-evident that there would seem to be no need to include it. However, a wish had been expressed that the principle of sovereign equality should be re-emphasized, and his delegation found it possible to agree to the inclusion of the sentence, considering that its purpose was to strengthen the principles of sovereign equality and free choice of means.

259. The representative of the Netherlands said that his delegation had taken special note of the interpretation which the Chairman of the Drafting Committee had given to paragraphs 5 and 6 of the text (see paragraph 249 above). The text as a whole, from the viewpoint of the codification and progressive development of international law, was clearly insufficient, and constituted only the minimum on which a consensus could be reached. It therefore represented just one step, which in due course should be followed by others.

260. The representative of Burma said that his delegation, as a sponsor of the ten-Power joint proposal (see para. 161 above), would like to see paragraph 3 of that proposal included in the consensus text for the reasons already stated by the proposal's sponsors. Burma strongly supported the principles of peaceful coexistence, as it had demonstrated by its actions in the international field, and sincerely believed in peaceful settlement of disputes; it supported the primacy of negotiations and was convinced that diplomatic negotiations constituted the most effective method of peaceful settlement. Burma would like to see States parties to an international dispute give precedence to negotiations over other forms of peaceful settlement. His delegation could have accepted many of the proposals and amendments on which the Drafting Committee had reached no consensus. His delegation had already made known its views concerning the reference of legal disputes to the International Court of Justice, both in the 1964 Special Committee and at various sessions of the General Assembly. While it would like to accord great importance to the juridical settlement of disputes, it felt that first the composition of the International Court of Justice would have to be improved in the light of the admission of new Members to the United Nations and international law would have to be more developed. His delegation fully supported the text recommended by the Drafting Committee.

261. The representative of the United Kingdom said that his delegation associated itself with the interpretation of the recommended text given by the Chairman of the Drafting Committee. In his delegation's view, the recommended text was a compromise formula representing only the minimum amount of progress in formulating the principle on which general agreement could be reached. Some proposals to which his delegation attached importance had not been included, in particular, those listed under points B, D, E and F of section II of the consensus text (see para. 248 above) and further efforts would have to be made to expand the area of agreement with the text recommended.

262. The representative of France stated that the consensus text was, by definition, the result of a process of concession and compromise. His delegation found it difficult to reconcile the need for compromise, inevitably involving political considerations, with the fact that the Committee was called upon to formulate general principles of international law which would have to be strictly construed as legal texts. He shared the regret of some delegations that it had not been possible to achieve a consensus on all the proposals submitted, particularly those regarding the role of judicial settlement and the International Court of Justice, and on the inclusion of provisions concerning peaceful means of settlement in bilateral and multilateral agreements. In addition, there was no mention of the efforts of the competent United Nations organs and the need for Members to have recourse to those organs. The text was therefore not exhaustive and, while his delegation could accept it, it hoped that at a future stage the text would serve as a basis for a complete and exhaustive formulation of the principle.

263. The representative of Japan welcomed the fact that agreement had been achieved on certain points of the principle of the peaceful settlement of disputes. However, as a sponsor of the five-Power proposal (see para. 159 above) he was far from satisfied with the recommended text, which he deemed insufficient. He also considered that all the points on which agreement had not been reached remained open for further consideration and elaboration. His delegation would, however, accept the recommended text since it marked a small but significant step forward in the Committee's efforts to amplify the principle.

264. The representative of Czechoslovakia said that his delegation regarded the principle of peaceful settlement as the corner-stone of international law and welcomed the fact that it had been possible to draft a text on it after the failure to do so recorded at Mexico City. There were, however, two main defects in the recommended text. First, paragraph 1 did not indicate that international disputes should be settled solely by peaceful means, as had been suggested in the Czechoslovak proposal (see para. 158 above). Secondly, paragraph 2 laid no particular stress on the role of negotiation as the most appropriate means of settling disputes. His delegation would reserve the right to introduce further proposals concerning the principle when it was discussed at the forthcoming session of the General Assembly.

265. The representative of Sweden stated that his delegation would support the recommended text although it was not completely satisfied with it and considered that it represented merely the minimum amount of agreement possible at the present stage. It did think, however, that the area of agreement within the Committee was in fact larger than might be supposed from that text. It could hardly believe, for example, that there was no agreement in the Committee on the desirability of continuing efforts to codify and develop international law and on the usefulness of such efforts for the peaceful settlement of disputes. He hoped that, in due course, agreement on such points would become possible and, in particular, that the increasing trend towards accepting the compulsory jurisdiction of the International Court of Justice would be reflected in a statement indicating the desirability of such ac-

ceptance. He also hoped that agreement would eventually be possible on the desirability of including a clause in bilateral and especially in multilateral treaties concerning the peaceful settlement of disputes arising out of those treaties.

266. The representative of the United States said that he agreed that the recommended text was not an exhaustive statement of the principle, particularly in view of the lack of agreement on points B, D, E and F in part II of the consensus text (see para. 248 above). It did, however, represent a substantial and significant measure of progress and his delegation could support it. His delegation took note of the interpretation placed by the Chairman of the Drafting Committee on paragraphs 5 and 6 of the recommended text (see paragraph 249 above). It was especially important that paragraph 6 should refer to all the provisions of the Charter, and mention only in particular those relating to the pacific settlement since it would not be consistent with international law to say that a party to a dispute against which force had been used would be violating the principle of pacific settlement by exercising its right of self-defence—which paragraph 4 could be taken to imply.

267. The representative of Australia associated himself with the view that the recommended text represented the maximum amount of agreement possible at the present stage of the Committee's work. The principle would, however, have to be amplified before it could be considered an adequate formulation. Nevertheless, the text did represent a very real measure of progress over what had been achieved at Mexico City and he would therefore support it. His delegation associated itself with the interpretation of the text given by the Chairman of the Drafting Committee, with the comments made by the representative of the Netherlands on paragraph 5 and with those made by the United States representative on paragraph 4.

268. The representative of Canada welcomed the fact that a certain measure of agreement had been reached on the principle of peaceful settlement, as shown by the recommended text. While the text was neither complete nor exhaustive, since agreement had not been possible on many valuable proposals, he was confident that it would serve as a useful and significant basis for the future work of the United Nations on the principle.

269. The representative of Dahomey also welcomed the fact that a measure of agreement had been reached on the principle. It should, however, be remembered that the consensus text was the result of a compromise. As a sponsor of the five-Power proposal (see para. 159 above), his delegation regretted that some of the points in that proposal had not been included in the text. Nevertheless, it did represent a great advance on the position reached at Mexico City. The world, and especially the weaker and poorer countries, needed a high judicial authority which would ensure that justice prevailed—a goal which was one of the purposes of the United Nations. The recommended text represented a first step in that direction and it was to be hoped that advances would continue to be made so that eventually all citizens of the world would be able freely to submit to a world judicial authority, either the existing body or a more universal one, which would treat each case on its merits, thus making negotiation, which favoured the stronger nation, unnecessary.

270. The representative of Venezuela said that on the whole his delegation could support the consensus text. It would, however, like to make two comments. First, the text did not mention the use of good offices as a means of peaceful settlement. That means was mentioned in article 21 of the Charter of the Organization of American States. Secondly, it was his understanding that the words "resort to regional agencies or arrangements" included resort to the United Nations itself.

271. The representative of Poland stated that his delegation considered the text recommended by the Drafting Committee to be a further step towards ensuring international peace and security. It would prefer, however, to have the word "solely" inserted before the words "by peaceful means" in paragraph 1, in order to stress the universal application of the principle. The text correctly stated the principle of free choice of means. His delegation would also prefer to stress the importance of negotiation as the most useful means of settling disputes. In general, however, it regarded the text as an outstanding achievement.

3. *Decision*

272. At its forty-ninth meeting on 21 April 1966, the Special Committee adopted unanimously the text setting out points of consensus on the principle of peaceful settlement of disputes which had been recommended by the Drafting Committee.

IV. The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter[37]

A. Written proposals and amendments

273. Initially, two written proposals containing formulations of the duty not to intervene within the domestic jurisdiction of any State were submitted to the Special Committee jointly by India, Lebanon, the United Arab Republic, Syria and Yugoslavia, and jointly by Australia, Canada, France, Italy, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Amendments to the first of these proposals were submitted by Ghana. Subsequently, this first proposal was revised by its sponsors. Australia and Italy submitted a joint proposal to the Special Committee after the principle of non-intervention had been considered by the Drafting Committee.

274. In addition, draft resolutions of a largely procedural character were submitted by the United Arab Republic and by Chile. These resolutions were subsequently withdrawn in favour of a joint draft resolution by Chile and the United Arab Republic. Amendments to this latter draft resolution were submitted jointly by Australia, Canada, France, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America. A further draft resolution of a procedural character was submitted by Czechoslovakia, the substance of which was later incorporated in part III of the draft declaration by Czechoslovakia.

275. The texts of the above-mentioned proposals, amendments and draft resolutions are set out below.

276. Joint proposal by India, Lebanon, the United

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[37] An account of the consideration of this principle by the 1964 Special Committee appears in chapter V of its report (A/5746).

Arab Republic, Syria and Yugoslavia (A/AC.125/L.12):

"1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned;

"2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State;

"3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principles of non-intervention;

"4. No State shall 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;

"5. No State shall use duress to obtain or maintain territorial settlements or special advantages of any kind;

"6. Aid and assistance given to peoples under any form of foreign domination does not constitute intervention."

277. Amendments (A/AC.125/L.18) by Ghana to the above joint five-Power proposal (A/AC.125/L.12):

1. Amend paragraph 1 to read as follows:

"1. 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 State. Consequently, armed intervention and all other forms of interference or [ ] threats against the personality of the State, that is, its territorial integrity, political, economic and cultural independence are prohibited under international law;".

2. Transpose present paragraph 4 and renumber it as paragraph 2.

3. Amend and renumber present paragraph 2 to read as follows:

"3. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to compromise its sovereign rights or use duress to obtain or maintain territorial settlement or special advantages of any kind [ ];".

4. Accordingly, delete paragraph 5.

5. Renumber the second sentence of present paragraph 2 as paragraph 4, to read as follows:

"4. No State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State or interfere with civil strife in another State;".

6. Renumber present paragraph 3 as paragraph 5.

7. Present paragraph 6 remains paragraph 6 without changes.

8. Add as paragraph 7 paragraph 8 in resolution 2131 (XX), to read as follows:

"7. Nothing in this declaration shall be construed as affecting in any manner the relevant provision of the Charter of the United Nations relating to the maintenance of international peace and security in particular those contained in chapters VI, VII and VIII".

278. Revised joint proposal by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (A/AC.125/L.12/Rev.1 and Corr.1):

Additional paragraphs for consideration in connexion with the text of General Assembly resolution 2131 (XX) of 21 December 1965:

"1. No State shall 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;

"2. No State shall use duress, to obtain or perpetuate political or economic advantages of any kind;

"3. Aid and assistance given to peoples under any form of colonial domination does not constitute intervention".

279. Joint proposal by Australia, Canada, France, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.125/L.13):

"1. Every State has the duty to refrain from intervening, directly or indirectly, in matters within the domestic jurisdiction of any State. Every State has an inalienable right freely to choose its political, economic, social, or cultural systems, without intervention by another State, and the right freely to choose the form and degree of its association with other States, subject to its international obligations.

"2. In accordance with the foregoing principle:

"A. Every State shall refrain from the threat or use of force against the territorial integrity or political independence of any other State.

"B. No State shall take action of such design and effect as to impair or destroy the political independence or territorial integrity of another State.

"C. Accordingly, no State shall instigate, foment, organize or otherwise encourage subversive activities directed toward the violent overthrow of the régime of another State, whether by invasion, armed attack, infiltration of personnel, terrorism, clandestine supply of arms, the fomenting of civil strife, or other forcible means. In particular, States shall not employ such means to impose or attempt to impose upon another State a specific form of government or mode of social organization.

"D. The right of States in accordance with international law to take appropriate measures to defend themselves individually or collectively against intervention is a fundamental element of the inherent right of self-defence.

"3. Nothing in the foregoing shall be construed as derogating from

"A. the generally recognized freedom of States to seek to influence the policies and actions of other States, in accordance with international law and settled international practice and in a manner compatible with the principle of sovereign equality of States and the duty to co-operate in accordance with the Charter;

"B. the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters IV through VIII."

280. Joint proposal by Australia and Italy (A/AC.125/L.36): After the Drafting Committee had completed its discussion of the principle of non-intervention, the representatives of Australia and Italy submitted to the Special Committee the following additional paragraphs for consideration in connexion with the text of General Assembly resolution 2131 (XX) of 21 December 1965:

"2D. It is the inherent right of a State which is the victim of intervention, by methods other than armed attack, in matters within its domestic jurisdiction, to take such measures individual or collective for its own protection as are appropriate, proportionate and in accordance with the Charter of the United Nations.

"3. Nothing in the foregoing shall be construed as derogating from:

"(*a*) The freedom which as a recognized fact is universally exercised by States in the normal course of their international relations to influence one another in accordance with international law and in a manner compatible both with the principle of the sovereign equality of States and with the duty of Members of the United Nations to co-operate in accordance with the Charter;

"(*b*) The relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters IV to VIII inclusive."[38]

281. In regard to the procedural questions connected with this principle the proposals and amendments set out below were submitted.

282. Draft resolution by the United Arab Republic (A/AC.125/L.14):

"The Special Committee,

"Bearing in mind that the General Assembly has adopted a declaration on the inadmissibility of intervention (resolution 2131 (XX) of 21 December 1965),

"1. *Reaffirms* that the aforementioned declaration of the General Assembly enunciates an area of agreement;

"2. *Instructs* the Drafting Committee, without prejudice to the preceding paragraph, to direct its work regarding the duty not to intervene in matters within the domestic jurisdiction of any State, to the consideration of additional proposals with a view to expanding the area of agreement as formulated in General Assembly resolution 2131 (XX)."

283. Draft resolution by Chile (A/AC.125/L.15):

"The Special Committee,

"Bearing in mind that:

"(A) The General Assembly by its resolution 1966 (XVIII) of 16 December 1963 established this Special Committee to study and report on the principles of international law enumerated in General Assembly resolution 1815 (XVII),

"(B) The General Assembly by its resolution 2103 (XX) of 20 December 1965 definitively fixed the structure of this Committee, entrusting it *inter alia* with the task of considering the principle of non-intervention, and

"(C) The General Assembly in its resolution 2131 (XX) of 21 December 1965 adopted a Declaration on the inadmissibility of intervention which, by virtue of the number of States which voted in its favour, the scope and profoundness of its contents, and in particular the absence of opposition or reservations, reflects a universal legal conviction which already constitutes an authentic and definite principle of international law,

"Resolves

"1. That with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965; and

"2. That the Drafting Committee will confine itself to gathering together those propositions supplementary to the above resolution which express the unanimous view of the members of the Special Committee."

284. Joint draft resolution by Chile and the United Arab Republic (A/AC.125/L.17):

"The Special Committee,

"Bearing in mind that:

"(*a*) The General Assembly, by its resolution 1966 (XVIII) of 16 December 1963, established this Special Committee to study and report on the principles of international law enumerated in General Assembly resolution 1815 (XVII),

"(*b*) The General Assembly, by its resolution 2103 (XX) of 20 December 1965, definitively fixed the structure of this Committee, granting it *inter alia* authority to consider the principle of non-intervention, and

"(*c*) The General Assembly, by its resolution 2131 (XX) of 21 December 1965, adopted a Declaration on the inadmissibility of intervention which, by virtue of the number of States which voted in its favour, the scope and profundity of its contents and, in particular, the absence of opposition reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law,

"1. *Decides* that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965; and

"2. *Instructs* the Drafting Committee, without prejudice to the provisions of the preceding paragraph, to direct its work on the duty not to intervene in matters within the domestic jurisdiction of any State towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX)."

285. Joint amendments by Australia, Canada, France, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.125/L.19) to the joint draft resolution by Chile and the United Arab Republic (A/AC.125/L.17):

"1. In preambular sub-paragraph (*c*):

"(*a*) After 'intervention' insert 'in the domestic affairs of States and the protection of their independence and sovereignty';

"(*b*) Replace 'reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law', by 'reflects, *inter alia*, a large area of agreement among States on the scope and content of the principle of non-intervention;'.

"2. In operative paragraph 1: replace 'abide by' by 'takes as a basis for its discussion'.

"3. In operative paragraph 2:

"(*a*) Replace 'additional' by 'all';

"(*b*) Replace 'with the aim of widening the area of agreement of General Assembly resolution 2131 (XX).', by 'with the aim of securing the widest general agreement in the Special Committee on the legal definition of non-intervention'."

286. Draft resolution by Czechoslovakia (A/AC.125/L.20):

"The Special Committee,

"Having considered, in pursuance of General Assembly resolution 2103 (XX), the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

"Bearing in mind that the General Assembly adopted, on 21 December 1965, by 109 votes in favour, none against, with one abstention, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty [resolution 2131 (XX)], which had enunciated the principle of non-intervention,

"Recognizing that the Declaration reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law,

"Recommends the General Assembly to incorporate provisions contained therein in the Declaration to be adopted pursuant to paragraph 4 (*c*) of resolution 2103 (XX)."

287. Proposal by Czechoslovakia (A/AC.125/L.16, part III): The substance of the preceding draft resolution was also incorporated in part III of the draft declaration submitted by Czechoslovakia (A/AC.125/L.16) covering all principles before the Special Committee. It read as follows:

"It is proposed to incorporate in the present chapter the legal rules prohibiting intervention in matters within the domestic jurisdiction of any State, enunciated in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, adopted by the twentieth session of the General Assembly on 21 December 1965 (resolution 2131 (XX)), which shall be strictly observed by all States in their mutual relations."

[38] These paragraphs had been under consideration in the Drafting Committee, in the form of Working Papers. They had been submitted to the Drafting Committee as alternatives to paragraphs 2D and 3 respectively of document A/AC.125/L.13.

B. Debate

1. *General comments*

288. The Special Committee considered the principle forming the subject of this chapter at its 8th to 18th meetings, from 14 to 21 March 1966, and at its 52nd meeting on 25 March 1966.

289. In their general comments on the principle of non-intervention, several representatives emphasized its importance for the promotion of friendly relations and co-operation among States. It was said that the application of the principle had become an integral part of modern international law and that it necessitated the recognition of the inalienable right of every people, large or small, to determine its own destiny, to choose freely its own form of political, economic and social development and way of life, based on its national requirements and aspirations, and to affirm its national identity free from outside interference or pressure. The principle of non-intervention was also an essential condition for the maintenance of Peace. One representative said that, with the consolidation and development of the principle of self-determination, it had acquired special importance, for the disintegration of the colonial system and the accession to independence of many new States had increased the need to protect the sovereignty and independent development of those States against any external interference.

290. Several representatives recalled that the principle of non-intervention had already been proclaimed and affirmed at Inter-American Conferences held in Montevideo, Buenos Aires, Chapultepec and Bogotá, by the Bandung Conference in 1955 and by the Belgrade and Cairo Conferences in 1961 and 1964, in the Pact of the League of Arab States, in the Warsaw Treaty, in the Vienna Conventions on Diplomatic Relations of 1961 and on Consular Relations of 1963, as well as in the Charter of the Organization of African Unity. One representative also said that it constituted one of the basic principles of the United Nations political and legal systems.

291. Another representative said that the principle, as it was applied in relations between States, was not explicitly set forth in the United Nations Charter but followed directly and necessarily from the prohibition of the threat or use of force and from the principle of the sovereign equality of States, since the preservation of the territorial integrity or political independence of States presupposed an obligation on the part of every State to respect those two elements of sovereignty. Secondly, the principle of the prohibition of the threat or use of force, as contained in the Charter, covered much of the same ground as the traditional concept of the principle of non-intervention. That fact had been acknowledged without discussion at the session of the 1964 Special Committee.

2. *The relevance of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (General Assembly resolution 2131 (XX)) for the Special Committee's work, and the question of instructions to the Drafting Committee*

292. Most of those representatives who spoke on the principle of non-intervention referred to the above Declaration, adopted by the General Assembly at its twentieth session in resolution 2131 (XX) of 21 December 1965.

293. In the debate relating to the Declaration and the draft resolutions and amendments thereto, it was generally agreed that that Declaration must be taken fully into account by the Special Committee and that it constituted an important instrument for its work. By its adoption the General Assembly had largely facilitated the work of the Special Committee, in comparison with the difficulties it had had to face at its session in Mexico City. Differences of opinion were, however, expressed on the extent to which resolution 2131 (XX) should be endorsed, clarified or modified by the Special Committee for the purpose of its formulation of the principle of non-intervention as a rule of international law.

294. In the view of certain representatives, the Special Committee should recommend to the General Assembly that it incorporate the relevant provisions of resolution 2131 (XX) in its eventual declaration on the seven principles before the Special Committee. They argued that the General Assembly was acting under Article 13 of the Charter and had, in effect, already done work of codification in respect of the principle of non-intervention. One representative said that such a course of action would be in accordance with the terms of reference of the Special Committee, contained in paragraph 4 (*c*) of resolution 2103 (XX) of 20 December 1965, whereby it was asked to submit conclusions and recommendations to the General Assembly. It would constitute an expression of satisfaction at the progress made by the General Assembly on the principle of non-intervention. All that the Special Committee could otherwise do would be to consider any proposals for additions to the elements formulated in resolution 2131 (XX). This was the approach of the draft resolution submitted by Czechoslovakia (see para. 286 above).

295. Many representatives similarly considered the Declaration contained in resolution 2131 (XX), as a great achievement by the United Nations and as a standard of conduct for all States. They stated that it was based on the widest possible consensus, as was indicated by the almost unanimous support it received when it was adopted. It was further said that the consideration of the principle of non-intervention by the Special Committee could not include reconsideration of a text adopted by the General Assembly without negative vote, and that the Special Committee, as a subsidiary body of the General Assembly, could not question the latter's decision. Nothing must be done which would in any way impair or minimize the value of the Declaration, jeopardize the progress which its adoption signified, or reopen questions on which the General Assembly had already taken a position. In the view of these representatives it was essential that the force of the Declaration should not be weakened. They considered the constituent elements of the Declaration as final and irrevocable and they were opposed to any change by amendment or deletion of some of these elements. One representative said that there could be no doubt that the Declaration embodied an authentic principle of international law, for it had been agreed upon in form and substance by 109 States, after exhaustive discussions. In such circumstances, it could be regarded as applicable under the provisions of Article 38 of the Statute of the International Court of Justice as a general principle of law.

296. Several representatives stated, however, that factors of the foregoing nature did not rule out the possibility of expanding the area of agreement reflected

in the Declaration, by adding additional elements and thus broadening the compromise established in the Declaration; nor did they exclude, in the view of some of these representatives, the possibility of improvement of the juridical formulation of the text of the Declaration through minor drafting changes not affecting the substance or weakening of the General Assembly text. However, the Drafting Committee's discussions should be limited to such changes. This was the approach of the draft resolutions submitted by the United Arab Republic and Chile (see paras. 282 to 284 above).

297. Other representatives acknowledged that the Declaration represented a milestone in the development of the political attitudes of the General Assembly towards certain of the most pressing problems of the day. At the same time, they considered that the Declaration was not intended as a legal document and could therefore not be substituted for the formulation of the principle which the Special Committee had been instructed to draft. They felt that some of the terms used in the Declaration did not respect the basic criteria which should be applied, and some of its parts were not sufficiently precise to be considered as statements of law. Some criticism was also expressed on certain points of drafting in resolution 2131 (XX). For example, one representative mentioned that two alternative readings of the second sentence of paragraph 1 were possible: either the word "interference" was qualified by the words "against the personality of the State or against its political, economic and cultural elements", or it was not. Since the word "interference" was usually accompanied by the preposition "with" rather than "against", it might be supposed that the term "intereference" was used without qualification. The authors of operative paragraph 1 had undoubtedly been thinking of some sort of dictatorial interference, but the expression used in the text was so wide as to require tightening. Another representative said that while the English version of the second sentence of paragraph 1 of the resolution was admittedly ambiguous, the French version was open to only one interpretation. Other representatives referred to other drafting points which they considered as ambiguous. One representative wondered, for example, whether the terms "intervention" and "interference" differed in meaning and what were the criteria for determining whether a threat had been attempted.

298. Some of them recalled, in this connexion, statements made by their delegations in the General Assembly and in the First Committee at the time of the adoption of the draft Declaration, to the effect that it could not be regarded as an authentic and definite legal statement ready for incorporation as a definition of the law of the matter. They also said that, if the Committee was free to elaborate, amplify and clarify the often vague language of the Charter, it was *a fortiori* free to elaborate, amplify and clarify the wording of General Assembly resolutions. General Assembly resolutions were not treaties binding on Member States and none of them was sacrosanct for the Special Committee, which had a duty to consider their provisions from the standpoint of both form and substance and was entirely free to formulate the legal content of the principle of non-intervention without being bound in any way by the provisions of resolution 2131 (XX). If the Committee remitted the issue to the General Assembly, it would disregard the very purpose of the mandate given to it, particularly as the possibilities of achieving agreement had not yet been exhausted. This approach to the problem was expressed in the amendments by Australia, Canada, France, Italy, the United Kingdom and the United States (see para. 285 above) to the draft resolution of Chile and the United Arab Republic (see para. 284 above).

299. To arguments of this nature, several representatives replied that the Declaration represented an embodiment, in both political and juridical terms, of the principle of non-intervention. The inclusion of certain elements of a political character in the Declaration, and objections that the content of some of its provisions were not clear, also applied to the United Nations Charter itself and to law in general. The General Assembly was a single entity and it therefore could not be said that some of its resolutions were political and others juridical. Some representatives expressed doubts as to whether, in the case of the text in question, a clear distinction could be drawn between political and legal considerations.

300. The decision taken by the Special Committee on the procedural resolutions and amendments before it (see paragraphs 282 to 287 above) dealing with the General Assembly Declaration, is contained in part C of the present chapter, together with other decisions by the Special Committee dealing with the principle of non-intervention.

3. *Prohibition of the threat or use of force against the territorial integrity or political independence of any State and the prohibition of actions designed to impair or destroy the political independence or territorial integrity of any State*

301. The proposal submitted jointly by Austria, Canada, France, Italy, the United Kingdom and the United States (A/AC.125/L.13, para. 2 A and B, see para. 279 above) contained provisions in paragraphs 2 A and B to the effect indicated in the present sub-heading.

302. Sponsors of this proposal stressed the close connexion between the prohibition of the threat or use of force and the principle of non-intervention and considered that illegal use of force constituted a violation of the principle of non-intervention. The same conclusion could, in their view, be reached from the perusal of resolution 2131 (XX) of 21 December 1965. They felt that it was the duty of the Special Committee to spell out what was meant by the reference to armed intervention in the Declaration; intervention based on the use of armed force was one of the commonest forms of intervention and any formulation of the legal principles of non-intervention should give due prominence to that example. Some of the sponsors explained their view that the draft did not limit the prohibition of intervention to armed force only and that it also covered economic and other types of action. It was designed to express, in a legally acceptable form, the notion of dictatorial interference and to introduce it into the general provisions of resolution 2131 (XX). They thus wished to draw attention to the fact that no action of whatever character should be taken which would in any way impair or destroy the territorial integrity or political independence of States—ideas which were clearly recognized and defined in international law. Thus that paragraph sought to express in legal terms the related principles set forth in the Declaration contained in resolution 2131 (XX).

303. However, this formulation was criticized by a number of other representatives. It was said that paragraph 2 of the six-Power proposal was based on the idea that the principle of non-intervention was limited to the prohibition of threat or use of force, in particular armed force. That was, in their view, a dangerous curtailment of the scope of the principle and an attempt to exclude a number of inadmissible acts from its field of application, for resolution 2131 (XX) condemned also other forms of intervention which threatened the personality of the State or its political, economic and cultural elements. Paragraph 2 tended to preserve the *status quo* that had existed before the adoption of the Charter, when the use of intervention had been only loosely limited. The concept of a *status quo* in international law was, however, alien to the method of progressive development that the Special Committee should adopt. It was also said that reference to the threat or use of force was out of place in a proposal concerning the principle of non-intervention and that it should rather be dealt with under the principle relating to the non-use of force. It was objected, furthermore, that the draft did not indicate who was to decide whether action was "of such design and effect as to impair or destroy the political independence or territorial integrity" of a State; nor was it clear whether the word "action" included both armed and unarmed action. Even more restrictive, however, was the fact that the draft referred to impairment or destruction of political independence and territorial integrity only, and omitted any reference to action against the political, economic, social or cultural systems of a State.

4. *Intervention against the personality of a State or against its political, economic and cultural elements, or in the internal or external affairs of a State*

304. Forms of intervention of the above nature were referred to in paragraph 1 of the joint proposal submitted by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (see para. 276 above) and in paragraph 1 of the amendment to that proposal submitted by Ghana (see para. 277 above).

305. Several representatives commented on the concept of the personality of the State, which appeared in resolution 2131 (XX) of 21 December 1965, and also in the above-mentioned drafts. One representative observed that paragraph 1 of both those texts mentioned some of the constituent elements of the personality of the State and, while that enumeration was not exhaustive, it represented a starting point which could serve as a basis for further work. He was of the opinion that a State had a distinct personality consisting of a number of components, the elimination of any one of which could result in the State's destruction. One representative thought it desirable to follow the words "the personality of the State" by an enumeration of its components, that is, its territorial integrity and political, economic and cultural independence. In the view of another representative, however, to do so would give another meaning to the concept. To other representatives the concept of the personality of the State was a complex matter requiring clarification. They sought to solve this difficulty by an effort to define more accurately the essence of the concept of the political independence of States, without using the expression "personality of the State" which some felt could not be considered as a legal term. This was criticized by some other representatives who said that, under cover of clarification, an idea had been eliminated as this approach failed to condemn armed intervention or threats against the personality of a State or against its political, economic and cultural elements.

306. Several representatives proposed the elimination of "external affairs" in the introductory statement of the principle of non-intervention as formulated in resolution 2131 (XX). They said that it was impossible to find a generally accepted definition of what constituted intervention in the external affairs of a State and they found the terminology "internal and external affairs" inaccurate from a legal standpoint. In their view, intervention in external affairs was not subject to the same limitations as intervention in matters within the domestic jurisdiction of a State. A State's external affairs were governed by international law in so far as they were of legitimate interest to the other members of the international community. There were a number of spheres of the external affairs of States in which other States did intervene: for example, the use of influence in negotiations, the pressing of claims against other States and similar actions could not be considered as dictatorial interference. That did not mean that States had a right to interfere in a dictatorial way in the external affairs of other States. There were precise limitations in that connexion, but they derived from principles other than that of non-intervention, such as the principle prohibiting the threat or use of force, that of the sovereign equality of States, and that of the peaceful settlement of disputes. These representatives also preferred the formula "matters within the domestic jurisdiction" to any reference to "external and internal affairs". They said that the former expression was in conformity with the terms used to designate the principle in resolution 1815 (XVII) defining the Committee's mandate. Furthermore, the meaning of that expression was more accurate and easier to understand, since it covered questions which were not regulated by international law.

307. Other representatives, however, considered the concept of the external jurisdiction of the State as an essential element in any definition of the State and said that, by eliminating the vitally important ban on interference in external affairs, a dangerous element for small countries would be neglected. It was recalled that that form of intervention had been recognized as unlawful for the past thirty years by inter-American jurists and that the doctrine was reflected in the Montevideo Declaration of 1933, in the Buenos Aires Protocol of 1936 and again in the Charter of the Organization of American States of 1948. They said that the omission of intervention in the external affairs therefore represented a departure from resolution 2131 (XX) and was unacceptable to them.

5. *Coercion in order to obtain the subordination of the exercise of sovereign rights or in order to secure advantages of any kind*

308. A prohibition of coercion of the above nature was contained in paragraph 2 of the first proposal submitted jointly by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (see para. 276 above) and referred to in paragraph 3 of the amendments of Ghana (see para. 277 above) to that proposal.

309. While a group of representatives supported inclusion in the Special Committee's text of such forms of intervention, their formulation in the drafts before the Special Committee gave rise to certain reservations on the part of others. Reference was made, in particular, to the sentence "No State may use or encourage the

use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind appearing in the five-Power proposal." The phrase "to coerce another State" could, in the view of some representatives, be read as introducing the remainder of the sentence so that to obtain the subordination of the exercise of sovereign rights and to secure advantages were only alternative means of coercion. Alternatively, the phrase could be read as relating only to the words immediately following, so that measures to secure from a State advantages of any kind, even when not coercive, were prohibited. Again, behind the question of legal formulation there lay a question of substance. If the second reading was correct, the paragraph should be supplemented to make it clear that ordinary negotiations and diplomatic relations were not prohibited. Some representatives thought moreover, that the legal concept of non-intervention related largely to the intention of one State to force another State to change its internal order. That intention must in fact exist on the part of the intervening State before the activities referred to could be said to be taking place, but it must at the same time be an abnormal or arbitrary form of coercion; also, the intention by itself was not enough if it did not have any effect.

6. *Subversive and other activities directed against another State or its régime*

310. Provisions designed to formulate in some detail a prohibition of the activities indicated in this subheading appeared in paragraph 2 of the proposal submitted jointly by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (see para. 276 above), and in sub-paragraph 2 C of the proposal submitted jointly by Australia, Canada, France, Italy, the United Kingdom and the United States (see para. 279 above). Paragraph 5 of the amendments by Ghana to the first of the foregoing joint proposals (see para. 277 above) also contained provisions to the same effect.

311. No extensive discussion took place in regard to these suggested forms of intervention. While the sponsors of the proposal submitted by Western European and other States considered their wording an improvement on the wording of the corresponding paragraph in the alternative proposal of non-aligned countries, other representatives thought, on the contrary, that it omitted certain details which were included in resolution 2131 (XX) of 21 December 1965, particularly the fact that States should refrain from assisting, financing or tolerating certain specific activities. The first sentence of sub-paragraph C of the proposal by Western European and other States was in their view very vague and ambiguous. In the second sentence, the word "means" was presumably limited to forcible means. One representative, however, considered that any formulation adopted should extend to the prohibition of propaganda against the régime of another State. The expression "to interfere" in paragraph 2 of resolution 2131 (XX) was not restricted to action by forcible means, and, on the whole, paragraph 2 of that resolution was a much better statement of the matter covered by sub-paragraph 2 C, of the proposal by Western European and other States.

7. *The use of force to deprive peoples of their national identity*

312. A provision prohibiting the use of force to deprive peoples of their national identity was contained in paragraph 3 of the joint proposal submitted by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (see para. 276 above) and was referred to in paragraph 5 of the amendment of Ghana (see para. 277 above) to that proposal.

313. Sponsors of the joint proposal, and other representatives who supported the adoption of such a provision, stated that it definitely belonged in any text which the Special Committee prepared on non-intervention. It was stated that this had been the position of the General Assembly when it adopted resolution 2131 (XX) of 21 December 1965. One great development since the Second World War, which had resulted from the approval given in the United Nations Charter to the principle of self-determination, was the recognition of the legal importance of the concept of a "people". The struggle against the colonial yoke should therefore be regarded as legitimate. Since resolution 2131 (XX) had taken account of that development, it was perfectly natural that it should include a paragraph affirming that "All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms." The General Assembly had in that manner pointed the way to the progressive development of the traditional concept of non-intervention. Moreover, that principle was implied in Article 2, paragraphs 4 and 7, of the Charter. With regard to the reference to "peoples" in paragraph 3 of the joint five-Power draft, it was pointed out that, while one spoke of sovereignty in connexion with States, it was actually peoples who exercised such sovereignty. In the view of these delegations, the Committee should not devote disproportionate time to fine points of definition, which could be taken care of by the Drafting Committee. They did not agree that paragraph 3 of the proposal in question was less relevant to the principle of non-intervention than it was to that of self-determination. For example, even if the territory of a State was occupied only temporarily by a foreign invader, great changes could take place during such occupation, the population could be removed and the structure of the State thereby destroyed.

314. Other representatives were unable to see what purpose a provision of this nature would serve. Moreover, the term "peoples", as used in the proposal did not cover States. The principle of non-intervention dealt with the duty not to intervene in the domestic affairs of States, not of peoples. Peoples did not necessarily constitute States under international law and consequently were not necessarily subjects of international law. The interpretation of sovereignty mentioned in the preceding paragraph was not agreed to by these representatives. They felt that logically and legally this subject matter fell under the principle of equal rights and self-determination of peoples; or under the protection of human rights, in the case of the internal use of force; or under the prohibition of the threat or use of force, in case of external use of force. Moreover, the meaning of the expression "national identity" was too vague and must be clarified.

8. *Interference with or hindrance of the promulgation or execution of laws in regard to matters essentially within the competence of any State*

315. A prohibition relating to the above matter was contained in paragraph 4 of the initial proposal and paragraph 1 of the revised proposal submitted by India,

Lebanon, the United Arab Republic, Syria and Yugoslavia (see paras. 276 and 278 above); and reference was also made to it in paragraph 2 of the amendment by Ghana (see para. 277 above).

316. In support of such a provision it was said that it was based on the text drafted by the Inter-American Juridical Committee relating to violations of the principle of non-intervention,[39] and was designed to stress the great importance of respect for the integrity of the legal system of States, which was one of the particular aspects of their territorial integrity.

317. However, to some other representatives, the wording of the proposal was unclear. It was said that no State had ever interfered with the promulgation of laws in other States. Under international law, the execution of the laws of one State in the territory of another State was not permitted unless that other State had given its consent. The expression "essentially" within the competence of a particular State implied that the matters in question were not solely within the competence of that State; thus, the provision would seem to prohibit interference in matters that involved the interests of other States or of international organizations. Moreover, it might happen that such promulgation or execution was contrary to international law, in which case interference could not be prohibited. Recourse to the United Nations against the adoption by a given country of legislation based on racial discrimination was given as one example.

9. *Duress to obtain or perpetuate political or economic advantages of any kind*

318. A prohibition of duress of the above nature was contained in paragraph 2 of the revised joint proposal submitted by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (see para. 278 above). In the original draft of the five Powers the wording was as follows: "No State shall use duress to obtain or maintain territorial settlements or special advantages of any kind." In paragraph 3 of its proposal, Ghana had proposed an amendment to this original five-Power draft (see para. 277 above), similar in wording to that eventually submitted in the revised joint proposal.

319. In support of the proposal it was said that it reflected another particular aspect of the principle of non-intervention, that it was based on paragraph 2 of resolution 2131 (XX) of 21 December 1965, and that there was no reason why the explicit terms "duress" or "coercion" should not be used. It was also recalled that the sub-paragraph had been based upon the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee, and had not been the subject of any individual comment in the 1964 Special Committee. One representative pointed out that the word "State" was to be given the meaning attributed to it by paragraph 7 of the Declaration contained in resolution 2131 (XX).

320. In connexion with the original version of the proposal, certain representatives assumed that it was not the intention to suggest that valid and binding agreements involving territorial settlements could be departed from in the absence of agreement between the parties. While duress vitiated consent in treaty law, its role was much more difficult to define in the context of territorial settlements, and reference to the use of duress to maintain such settlements should be clarified. The maintenance of territorial agreements, valid when entered into, should not be prohibited or prevented in any way.

10. *Aid and assistance to peoples under any form of colonial domination*

321. Reference to the above matter was contained in paragraph 3 of the revised joint proposal submitted by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (see para. 278 above). In the original proposal of these five Powers, reference had been made to peoples under "foreign" domination.

322. Representatives who advocated the formulation of such an exception to the prohibition of intervention said that the proposal merely reflected the many recent resolutions of the General Assembly drawing attention to colonial problems giving rise to dangerous situations and asking States to assist in bringing about their solution. It constituted a formal recognition of the fact that the principle of non-intervention had acquired a new and universally valid dimension: the provision of assistance to peoples oppressed by any form of foreign domination, far from being a form of intervention in the internal affairs of a State, was in fact the duty of all States. Anything done to liquidate foreign domination—which was the worst form of intervention, since it prevented the cultural development of peoples—was welcome. One representative added that in the past some States—fortunately very few in number—had questioned and even denied the authority of the United Nations to intervene in certain questions endangering international peace and security, citing the principle of non-intervention in support of their stand. Their attitude had prevented the establishment of an atmosphere of understanding and trust among States and had also created a very dangerous precedent. Two or three Member States, which made apartheid and colonial domination national policies, continued to advance those unconvincing arguments against United Nations intervention in certain extremely important matters. It was clear that international action to destroy such evils did not constitute intervention in the domestic affairs of those States. On the contrary, because those policies were based on a grave injustice supported by force and repression, all States must pool their efforts to aid oppressed peoples. By so doing the international community would perform one of its main duties, namely, the elimination of all elements poisoning international life and endangering world peace.

323. This position was opposed by certain other representatives. They argued that paragraph 6 of the joint five-Power proposal referred to above, which repeated in amended form a former oral proposal of Algeria, appeared to give a State complete freedom to intervene whenever it considered that there existed in any other State elements under foreign domination. The wording of that paragraph might offer a loop-hole and a possibility for actions which they could not accept as permissible. It would give legal sanction to a form of intervention by force which appeared to these representatives to be contrary not only to the provisions of the Declaration contained in resolution 2131 (XX) of 21 December 1965 but also to those of the Charter.

[39] Pan American Union (Washington, D.C.), doc. CIJ-51, 1959.

If a specific exception to the prohibition on the threat or use of force was thus created by the Assembly, it would then be necessary to determine what were the circumstances in which the provision of aid and assistance would be justified. If the vernacular used in certain quarters was to be taken as a guide, it would be seen that neither military occupation nor colonial domination was actually what was meant, for there were a number of cases in which sovereign States, whose indigenous populations were admittedly fully in charge of their own Governments, had nevertheless been made the object of the use of force under the pretext of "anti-colonialism". Quite aside from the question of consistency with the provisions of the Charter, the paragraph involved the question of what sort of world the United Nations was trying to establish.

324. One representative asked whether the conclusion should be drawn, by reasoning *a contrario sensu*, that aid and assistance given to people not subjugated by any form of foreign domination did constitute intervention. He also observed that if the words "aid and assistance" were merely a discreet euphemism for "armed aid and armed assistance", then the proposal would be linked to the highly controversial concept of wars of liberation, on which it was doubtful that agreements could be reached and which, moreover, resolution 2131 (XX) was careful to omit. If, on the other hand, the aid referred to in that paragraph was of an economic or technical nature, all peoples and all Governments were entitled to engage in it in accordance with international law. One aspect of the principle of non-intervention which also was not covered in that resolution, but which in his view was of considerable practical and political importance and worthy of attention, was intervention at the invitation of the Government concerned.

11. *Self-defence against intervention*

325. Sub-paragraph 2 D of the joint proposal submitted by Australia, Canada, France, Italy, the United Kingdom and the United States (see para. 279 above) referred to a right of States in accordance with international law to take appropriate measures to defend themselves individually or collectively against intervention as a fundamental element of the inherent right of self-defence.

326. Representatives supporting the adoption of such a provision considered it of the utmost importance. While it had been omitted from General Assembly resolution 2131 (XX) of 21 December 1965, they observed that, in a political statement dealing with the principles of non-intervention, there would be no need to include a reference to closely related obligations and rights. None the less, as the Special Committee was seeking to formulate a statement of international law, it was correct and necessary to state the all-important principle that countries had a right to defend themselves against intervention. It was stressed that the paragraph referred specifically to the fact that action in self-defence must be taken in accordance with international law. That provision, far from being inconsistent with the Charter, sought to ensure recognition of the principle that States which were guilty of acts of intervention must realize that certain consequences would flow from those acts: in other words, that States against which intervention had been committed were not obliged to stand helplessly by but would have the right to take whatever action was permissible under international law, and in accordance with the Charter, to defend themselves.

327. Other representatives considered the proposed provision as a dangerous departure from the Charter and from international law in general. It was pointed out, in particular, that it ignored Article 51 of the Charter, which was the sole basis for the exercise of the right of self-defence of States, and gave the impression that there were other justifications for the use of force in self-defence apart from those envisaged in Article 51. Such an excessively wide interpretation was considered by these representatives to be contrary to the spirit and the letter of the Charter and to be tantamount to an attempt to legitimize preventive war. In the view of some representatives, no group of States had the right to intervene in the affairs of another State on the pretext of collective self-defence, civil strife or infiltration. Some representatives wondered why the proposal, which dealt with the prohibition of the use of force, had been submitted under the principle of non-intervention. It was also said that the proposal was silent on the point whether reference was made to the right of self-defence under Article 51, or whether it was related to the regional arrangements under Article 53 of the Charter; it did not even refer to the Charter, but simply to "international law". The Charter was an international convention, and as such constituted an integral part of international law; but it very specifically regulated the conditions in which the right of self-defence might be exercised, and could therefore usefully have been mentioned expressly. Moreover, the proposal referred to the right of self-defence "against intervention" and it was not clear what this meant. Some of the delegations that were sponsoring the proposal had insisted, in the 1964 Special Committee, that it was almost impossible to define "intervention". If that was the case, the right of self-defence against intervention would rest on a very unsure ground, which could only lead to a dangerous broadening of the range of eventualities in which it could be exercised. Several representatives believed that, while the right of States to take certain measures against less open forms of intervention should be allowed for, it should be given a more precise definition than that contained in the proposal and that the formulation of the right of self-defence should be limited to the occurrence of an armed attack, in accordance with Article 51 of the Charter.

328. Replying to these objections, one representative expressed the view that States had the right to defend themselves against any form of intervention whatsoever until the Security Council took the necessary action. As to the point that the draft extended the legal scope of self-defence beyond the limits laid down in the Charter, he explained that this would constitute a violation of international law, which was excluded by the draft which limited the measures taken in self-defence to those which were "in accordance with international law".

12. *The limitation of the scope of non-intervention*

329. A provision referring to this question was contained in paragraph 3 of the joint proposal submitted by Australia, Canada, France, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (see para. 279 above) and in paragraph 6 of the amendments by Ghana (see para. 277 above) to the five-Power proposal.

330. The debate on this question concentrated on the proposed formulation concerning a "generally recognized freedom of States to seek to influence the policies and actions of other States, in accordance with international law and settled international practice".

331. Sponsors and other representatives supporting such a formulation declared that it was in no way intended to suggest that intervention was permissible. The freedom referred to in the proposal was specifically to be exercised in accordance with international law. The idea underlying that paragraph was that, in the modern world, States were interdependent and were called upon by the Charter to co-operate in maintaining international peace and security. There might be many instances in which States should try to influence others to follow policies consistent with the maintenance of peace and security—or, to give another example, with the principle of respect for human rights. Thus, the idea that States should have freedom to influence the policies of other States seemed to these representatives to be essential to the fulfilment of the obligations of States to the international community. They considered it also as extremely important that the text of the principle should include general provisions which balanced the negative aspect of the formulation of prohibitions by saying that the ban on intervention did not extend to the practices which were generally recognized as not being unlawful in international law and in which all countries habitually engaged. Reference, in this connexion, was made to the Vienna Convention on Diplomatic Relations,[40] which stipulated in article 3 (*b*) that a diplomatic mission had the function of "protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law".

332. One representative, referring to the Vienna Convention, suggested an alternative phrase, reading as follows: "nor as affecting the right of any State to protect its interests and those of its nationals, within the limits permitted by international law, nor the right of promoting friendly relations and developing economic, cultural and scientific relations".

333. Other representatives stated that the proposed provision would legitimize intervention and was therefore unacceptable to them. They considered it as being incompatible with the purposes of the United Nations, especially that of developing friendly relations and co-operation among States, and as a negation of General Assembly resolution 2131 (XX) of 21 December 1965. It was said that there was no "generally recognized freedom" of States to intervene in the affairs of other States; what was essential was to define not the forms of influence that States exerted on each other, but rather the forms of manifestly unlawful pressure, on which the proposal was silent. Certain representatives also objected to reference to "settled international practice". If what was meant was the practice which for decades had been a source of threats to peace and was associated with a troubled past, then such practice was no longer acceptable today. One representative stated that if the proposal was not designed to limit the principle of non-intervention in the affairs of other States and referred only to ordinary diplomatic and consular activities, there was no need for the provision. The principle of non-intervention had never been considered to prohibit such activities which were now governed by the Vienna Conventions on Diplomatic Relations and Consular Relations. If, on the other hand, it did seek to limit that principle, it was unacceptable to him.

[40] United Nations, *Treaty Series*, vol. 500.

C. Decisions of the Special Committee

1. *Decision on the draft resolution sponsored by Chile and the United Arab Republic*

334. At its seventeenth meeting, on 18 March 1966, the Special Committee took decisions on the draft resolution submitted by Chile and the United Arab Republic (see para. 284 above) and on the amendments to it submitted jointly by Australia, Canada, France, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (see para. 285 above).

335. Sub-paragraph 1 (*a*) of the six-Power amendment, reproduced in paragraph 285 above, was accepted by the two sponsors of the draft resolution.

336. A roll-call vote was taken on the amendment in sub-paragraph 1 (*b*) of the document reproduced in paragraph 285 above, with the following result:

In favour: Netherlands, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Canada, France, Guatemala, Italy, Japan.

Against: Mexico, Nigeria, Poland, Romania, Syria, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Algeria, Argentina, Burma, Cameroon, Chile, Czechoslovakia, Dahomey, India, Kenya, Lebanon, Madagascar.

Abstaining: Venezuela.

The amendment was rejected by 19 votes to 10, with 1 abstention.

337. The vote on the amendment in paragraph 2 of document A/AC.125/L.19, reproduced in paragraph 285 above, also by roll-call, was as follows:

In favour: United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Canada, France, Italy, Japan, Netherlands, Sweden.

Against: Syria, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yugoslavia, Algeria, Argentina, Burma, Cameroon, Chile, Czechoslovakia, Dahomey, Ghana, Guatemala, India, Kenya, Lebanon, Madagascar, Mexico, Nigeria, Poland, Romania.

The amendment was rejected by 22 votes to 9.

338. The amendment in sub-paragraph 3 (*a*) of document A/AC.125/L.19, reproduced in paragraph 285 of the present chapter, was put to the vote, by roll-call, with the following results:

In favour: United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Canada, France, Italy, Japan, Netherlands, Sweden.

Against: Syria, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Algeria, Burma, Cameroon, Chile, Czechoslovakia, Dahomey, Ghana, Guatemala, India, Kenya, Lebanon, Madagascar, Mexico, Nigeria, Poland, Romania.

Abstaining: Venezuela, Argentina.

The amendment was rejected by 20 votes to 9, with 2 abstentions.

339. A roll-call vote was taken on the amendment in sub-paragraph 3 (*b*) of document A/AC.125/L.19, also reproduced in paragraph 285 of the present chapter, with the following results:

In favour: Netherlands, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Canada, France, Italy, Japan.

Against: Nigeria, Poland, Romania, Syria, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Algeria, Burma, Cameroon, Chile, Czechoslovakia, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Mexico.

Abstaining: Sweden, Venezuela, Argentina, Guatemala.

The amendment was rejected by 19 votes to 8, with 4 abstentions.

340. The joint draft resolution (see para. 284 above) sponsored by Chile and the United Arab Republic, as modified by sub-paragraph 1 (*a*) of the six-Power amendment to it (see para. 285 above) was then adopted by the Special Committee by a roll-call vote of 22 votes to 8, with 1 abstention. The roll-call vote was as follows:

In favour: Venezuela, Yugoslavia, Algeria, Argentina, Burma, Cameroon, Chile, Czechoslovakia, Dahomey, Ghana, Guatemala, India, Kenya, Lebanon, Madagascar, Mexico, Nigeria, Poland, Romania, Syria, Union of Soviet Socialist Republics, United Arab Republic.

Against: United States of America, Australia, Canada, France, Italy, Japan, Netherlands, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Sweden.

341. The resolution, as adopted (A/AC.125/3) reads as follows:

"*The Special Committee,*

"*Bearing in mind*:

"(*a*) That the General Assembly, by its resolution 1966 (XVIII) of 16 December 1963, established this Special Committee to study and report on the principles of international law enumerated in General Assembly resolution 1815 (XVII),

"(*b*) That the General Assembly, by its resolution 2103 (XX) of 20 December 1965, definitively fixed the structure of this Committee, granting it, *inter alia*, authority to consider the principle of non-intervention, and

"(*c*) That the General Assembly, by its resolution 2131 (XX) of 21 December 1965, adopted a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty which, by virtue of the number of States which voted in its favour, the scope and profundity of its contents and, in particular the absence of opposition, reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law,

"1. *Decides* that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965; and

"2. *Instructs* the Drafting Committee, without prejudice to the provisions of the preceding paragraph, to direct its work on the duty not to intervene in matters within the domestic jurisdiction of any State towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX)."

2. *Explanations of vote*

342. Explanations of vote on the draft resolution and amendments thereto were made by the representatives of France, Japan, Czechoslovakia, Italy, Venezuela, the United Kingdom, Guatemala, Sweden, Australia, and the United States at the eighteenth meeting of the Special Committee on 21 March 1966.

343. The representative of France said that his delegation shared the disappointment of those who regretted the negative outcome of the discussion on the principle of non-intervention. When the Committee had voted on the draft resolution submitted by Chile and the United Arab Republic (see para. 284 above), it had been faced with a perfectly clear situation, since the laudable efforts of certain delegations to achieve a compromise on the meaning of some terms had failed; such a compromise might well have prolonged the disputes over interpretation in the Drafting Committee. His delegation had voted against that draft resolution because of certain points on which it had made comments. It had raised two objections to the words "Declaration ... which ... reflects a universal legal conviction ...", etc., in preambular paragraph (*c*): first, that General Assembly resolutions did not possess the character of hard-and-fast rules which it was desired to attribute to them, although they were universal in scope and did influence international law; secondly, that resolution 2131 (XX) of 21 December 1965, in particular, had been drafted, debated and voted upon solely as a declaration designed to pass formal condemnation upon intervention. The Assembly had had neither the intention nor the means of giving a legal definition of the principle of non-intervention. His delegation had considered that the General Assembly, in adopting the Declaration the day after it had adopted resolution 2103 (XX) of 20 December 1965 containing the Special Committee's terms of reference, had not intended to repudiate its own earlier decision by restricting those terms of reference, so far as the principle of non-intervention was concerned, to the examination of the Declaration alone. His country's vote had therefore been a demonstration of respect for the clearly expresed will of the General Assembly. He also regretted that the text adopted by the Committee had deprived the Drafting Committee which was a negotiating committee as well, of the possibility of working for a reconciliation of views, which had seemed feasible in the light of some positive features of the preceding discussion. It was unfortunately to be feared that the adoption of the draft resolution had delayed a generally acceptable formulation of the principles of non-intervention for a long time.

344. The representative of Japan said that the Declaration contained in resolution 2131 (XX) was quite acceptable to his delegation as a statement of political intent but that, since the Assembly had not had time to make a thorough study, it could not be regarded as an adequate formulation of the principle from the standpoint of international law. He regretted that the Special Committee had not been able to take into account the reservations made to that effect when the terms of reference of the Drafting Committee had been laid down. Japan had voted against the draft resolution because it considered that that text failed to take into full account the amendments thereto (see para. 285 above) and the provisions of General Assembly resolution 2103 (XX) which emphasized "the significance of continuing the effort to achieve general agreement at every stage of the process of the elaboration of the seven principles ...". However, his delegation's apprehension at the excessively restrictive conception of the Drafting

Committee's terms of reference had been largely allayed by explanations given of the nature recorded in paragraph 296 above of the present report; it hoped the Drafting Committee would be able to elaborate the principle in a satisfactory manner.

345. The representative of Czechoslovakia said that his delegation had voted in favour of the draft resolution because that text unequivocally upheld General Assembly resolution 2131 (XX), which had immense political and legal significance since the Declaration contained in it enunciated the basic elements of the legal principle of non-intervention. Czechoslovakia had cast its favourable vote on the understanding that the Special Committee would be required, at all stages of its work, to abide by the provisions of the Declaration, without departing from it and without narrowing its scope or content. With regard to the terms of reference of the Drafting Committee, his delegation considered that the task of that body was as follows: first, it was bound to preserve all the elements of the principle of non-intervention which were contained in the Declaration. Secondly, it was requested to consider additional proposals—namely those which, by their nature, complemented the definition given in the Declaration by adding new elements that would widen the area of agreement established by General Assembly resolution 2131 (XX). On that understanding, his delegation considered that the additional proposals could include both those submitted at the present session and those submitted at the 1964 session. His delegation had proposed that the Drafting Committee should be given a time-limit for the completion of its work on the principle of non-intervention because that principle had already been formulated fairly precisely and because the Drafting Committee should be allowed time to complete its work on the remaining principles. Because the draft resolution submitted by Chile and the United Arab Republic had been adopted, his delegation had decided not to press for a vote on its own draft resolution (see para. 286 above), but it reserved the right to reintroduce that proposal if, in its opinion, that should become necessary.

346. The representative of Italy said that his delegation's vote against the draft resolution adopted by the Special Committee at its previous meeting should not be taken as implying any disregard for General Assembly resolution 2123 (XX). As could be seen from the amendments (see para. 285 above) of which Italy had been a sponsor, the interpretation which those amendments placed on the Declaration did not coincide with the interpretation given in the draft resolution submitted by Chile and the United Arab Republic. In his delegation's view, the Declaration could not be regarded as a final legal formulation of the principle. He did not think the Committee had taken a wise decision, but he hoped that the Drafting Committee, despite its restrictive terms of reference, would be able to produce a text likely to constitute an acceptable basis for general consensus within the Special Committee.

347. The representative of Venezuela said that his delegation had voted for the draft resolution submitted by Chile and the United Arab Republic, which on the whole corresponded to its views. In the vote on the amendments (see para. 285) it had preferred to abstain on sub-paragraph 1 (*b*), because while the expression "reflects a universal legal conviction" did not seem to it altogether correct, in view of the different possible meanings of the word "universal", the Venezuelan delegation had reservations about the formula proposed to replace it, namely, "reflects, *inter alia*, a large area of agreement...". It has also abstained on sub-paragraphs 3 (*a*) and (*b*) of the proposed amendments. On the other hand, it had voted against paragraph 2, in view of the fact that the expression "*se atenderá a*", used in the Spanish text of the draft resolution was more categorical than that proposed to replace it, which seemed to authorize the Drafting Committee to depart somewhat from the text of resolution 2131 (XX).

348. The representative of the United Kingdom said that his delegation could not agree that the Special Committee's task should be confined to incorporating in any formulation of the principle of non-intervention provisions contained in General Assembly resolution 2131 (XX), together with additional proposals on which general agreement might be achieved. For that reason his delegation had joined with others in submitting amendments designed to clarify the legal status and effect of resolution 2131 (XX) and to allow the Drafting Committee to fulfil its functions in conditions consistent with the terms of the mandate given to the Special Committee in General Assembly resolution 2103 (XX). Those amendments having been rejected, his delegation had been obliged to vote against the draft resolution. It would of course participate in the work of the Drafting Committee on the principle of non-intervention. His delegation appreciated the efforts made by certain delegations to give a more flexible interpretation to the resolution adopted. However, it would now be more difficult for the Drafting Committee to achieve general agreement on a formulation of the principle, and the United Kingdom delegation must accordingly reserve its position on any text which might emerge.

349. The representative of Guatemala said that his delegation had voted for the draft resolution submitted by Chile and the United Arab Republic in the first instance because operative paragraph 1 of the draft provided that the Special Committee was to abide by General Assembly resolution 2131 (XX). In the second place, the draft defined the Drafting Committee's mandate by instructing it to consider additional proposals with the aim of widening the area of agreement of resolution 2131 (XX). These provisions met the wishes expressed by his delegation on a number of occasions. So far as the amendments to the draft resolution were concerned, his delegation had voted for the substitution proposed in sub-paragraph 1 (*b*) because the words "reflects, *inter alia*, ..." seemed to correspond to a fact that could not be denied. On the other hand, it had felt unable to vote for the amendment to operative paragraph 1 because the draft resolution had originally been drafted in Spanish and the expression "*tenerse a*" meant the same as the term with which it was proposed to replace it in the Spanish text. Neither had it voted for paragraph 3 of the amendments, because given the limited time at the Drafting Committee's disposal it could not consider "all" the proposals, including those not aimed at widening the area of agreement of General Assembly resolution 2131 (XX) or other proposals such as, for example, that in paragraph 3 of the revised five-Power draft resolution (see para. 128 above), which his delegation regarded as contrary to the principle of non-intervention.

350. The representative of Sweden said that the task of the Special Committee, and of its Drafting Committee, was to seek a formulation which could be used by the General Assembly in drafting a declaration on the principles referred to the Special Committee. Under the terms of its mandate, the Committee was required to have particular regard to the practice of the United Nations and of States, the comments submitted by Governments, and the views and suggestions advanced in the General Assembly during the seventeenth, eighteenth and twentieth sessions. So far as the principle of non-intervention was concerned, his delegation did not think the Committee could fulfil its mandate by the mere mechanical endorsement of resolution 2131 (XX). For those reasons it had voted for paragraphs 2 and 3 of the amendments to the draft resolution submitted by Chile and the United Arab Republic, which would have given the Drafting Committee the necessary latitude. It had seemed to his delegation that the words "will abide by" in operative paragraph 1 of the draft resolution meant no more and no less than that the Committee should respect the substance of the Declaration. For that reason his delegation believed it was in agreement with the substance of the key operative paragraph of the draft resolution. His delegation had abstained in the vote on the draft resolution mainly because of the unqualified statement in the preamble that the Assembly's Declaration "reflects a universal legal conviction". It had felt that there was something paradoxical in deciding by a majority vote that something constituted a universal legal conviction even though express reservations had been voiced by a minority. Could a Committee really decide by a majority vote that it was unanimous? So far as the legal character of the Declaration was concerned, his delegation felt that some passages in it were merely hortatory, not legal, and that other passages were so vague that it was impossible to identify what, if any, legal conviction was behind them. His delegation had voted for sub-paragraph 1 (*b*) of the amendments concerning that point, the language of which it accepted. On the other hand, it had seen no substantive difference between the wording of sub-paragraph 3 (*b*) and the passage it was intended to replace, and had abstained on that amendment.

351. The representative of Australia said that his delegation had supported the Declaration contained in resolution 2131 (XX) as constituting an important statement of principle. Its vote against the draft resolution submitted by Chile and the United Arab Republic should not, therefore, be regarded as a vote against resolution 2131 (XX) itself, but against the terms of a procedural resolution which gave resolution 2131 (XX) an altogether incorrect legal character. When resolution 2131 (XX) had been adopted by the General Assembly his delegation, like many others, had stated that the Declaration did not, in its view, constitute a definitive formulation of the principle of non-intervention, and had added that it would be for the Special Committee to undertake that formulation. But the statement in paragraph (*c*) of the preamble to the draft resolution that the Declaration on the inadmissibility of intervention "reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law" clearly overrode that understanding. The operative part of the draft resolution was worded in rather general terms, and he hoped that the resolution just adopted (see paragraph 341 above) would not be applied in such a way as to depart from the Committee's mandate, which was to continue the effort to achieve general agreement at every stage of the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII).

352. The representative of the United States said that he had voted against the draft resolution because he had been unable, for the reasons he had explained at the seventeenth meeting, to endorse the proposition in paragraph (*c*) of the preamble. A universal legal conviction could not be brought about by legislation, particularly by legislation adopted by a mere majority. Moreover, the draft resolution was not compatible with the Special Committee's mandate, which was to achieve general agreement. Its adoption could be interpreted as an abandonment of efforts to achieve that aim, before those efforts had even begun. Nevertheless, he hoped that the work of the Drafting Committee would lead to satisfactory results. The United States wished to abide by the undertaking it had given in voting for resolution 2131 (XX), which marked an important date in the development of the political attitude of Member States towards the problem of non-intervention. For that reason it could not but oppose resolutely certain proposals which had been made in the Special Committee, whose effect would be in many respects to neutralize resolution 2131 (XX).

3. *Report of the Drafting Committee*

353. The Drafting Committee submitted the following report (A/AC.125/5) to the Special Committee on the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter:

"1. The Drafting Committee considered the above principle in accordance with the mandate given to it by the resolution of the Special Committee of 18 March 1966 (A/AC.125/3).

"2. No agreement was reached on the additional proposals made with the aim of widening the area of agreement of General Assembly resolution 2131 (XX)."

354. This report was introduced by the Chairman of the Drafting Committee in the Special Committee at its forty-seventh meeting on 16 April 1966. He recalled that, in respect of the principle of non-intervention, the Drafting Committee had been given a special mandate embodied in the resolution adopted by the Special Committee on 18 March 1966 (see para. 341 above). In that resolution, the Special Committee, bearing in mind the provisions of General Assembly resolutions 1966 (XVIII), 2103 (XX), and 2131 (XX), had decided, in paragraph 1, that with regard to the principle of non-intervention the Special Committee would abide by General Assembly resolution 2131 (XX) and, in paragraph 2, had instructed the Drafting Committee, without prejudice to the provisions of the preceding paragraph, to direct its work on the duty not to intervene in matters within the domestic jurisdiction of any State towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX). It might also be recalled that, in respect of paragraph 1, the Special Committee had agreed on the construction to be placed on the words "will abide by", in relation to the work of the Drafting Committee. Briefly, it was that those words did not

preclude that Committee from making such drafting changes in General Assembly resolution 2131 (XX) as were of a purely drafting character, provided that no such drafting changes should cause any alteration in the substance of the resolution or reduce its full effect in any way. That had been the Drafting Committee's mandate. The negotiating machinery which it had set up for its work had been controlled entirely by the specific terms of that mandate. The fullest possible opportunity had been given to all members and non-members to participate in the examination of the principle, to which a not inconsiderable amount of time and effort had been devoted. All aspects of the principle had been given equal weight, and opportunity for their consideration had never been fettered. To his profound regret, however, he was unable to report any definite conclusions. The Drafting Committee had encountered at every turn an embarrassing lack of agreement. No drafting changes had been made in resolution 2131 (XX) and no agreement had been reached on the additional proposals made with a view to widening the area of agreement, in accordance with paragraph 2 of the Drafting Committee's mandate. Nevertheless, the exercise in which the Drafting Committee had engaged had been useful in its own way.

4. Decision on the report of the Drafting Committee

355. At its fifty-second meeting, on 25 April 1966, the Special Committee took note of the report (A/AC.125/5) of the Drafting Committee set out in paragraph 353 above (see chapter IX below for the discussion of this report in the Special Committee).

V. The principle of sovereign equality of States[41]

A. Written proposals and amendments

356. The Special Committee based its consideration of the principle of sovereign equality of States on the formulation of the principle adopted unanimously by the 1964 Special Committee and reproduced in its report to the General Assembly (document A/5746, paragraph 339/1/I). The part of this formulation setting out points of consensus reads as follows:

"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."

357. Amendments to the above text were submitted by Czechoslovakia, by the United States of America, by the United Kingdom of Great Britain and Northern Ireland, by the United Arab Republic, by Kenya, and by Ghana. Cameroon submitted a sub-amendment to one of the amendments by Czechoslovakia. The texts of these amendments, and the sub-amendment, are described below.

358. Amendment by Czechoslovakia (A/AC.125/L.8): At the fourth meeting of the Special Committee, on 10 March 1966, the representative of Czechoslovakia submitted orally the following amendments to the 1964 text:

1. Amend paragraph 1 to read as follows:

"All States enjoy sovereign equality. As subjects of international law they have equal rights and duties, and reasons of 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. Amend paragraph 2, sub-paragraph (*e*) to read as follows:

"Each State has the right freely to choose and develop its political, social, economic and cultural systems, and to dispose freely of its national wealth and natural resources."

3. Insert a new sub-paragraph between sub-paragraph (*e*) and (*f*) of paragraph 2, reading as follows:

"(*f*) Each State has 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. Renumber paragraph 2 (*f*) as 2 (*g*).

These amendments were subsequently circulated in document A/AC.125/L.8. At a later date the representative of Czechoslovakia submitted a draft declaration (A/AC.125/L.16, part IV), which formulated the principle of sovereign equality of States on the basis of his aforementioned amendments. The only difference between the draft declaration and the amendment appeared in paragraph 1, where the word "restrict" in the earlier document was replaced by the word "impair".

359. Sub-amendment by Cameroon (A/AC.125/L.10): Cameroon submitted a sub-amendment (A/AC.125/L.10) to the Czechoslovakia amendment (A/AC.125/L.8) which formulated sub-paragraph (*e*) of paragraph 2 as follows:

"Each State has the right to freely choose and develop its political, social, economic and cultural systems, and to enter into treaty or convention with any State or States of its choice for the disposal of its national wealth and natural resources within the territorial limits of the contracting States."

360. Amendment by the United States of America (A/AC.125/L.5): At the fifth meeting of the Special Committee, on 10 March 1966, the representative of the United States introduced an amendment to the 1964 text, to add the following new numbered paragraph:

"3. As a principle upon which the United Nations is based, sovereign equality prohibits arbitrary discrimination among States Members as regards the rights and duties of membership. In particular,

"A. No Member shall be deprived of equal enjoyment of the rights of membership except in accordance with provisions of the Charter, and

"B. All Members are equally obligated to share in bearing the burdens of membership to the extent of their respective capacities and in accordance with the provisions of the Charter."

361. Amendment by the United Kingdom of Great Britain and Northern Ireland (A/AC.125/L.6): At the same meeting the representative of the United Kingdom introduced an amendment to add the following numbered paragraph to the text:

[41] An account of the consideration of this principle by the 1964 Special Committee appears in chapter VI of its report (A/5746).

"3. Every State has the duty to conduct its relations with other States in conformity with international law and with the principle that the sovereign of each State is subject to the supremacy of international law."

362. Amendment by the United Arab Republic (A/AC.125/L.9): Also at the fifth meeting the representative of the United Arab Republic submitted orally the following amendments:

(1) Add to paragraph 2, as new sub-paragraph (*f*), the following:

"(*f*) Each State has the right to dispose freely of its natural wealth and resources.

(2) Add to paragraph 2 the following sub-paragraph (*g*):

"(*g*) Each State has the right to remove any foreign military bases from its territory.

(3) Renumber paragraph 2 (*f*) as 2 (*h*);

(4) Add the following new paragraph 3:

"3. No State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States."

These amendments were subsequently circulated in document A/AC.125/L.9.

363. Amendment by Kenya (A/AC.125/L.7): At the sixth meeting, on 11 March 1966, the representative of Kenya submitted an amendment to add the following new sub-paragraph to paragraph 2:

"Each State has the right to freely dispose of its national wealth and natural resources. In the exercise of this right, due regard shall be paid to the applicable rules of international law and to the terms of agreements validly entered into."

364. Amendment by Ghana (A/AC.125/L.11): The representative of Ghana submitted at the seventh meeting a number of modifications to formulate the principle as follows:

"1. Save as specifically provided for by the United Nations Charter, all States enjoy sovereign equality under international law.

"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 right to take part in the solution of international questions affecting its legitimate interests.

"(*d*) Each State may become party to multilateral treaties dealing with or governing matters involving its legitimate interests.

"(*e*) Every State has the right to join international organizations.

"(*f*) Each State has the duty to respect the personality of other States.

"(*g*) The territorial integrity or political independence of the State is inviolable.

"(*h*) No State shall conduct any experiment or resort to any action which is capable of having harmful effects on other States or endanger their security.

"(*i*) Each State has the right freely to choose and develop its political, social, economic and cultural systems.

"(*j*) Each State has the right to dispose of its national wealth and resources.

"3. Every State has the duty to conduct its relations with other States in conformity with international law."

B. Debate

1. *General comments*

365. The principle of the sovereign equality of States was considered by the Special Committee at its fourth to its seventh meeting, on 10 and 11 March 1966, and at its fiftieth meeting on 22 April 1966.

366. Several representatives made general comments on the importance of the principle of sovereign equality and on the tasks the Special Committee had to perform in regard to it. The principle was described by one representative as a necessary element in the stabilization of relations among States and groups of States, and as the basis of peaceful coexistence of States having different political and economic structures. Another representative stressed that the principle of sovereign equality of States was centrally placed in the whole fabric of international law; it bordered upon the principles of the non-use of force and non-intervention, was closely linked to the principle of fulfilment of international obligations, and was connected with the principle of equal rights and self-determination of peoples. Furthermore, the principle of pacific settlement of disputes and the duty of States to co-operate with one another were necessary corollaries of the principle of sovereign equality. This made it necessary to avoid placing too great a stress on one aspect of the principle through the omission of the counterbalance resulting from the other aspects.

367. One representative emphasized that the questions discussed by the Special Committee were of vital importance to the developing countries. He stated that all countries should unreservedly accept the idea that the freedom of the developing countries was an accomplished fact, that those countries must be recognized as Powers in the same way as the more developed countries, and that the provisions of the Charter applied to them on the same terms as to the countries which had emerged before them on the international scene.

368. Some representatives agreed that the Special Committee had a task of codification to perform in the light of the changes which had taken place in international law since 1945, taking into account the demands of the modern world. One representative said that the work must be based on the text of the United Nations Charter, and should constitute an extension of the Charter founded on State practice, precedent and doctrine. He started from the consideration that the Charter must remain intact, and that there must be no weakening of the juridical obligations laid down in the Charter and accepted by all Member States. At the same time, the Special Committee should take a cautious attitude towards proposals concerning moral principles in relations among States which did not constitute universal rules.

2. *Status of the text adopted by the 1964 Special Committee*

369. Most of the representatives who took part in the debate referred to the points of consensus reached by the 1964 Special Committee in Mexico City, and agreed that the consensus text should be taken as a basis for a formulation of the legal content of the principle.

370. The 1964 text itself was not discussed in great detail. One representative observed that the five points listed in sub-paragraph 2 (*a*), (*b*), (*c*), (*d*) and (*f*), of the consensus (see para. 356 above) were those accepted by Commission I of the San Francisco Conference. Sub-paragraph (*e*), however, was a new element, and its adoption by the 1964 Special Committee had confirmed, in his view, the great progress made in economic and social matters since the adoption of the Charter. One representative considered that legal texts must, above all, have a permanent and universal character, and that the 1964 text was irreproachable

in that regard. Another representative, on the other hand, offered certain criticisms of the text. He said, with respect to paragraph 1 of the 1964 text, that, while it was true that all States were equal before the law, it was not true that they enjoyed the same rights or had the same duties. The formulation in sub-paragraph 2 (*b*) of the 1964 text that "each State enjoys the rights inherent in full sovereignty" was in his view a mere repetition of paragraph 1, and the proposition was false in case of non-sovereign States, or tautological in case that a State was sovereign. The ideas expressed in sub-paragraphs 2 (*d*) and (*f*) were repetitious of other principles.

371. Some differences of opinion were expressed in the Special Committee at the beginning of the debate as to whether the 1964 text should be considered as having exhausted the agreed content of the principle or whether the definition of the principle should take into account various other elements. In the view of certain representatives the consensus text reflected a high degree of unanimity with regard to the elements of the principle, based on detailed discussions and intensive negotiations, and should therefore be endorsed by the Special Committee as it stood. They regretted that points had been reintroduced by other representatives on which it had been impossible to reach agreement and on which there was probably no chance of reaching agreement. Many other representatives felt, however, that the text on the principle should contain a certain number of other important elements which could not be omitted without greatly diminishing its value. They proposed that the Committee, in order to improve the 1964 text, should take as its task the continuation of the work begun at Mexico City, concentrating in particular on the proposals made and views expressed there, while taking into account any new proposals that might be made.

372. As indicated in paragraphs 356-364 above, a number of amendments were submitted in the course of the discussion, designed to reformulate or supplement the 1964 text. The members of the Special Committee concentrated on the consideration of the additional elements set out below of the formulation of the principle, as contained in those amendments.

3. *Capacity of a State to act or assume obligations as an equal member of the international community*

373. A modification referring to the above subject was indicated in paragraph 1 of the amendments, submitted by Czechoslovakia (see para. 358 above).

374. Some representatives considered that it was essential to complete paragraph 1 of the consensus text by stating explicitly that the exercise of the rights in question could not be restricted or impaired for reasons of a political, social, economic, geographical or other nature. That idea was in keeping with the letter and spirit of the United Nations Charter. Other representatives thought that the amendment raised the question of what constituted a State and therefore posed practical problems. One representative said that the Committee could either regard only States Members of the United Nations as States, or could extend the use of the term to cover all States, when it would have to say exactly what is meant by the word "State". He also doubted the practical usefulness of the amendment. Representatives supporting the amendment said that it merely stressed the sovereign equality of all States, and should not be abandoned simply because there was a dispute concerning the statehood of certain entities. Every rule of international law was addressed to States. Indeed, every sentence of the points of consensus contained the word "State". Moreover, the amendment did not require the Special Committee to decide which entities were States.

4. *The right of States to dispose freely of their national wealth and natural resources*

375. Modification concerning a right of the nature just mentioned were indicated in paragraph 2 of the amendment submitted by Czechoslovakia; in the amendment of Cameroon; in the amendment of Kenya; in paragraph 1 of the amendment by the United Arab Republic; and in sub-paragraph 2 (*j*) of the amendment by Ghana (see paras. 358, 359, 362-365).

376. Many representatives considered that the text on the principle would be incomplete unless such a right was mentioned. It was stressed that control over a territory, to be effective, implied a right of free disposal of the wealth encompassed by the boundaries of that territory and that the State concerned would no longer be sovereign if it lost control of one of its component elements. Moreover, the economic aspect of the principle of sovereign equality could not be separated from its political and legal aspects, for economic independence was one of the main guarantees of the effective and complete exercise of State sovereignty. The right to dispose freely of natural resources was a corollary of the sovereign equality of States, and was vitally important to the developing countries in their efforts to overcome factors which severely limited the prospects for expanding their economy and raising their peoples' level of living; it was particularly important to peoples recently liberated from colonial domination. Reference was made to the recognition of the right in the Final Act of the United Nations Conference on Trade and Development, General Principle Three;[42] in General Assembly resolution 1803 (XVII) of 14 December 1962, part I, paragraph 5; and in the Belgrade and Cairo Declarations of non-aligned countries.

377. Certain representatives expressed doubts regarding the appropriateness of introducing the question of national wealth and natural resources into the definition of the sovereign equality of States, since the General Assembly had already adopted a resolution on the subject at its seventeenth session (resolution 1803 (XVII)) and it would continue to consider the matter at its forthcoming session. Also, the topic was not peculiarly relevant to the principle of sovereign equality; the right to dispose of natural resources was a right that States, which were by definition sovereign, exercised in the natural course of events.

378. Some other representatives, while recognizing the right, emphasized that it had to be exercised in conformity with and subject to the supremacy of international law and so as not to jeopardize arrangements which had been validly entered into and were now in operation, for treaties validly entered into were not incompatible with the sovereign equality of States. It was said that a formulation stating such a right would have to be balanced by references to the State's duty to fulfil its obligations in that regard, to co-operate with other States, and to settle disputes by peaceful means.

[42] *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), Final Act, Second Part.

It would be incorrect to define the basic right in such terms as might allow a State to escape international obligations, as to do so would introduce an element of arbitrariness.

379. During the discussion, certain representatives were in favour of the adoption of amendments making the formulation of the right subject to certain qualifications. One representative, while agreeing that the right of free disposal of national wealth and natural resources was subject to the applicable rules of international law and to the terms of agreements entered into, stated that, nevertheless, some agreements on the subject had not been validly entered into and could not now be regarded as being in force; among these he included, in particular, agreements which had been applied by the colonial Powers to dependent territories which later gained their independence. Such agreements were anachronistic and one-sided, and they were not in keeping with the wishes or the interests of those territories.

5. *The right of States to take part in the solution of international questions affecting their legitimate interests*

380. Amendments referring to a right of the above nature were in paragraph 3 of the amendment submitted by Czechoslovakia (see para. 358 above) and in sub-paragraph 2 (*c*) of the amendment submitted by Ghana (see para. 364 above).

381. In the amendment submitted by Czechoslovakia the formulation made reference also to the right of a State to join international organizations and to become party to multilateral treaties dealing with or governing matters involving its legitimate interests. In support of the adoption of this amendment, it was said that the right was a necessary consequence of the unanimously agreed principles that States were juridically equal, that each State enjoyed the rights inherent in full sovereignty, and that each State had the duty to respect the personality of other States. It was also said that, in order to make international law universal in character, it was essential to guarantee the right of each State to play its proper part in the international community. The importance of that question was emphasized by various current problems, such as disarmament, a problem which could be solved only with the participation of all States. Any discrimination against a State was contrary to the principle of the sovereign equality of States.

382. Some other representatives found it very difficult to accept such an amendment. They stated that under Article 4 of the Charter the admission of any State to membership in the United Nations was a matter for decision by the Security Council and by the General Assembly. That amendment was inconsistent with the Charter, with the constitutions of the specialized agencies and of regional organizations and with the general principle that any State was free to enter or not to enter into international agreements with other States and to decide with what other parties it wished to enter into international contracts. A general statement that each State had the right to become party to multilateral treaties would contravene the right of the parties to such treaties to decide the scope of participation. One representative made it clear, however, that Article 4 of the Charter remained applicable and that universality of multilateral agreements would help to strengthen international law. Another representative said that the amendment ought to be discussed in the context of the duty of States to co-operate with one another in accordance with the Charter, as this right did not flow from territorial sovereignty and as it affected also the interests of other States so that their consent would be required for its application. Another representative explained that the susbtance of the proposal was not unacceptable to his delegation, which shared the desire that all States throughout the world should one day be Members of the United Nations, and which also believed that multilateral treaties of general interest should in principle be open to all.

6. *The relationship between State sovereignty and international law*

383. Modifications bearing upon the relationship between State sovereignty and international law were to be found in the amendment submitted by the United Kingdom (see para. 361 above) and in paragraph 3 of the amendment by Ghana (see para. 364).

384. The discussion concentrated largely on the United Kingdom amendment, which was to the effect that every State had to conduct its relations with other States in conformity with international law and that the sovereignty of each State was subject to the supremacy of international law. It was explained, in support of this amendment, that if international order was to have any real substance, it must be accepted that there was in existence a body of law which regulated relations between States. It was also said that progress in international law, the development of friendly relations among States and the maintenance of international peace required a partial surrender by States of their sovereignty. By a sovereign act, States renounced a part of their sovereignty in order to submit to a higher order, namely international law; they thus affirmed their sovereignty by voluntarily contributing to the equilibrium of the international community.

385. It was said by a number of representatives that there were many divergent theories on the relationship between the concept of State sovereignty and the doctrine on the supremacy of international law. One representative thought that the idea of sovereign equality was meaningful only if it was understood to fall within the framework of international law and to derive much of its meaning from international law. State sovereignty could not be respected without international law; if international law did not prohibit the use of force, juridical equality might have little meaning. Thus the concept of sovereign equality and the idea that States were subject to international law were complementary; sovereign equality presupposed an international order in which States were subject to and conformed to international law. Acceptance by States of treaty obligations limiting their freedom of action was in no sense a limitation on their sovereignty. A State entered into treaties as an act of sovereignty, if it did so freely and voluntarily. The fact that international law was uncertain in some areas did not derogate from the general principle that sovereignty was sovereignty under the law.

386. However, the view that States derived their sovereignty from international law was opposed by another representative. He held the view that international law was a product of the customary behaviour of States, and States were sovereign by virtue of their existence as sovereign entities. Sovereignty was a fact, not a legal attribute granted by international law. He did not believe that the obligations or duties deriving

from international treaties or from the Charter entailed, as a rule, any restriction on the sovereignty of the contracting parties. At the most, they restricted the parties' freedom of action, as any rule of municipal law might do. A distinction must be made between restrictions on freedom of action and restrictions on sovereignty. Sovereignty was restricted only when a State lost its exclusive control over a given matter.

387. Still another representative stated that he could not support any suggestion of including a statement to the effect that sovereignty was subject to the supremacy of international law. Such a formula was incompatible with the real relationship between sovereignty and international law, and might be interpreted as reflecting the idea of a supra-national law. He considered that international law, which derived from the sovereignty of States, could not be directed against that sovereignty but should be based on recognition of it and should serve to strengthen and to affirm it. It was also said that the amendment embodied a concept which in practice was not recognized in international law.

388. Two additional reasons were given by one representative for opposing the United Kingdom amendment. He did not think international law was sufficiently coherent, precise or complete for national sovereignty to be subordinate to its rules. States agreed, at the very most, to abide by the obligations which they had freely assumed, but, in the present state of development of international law, States could not be asked to subordinate themselves to it in all respects. In his opinion, a distinction should be drawn between an obligation voluntarily accepted and the general imposition of a law made in other times by a small international community. The second reason why he could not recognize the supremacy of international law was that such supremacy could be considered only in the context of each national constitution. Some constitutions made international law the supreme rule of their internal and external conduct, whereas others expressly recognized that only certain rules of international law stood at the apex of the legal hierarchy. It was therefore desirable, in the present state of international law, to lay greater stress on the need for strict compliance by States with their international obligations under bilateral or multilateral agreements, rather than to impose a supremacy of international law over State sovereignty.

7. *The right of States to remove any foreign military base from territories*

389. Paragraph 2 in the amendment submitted by the United Arab Republic (see para. 362 above) was to the effect indicated in the present sub-heading.

390. In support of the amendment, it was said that the presence of foreign military troops or military bases against the expressed will of the States concerned violated the sovereign rights of these States. Some representatives suggested that such a proposal was justified by the situation existing at present in the world, the areas of conflict often coinciding with areas where bases existed. The presence of such troops and bases was found particularly regrettable by these representatives when it had been laid down as a condition for the granting of independence or an obligation imposed in perpetuity on weaker countries. Reference was made to the Cairo Declaration of non-aligned countries which had affirmed that the existence of foreign bases was a threat to peace and violated the sovereign equality of States.

391. In the view of one representative, once two States had concluded a treaty on that subject, military bases established with official permission could be removed only in virtue of a provision of that treaty. Nevertheless, a distinction should be made between treaties which international law could accept and those which it must reject. Thus, certain treaties which had been concluded between former colonial peoples and their former masters could hardly be described as agreements freely entered into. Those treaties had been imposed by one group on another and should not be put into effect. To obtain their freedom, certain countries had had to pay a very high price, including consent to the establishment of foreign military bases on their soil. International law should not encourage such situations which, in the long run, were likely to lead to a breach of the peace. It was therefore necessary to ensure that in future no treaty could contain provisions binding on countries which were not yet in a position to take decisions in complete freedom.

392. Another representative observed that the physical removal of foreign troops or bases whose presence was grounded in the consent of the host State might be, according to cases and circumstances, a way of relieving a State of burden, a discourtesy, or a breach of an international obligation. Everything depended, therefore, on what qualifications the sponsor of the amendment was ready to accept.

8. *Prohibition of actions having harmful effects on other States*

393. Modifications formulating a prohibition of experiments or resort to any actions capable of having harmful effects on the other States were in paragraph 4 of the amendment submitted by the United Arab Republic and in sub-paragraph 2 (*h*) of the amendment submitted by Ghana (see paras. 326 and 364 above).

394. Representatives who advocated the formulation of such a prohibition in the enunciation of the principle of sovereign equality of States pointed out that the practices referred to in the prohibition came under the doctrine of the misuse of a right and were seriously harmful to sovereign equality and to the rights and duties flowing from it. They said that the safety of States and their inhabitants must be secured and that international law should not remain indifferent to such harmful acts. It was said, further, that the question whether a State had the right to conduct any experiment or resort to any action capable of having harmful effects on other States or endangering their security was of great importance for the developing countries. It was surely to the advantage of the entire international community that the developing countries should be able to carry out their task of nation-building free from the health hazards represented by certain experiments which were being conducted in parts of the under-developed continents. Reference was made, in particular, to the dangers currently presented by nuclear weapons, dealt with in the Moscow Treaty of 1963 banning nuclear weapon tests in the atmosphere, in outer space and under water, and in the resolutions of the General Assembly concerning the obligation to refrain from launching weapons into space. One representative understood the words "harmful effects" as physical effects only, and he considered that any reference to "territorial limits" should be omitted in order to take into account the possibility that harm might be done, for example, in international waters.

395. Some representatives, while advocating the formulation of such prohibition did not press for its inclusion in the principle of sovereign equality.

396. Certain representatives expressed reservations concerning the adoption of any prohibition of the nature here discussed in the text to be prepared by the Special Committee. One representative pointed out, with regard to the question whether a State had the right to conduct any experiment or resort to any action which was capable of having harmful effects on other States or endangering their security, that such experiments were already regulated by international law. Another representative felt that that question fell within the field of responsibility of States. However, while he agreed that the question was of the greatest importance in the modern world, he did not think it appropriate to introduce into a definition of sovereign equality a concept which was necessarily vague. This view was shared by another representative who believed that the proposal was covered by the principle of the international responsibility of States and also wondered whether a declaration concerning sovereign equality was the right place for such a proposal. On the other hand, one representative replied that that principle was so fundamental that it was not enough to argue that it was covered by the principle of international responsibility of States. That representative suggested that the principle should be spelt out in writing and not simply left to be inferred.

9. *Prohibition of arbitrary discrimination among States Members of the United Nations*

397. A proposal concerning a prohibition of the above nature was submitted by the United States (see para. 360 above).

398. In explanation of its purposes it was said that the principle of sovereign equality derived initially from Article 2, paragraph 1, of the United Nations Charter and that it was, in one of its fundamental aspects, an organizational principle of the United Nations.

399. One representative, in commenting on the expression "arbitrary discrimination", said that the purposes and principles of the Charter and those embodied in declarations of the General Assembly excluded every kind of discrimination and not merely one particular form. The idea of giving the rights and obligations of States Members of the United Nations a more concrete form was a concern outside the competence of the Special Committee, whose task was to study the principles concerning relations among States, whether or not they were Members of the United Nations. He also had the impression that some of the provisions proposed by the United States ran counter to United Nations resolutions, particularly those concerning the Republic of South Africa, and were not in conformity with the Charter. Furthermore, in view of the political nature of the proposal, he considered that the General Assembly alone was competent to discuss such a proposal.

400. On the other hand, it was said by one representative that the proposal was to prohibit discrimination of any kind among Member States and to refer specifically to discrimination "as regards the rights and duties of membership"; arbitrary discrimination among Member States would be discrimination for which there was no legal basis under the Charter. The word "arbitrary" was necessary since it might otherwise be understood to mean all "differentiation" or "distinction". Distinctions drawn among Members in application of the provisions of the Charter, for example under Article 27 and Chapter VII, were not arbitrary, for the Charter gave them an adequate basis in international law. As to the question whether the Special Committee was competent to discuss that aspect of the principle of sovereign equality, he replied that its terms of reference, as set forth in General Assembly resolution 2103 (XX) of 20 December 1965, and even the title of the resolution, made explicit reference to the Charter. Moreover, Article 2, paragraph 1, of the Charter was clearly concerned with organizational matters. There might be disagreement on the breadth of the interpretation to be placed on the phrase "in accordance with the Charter of the United Nations", but it could not be argued that the provisions of the Charter were outside the Committee's terms of reference.

10. *Territories under colonial domination*

401. Some representatives stated that territories which, in contravention of the principle of self-determination, were still under colonial domination, could not be considered integral parts of the national territory of a colonial Power. They preferred, however, to consider that question in connexion with the principle of equal rights and self-determination of peoples.

11. *The duty to assist less developed countries*

402. Reference was also made during the debate to the question whether the economically advanced countries had an obligation to assist the less developed countries and to do what they could to narrow the gap between them. Representatives speaking on this subject indicated, however, that it would be preferable for that matter to be discussed in connexion with the principle of the duty of States to co-operate with one another. This topic, and the one referred to in paragraph 401, were also discussed in relation to the principles of the non-use of force and of self-determination (see chapters II and VII of the present report).

C. Decision of the Special Committee

1. *Recommendations of the Drafting Committee*

403. The Drafting Committee submitted the following recommendations to the Special Committee concerning the principle of the sovereign equality of States (A/AC.125/4):

I. Text

"1. All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

"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. Proposals and amendments submitted to the Special Committee on which the Drafting Committee reached no consensus

A. *Sovereignty over national wealth and natural resources*

(*a*) As a new formulation of paragraph 2 (*a*) of the 1964 text.

Czechoslovakia (A/AC.125/L.8):

"Each State has the right freely to choose and develop its political, social, economic and cultural systems and to dispose freely of its national wealth and natural resources".

Sub-amendment by Cameroon (A/AC.125/L.10) to the Czechoslovak amendment:

"Each State has the right to freely choose and develop its political, social, economic and cultural systems, and to enter into treaty or convention with any State or States of its choice for the disposal of its national wealth and natural resources within the territorial limits of the contracting States".

(*b*) As a new numbered sub-paragraph to paragraph 2 of the 1964 text.

Kenya (A/AC.125/L.7):

"Each State has the right to freely dispose of its national wealth and natural resources. In the exercise of this right, due regard shall be paid to the applicable rules of international law and to the terms of agreements validly entered into".

United Arab Republic (A/AC.125/L.9):

"(*f*) Each State has the right to dispose freely of its natural wealth and resources".

Ghana (A/AC.125/L.11):

"(*j*) Each State has the right to dispose of its national wealth and resources".

B. *Foreign military bases*

As a new numbered sub-paragraph to paragraph 2 of the 1964 text.

United Arab Republic (A/AC.125/L.9):

"(*g*) Each State has the right to remove any foreign military base from its territory".

C. *Experiments having harmful effects*

(*a*) As a new numbered sub-paragraph to paragraph 2 of the 1964 text.

Ghana (A/AC.125/L.11):

"(*h*) No State shall conduct any experiment or resort to any action which is capable of having harmful effects on other States or endanger their security".

(*b*) As a new numbered paragraph to the 1964 text.

United Arab Republic (A/AC.125/L.9):

"3. No State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States".

D. *Participation in international organizations, multilateral treaties and solution of international questions*

(*a*) As a new numbered sub-paragraph to paragraph 2 of the 1964 text.

Czechoslovakia (A/AC.125/L.8):

"(*f*) Each State has 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".

Ghana (A/AC.125/L.11):

"(*c*) Each State has the right to take part in the solution of international questions affecting its legitimate interests.

"(*d*) Each State may become party to multilateral treaties dealing with or governing matters involving its legitimate interests.

"(*e*) Every State has the right to join international organizations".

E. *Prohibition of discrimination among States Members of the United Nations*

As a new numbered paragraph to the 1964 text.

United States (A/AC.125/L.5):

"3. As a principle upon which the United Nations is based, sovereign equality prohibits arbitrary discrimination among States Members as regards the rights and duties of membership. In particular,

"A. No Member shall be deprived of equal enjoyment of the rights of membership except in accordance with the provisions of the Charter, and

"B. All Members are equally obligated to share in bearing the burdens of membership to the extent of their respective capacities and in accordance with the provisions of the Charter".

F. *Conformity of international relations with international law*

(*a*) As a new numbered paragraph to the 1964 text.

United Kingdom (A/AC.125/L.6):

"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".

Ghana (A/AC.125/L.11):

"3. Every State has the duty to conduct its relations with other States in conformity with international law".

404. The Chairman of the Drafting Committee introduced the above recommendations to the Special Committee at its 43rd meeting on 12 April 1966. He said that the principle of sovereign equality had been subjected to a thorough examination. In order to improve the prospects of reaching agreement, the Drafting Committee had divided into several groups, and non-members had been invited to participate in the discussions. Thus, the problem had been examined both formally and informally. In spite of the lack of time, the Drafting Committee, in keeping with its terms of reference, had done its utmost to reach negotiated agreements. With regard to the recommendations themselves, the report was divided into two parts: the recommended text, and proposals and amendments which had been submitted and on which no agreement had been possible. The document might give the impression that the work done by the 1964 Special Committee had not been carried forward any further, but that was completely erroneous, since among the topics discussed there was scarcely one which would not command a large majority. Moreover, one of the obstacles to a full consensus had been the fact that some delegations had not had time to communicate with their Governments on certain questions relating to the negotiations. It must also be borne in mind that the Drafting Committee consisted of members of the Special Committee, and it had therefore been able to meet only at the times scheduled for it by the latter.

405. The Chairman of the Drafting Committee stated that the recommended text respected the spirit of the text adopted by the 1964 Special Committee. However, paragraph 1 had been modified to give the principle of sovereign equality its full scope. The Drafting Committee had felt that it was essential to include a provision to the effect that no considerations of an economic, social, political or other nature should affect the rights and duties inherent in membership of the international community.

406. He further pointed out that the proposals and amendments on which no agreement had been possible were set out in section II of the Drafting Committee's recommendations (see para. 403 above). With regard to sovereignty over national wealth and natural resources, two main proposals had been referred to the Drafting Committee: paragraph 2 in the amendment by Czechoslovakia (see para. 358 above) and the amendment by Kenya (see para. 363 above). They had been given full consideration, along with the sub-amendment by Cameroon (see para. 359 above); paragraph 1 in the amendment of the United Arab Republic (see para. 362 above); and sub-paragraph 2 (*j*) in the amendment by Ghana (see para. 364). Other proposals had been made during private consultations. The members of the Drafting Committee had all agreed that the question

of the sovereignty of a State over its national wealth and natural resources should be included. It had not been possible to reach a consensus, however, for reasons both of form and of substance. In particular, the Drafting Committee had not been able to resolve the question whether or not qualifications should be attached to the right of a State freely to dispose of its national wealth and natural resources. That problem had arisen from the second part of the amendment (see para. 363 above) of Kenya. In short, although agreement had been near, a consensus on that point had not been possible. On the question of foreign military bases, the Chairman of the Drafting Committee said that the progress made could, at best, be described as negligible. Regarding experiments having harmful effects, there had seemed to be agreement concerning the substance of the matter. Some delegations, however, had felt that its scope was too wide. Difficult questions of definition had been raised, in particular, by the words "harmful effects on other States" appearing in the documents reproduced in paragraphs 362 and 364 above. The Chairman of the Drafting Committee believed that, with time, it should be possible to arrive at a consensus on that topic. Further consultations would be desirable, both in the Special Committee and in other bodies. On the topic of participation in international organizations, multilateral treaties and the solution of international questions, the Drafting Committee had tried to be as brief as possible, but it had been unable to ignore the debates in the Special Committee. Although all the documents had been carefully studied, the questions raised by the subject would require more time before they could be resolved. They had not been suitable for hurried consideration in the short time available to the Drafting Committee. With regard to the question of the prohibition of discrimination among States Members of the Organization, the Drafting Committee had had to agree that no consensus was foreseeable in the near future. Finally, according to the Chairman of the Drafting Committee, the topic of conformity of international relations with international law had also been thoroughly examined, simultaneously with the question of experiments having harmful effects. The Committee had been able to agree only as to its value.

2. *Explanations of vote*

407. The Special Committee considered the recommendations of the Drafting Committee on the principle of sovereign equality of States at its fiftieth meeting on 22 April 1966. Statements explaining the basis on which they could accept the text on points of consensus recommended by the Drafting Committee were made, in the order indicated, by the representatives of Syria, Chile, United Kingdom, United Arab Republic and Algeria.

408. The representative of Syria said that acceptance by his country in the Special Committee of any provision relating to the principles of peaceful coexistence, or of any provisions which might subsequently amplify those principles, would in no way imply that it accepted any of the commitments enunciated in them with respect to the aggressive forces which had established themselves as an alleged State to the detriment of the lawful rights of the Arab people of Palestine and in violation of the principles of international law themselves and of the purposes and principles of the United Nations Charter.

409. The representative of Chile regretted that it had not been possible to include in the consensus text on the principle of sovereign equality of States two elements on which there had been fairly wide agreement, namely a reference to the sovereignty of States over their national wealth and natural resources (see para. 403, II, A above) and a reference to the renunciation of experiments having harmful effects on other States (see para. 403, II, B above). He hoped that those two points could be added to the formulation at a later stage, perhaps at a further session of the Committee.

410. The representative of the United Kingdom said that his delegation had no objections to the text on which consensus had been reached (see para. 403 above), but, like the representative of Chile, he regretted that owing to a lack of unanimity in the Drafting Committee it had not been possible to include in that text certain proposals which had gained wide support. That applied first to the question of sovereignty over national wealth and natural resources where a compromise formula incorporating a qualification to the effect that due regard should be paid to the rules of international law had seemed likely, at one stage, to command general acceptance. It applied also to the proposal concerning experiments having harmful effects. In the course of negotiations within the working groups and the Drafting Committee, a text had been prepared which sought to combine that proposal with other proposals submitted by the United Kingdom and Ghana concerning the duty of States to conduct their relations with other States in accordance with international law; unfortunately, this composite text had failed, at the last moment, to gain unanimous support. His delegation continued to attach great importance to its proposal (see para. 361 above) and it shared the hope of the representative of Chile that the work on that point as on the others might be continued before long.

411. The representative of the United Arab Republic said that his delegation agreed with the points of consensus contained in part I of the Drafting Committee's recommendations on the principle of sovereign equality (see para. 403 above). However, he recalled that his delegation had already stated at the 1964 session of the Special Committee that the formulation of the principle would be incomplete unless it included other essential elements in addition to those points. Those elements had formed the subject, at the present session, of a proposal by his delegation (see para. 362 above) concerning the right to dispose freely of natural resources, the right to remove foreign bases, and the illegality of experiments capable of having harmful effects. He had noted during the work of the Committee that the last two elements, in particular, had received wide support and he was certain that lack of time had been one of the factors which had prevented their inclusion in the formulation. In any case, he was sure that it would be possible for the three elements proposed by the United Arab Republic to be inserted in the formulation at some future stage in the work.

412. The representative of Algeria confirmed that his delegation, as it had already indicated, approved any text that included the points on which consensus had been reached at the 1964 session. He would therefore support the text contained in part I of the recommendations of the Drafting Committee (see para. 403 above), but that did not mean that his delegation considered that that formulation was a complete definition of the principle. It lacked one element which his delegation considered more essential than ever, namely, an affirmation

of the right of each State to dispose freely of its natural wealth.

3. *Decision*

413. At its fiftieth meeting on 22 April 1966, the Special Committee adopted unanimously the text setting out points of consensus which had been recommended by the Drafting Committee.

VI. The duty of States to co-operate with one another in accordance with the Charter

A. Written proposals and amendments

414. Three proposals on the principle considered in the present chapter were submitted by Czechoslovakia; jointly by Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland, and the United States of America; and jointly by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, Syria, the United Arab Republic and Yugoslavia. Chile submitted amendments (A/AC.125/L.30) to this latter proposal. The texts of these proposals and amendments are set out below.

415. Proposal by Czechoslovakia (A/AC.125/L.16, part V):

"1. States have duty to co-operate with one another, irrespective of their different political, economic and social systems, in the various spheres of international relations in order to maintain international peace and security.

"2. Consequently, States shall, in particular:

"(*a*) Co-operate with other States in the maintenance of international peace and security, in the economic, social and cultural fields as well as in the field of science and technology, and promote economic and social progress of the developing countries;

"(*b*) Apply fully and consistently, in economic co-operation and international trade, the principles of equality and mutual advantages, respect for each other's interests, and non-interference with the internal affairs of other States;

"(*c*) Refrain from any discrimination in their relations with other States, in particular discrimination by reason of differences in political, economic and social systems or in levels of economic development."

416. Joint proposal by Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.125/L.28):

"1. Each Member of the United Nations has the duty to co-operate with other Members in accordance with the Charter of the United Nations in order to create the conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, including the maintenance of peace and security.

"2. Accordingly, all Members pledge themselves to take joint and separate action in co-operation with the United Nations for the achievement of:

"(*a*) higher standards of living, full employment, and conditions of economic and social progress and development;

"(*b*) solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and

"(*c*) universal respect for, and observance of, human rights, fundamental freedoms for all without distinction as to race, sex, language or religion.

"3. In order to make this co-operation fully effective, each Member should, *inter alia*:

"(*a*) participate in and contribute to the work of effective international institutions and procedures, including the United Nations and its specialized agencies, designed for the achievement of solutions to economic, social, health and related problems, or for the promotion of international cultural and educational co-operation;

"(*b*) formulate its economic policy and its policy in respect of any economic assistance which it gives or receives, so as to contribute to the acceleration of economic growth and the equitable elevation of standards of living throughout the world and the economic and social progress and development of other States, and so as to ensure the prudent and efficient use of economic means available to it;

"(*c*) participate in and contribute to the work of the United Nations towards disarmament; and

"(*d*) contribute to the maintenance of international peace and security in accordance with the Charter.

"4. The duty of a State to co-operate with other States in accordance with the Charter in no way implies or involves any derogation from the principle of sovereign equality of States, or from the duty to refrain from intervention in the domestic affairs of other States."

417. Joint proposal by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic, and Yugoslavia (A/AC.125/L.29):

"1. Each State has the duty to co-operate with other States in all spheres of international life in order to maintain world peace, and to secure the economic and social advancement of all peoples.

"2. Differences in the political, economic or social systems of States as well as in their levels of economic and social development shall not impede international co-operation.

"3. International economic, social and technical co-operation and trade among States shall be free from any conditions which might affect the sovereign equality of States.

"4. States shall co-operate in the promotion of economic growth throughout the world, especially that of the developing countries."

418. Amendments by Chile (A/AC.125/L.30) to the joint proposal of Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic and Yugoslavia (A/AC.125/L.29):

"1. In paragraph 1, after the words 'with other States', insert the words 'and with the United Nations'.

"2. In paragraph 3,

"(*a*) Replace the words 'International economic, social and technical co-operation and trade' by the words 'international co-operation in all spheres of international life, especially in the economic, social and technical spheres and in trade';

"(*b*) After the word 'conditions', insert the words 'or limitations'.

"3. In paragraph 4,

"(*a*) After the word 'co-operate', insert the words 'among themselves and with the United Nations';

"(*b*) After the words 'economic growth', insert the words 'and in raising levels of living'."

B. Debate

1. *General remarks*

419. The Special Committee discussed the principle considered in this chapter at its thirty-fourth to thirty-eighth meetings, between 1 and 5 April 1966, and at its fifty-second meeting on 25 April 1966.

420. Several representatives said that the duty of States to co-operate with one another was one of the most significant norms of contemporary international law, and also one of the fundamental rules of peaceful coexistence. They described co-operation as a form of active coexistence and as one practical way of giving effect to coexistence. It meant, in their view, that States should not merely tolerate the existence of other States, but should be prepared to help them as best they could.

421. At the same time, the concept of international co-operation was considered as one of the underlying ideas of the United Nations. Its embodiment in the Charter had resulted from the world community's realization that the maintenance of peace could not rest solely on the preventive functions of the United Nations but should also be ensured by encouraging States to

co-operate with one another. Co-operation among States was thus considered by several representatives to be an essential condition for the maintenance and strengthening of international peace and security and as one of the most important elements that promoted peace.

422. The development of the principle, according to certain representatives, was due to modern conditions. In the contemporary world no State could live in complete isolation, and even most concentrated national efforts by States acting individually would not solve the enormous economic and social problems of the international community. Active co-operation was needed to create the conditions of stability and well-being to which Article 55 of the Charter referred and to provide a basis for harmonious and friendly relations among States.

2. Relation between the duty to co-operate and other principles

423. All the proposals and amendments before the Special Committee contained provisions which referred in varying degrees to the relationship between, or the effect of the duty to co-operate on one or other of the principles before the Committee, in particular the principles of sovereign equality and of non-intervention. The provisions were in: sub-paragraph 2 (*b*) of the amendment submitted by Czechoslovakia; paragraph 4 of the amendment submitted jointly by Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America; paragraph 3 of the amendment submitted jointly by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic and Yugoslavia; and sub-paragraph 2 (*b*) of the amendment submitted by Chile (see paras. 415-418 above).

424. In the view of some representatives, international co-operation meant the uniting of efforts to achieve the purposes set out in the Charter, without violating the principles on which the Charter was based or the generally recognized principles of contemporary international law. Conversely, if any State disregarded its obligations under the United Nations Charter, international agreements, and the generally accepted principles of international law, it undermined the very foundations of international co-operation.

425. It was stated, in particular, that international co-operation at the present time was incompatible with all forms of subordination and pressure exercised by the strong against the weak, and that the principle of the sovereign equality of States must have a place in the formulation of the reciprocal rights and obligations of States in the process of bilateral, multilateral, regional and world-wide co-operation, irrespective of the size of the territory or population of States, the extent of their natural resources or their military or economic strength or influence in the world. Mutual advantages, non-intervention in the domestic affairs of States, non-discrimination on grounds of differences in the political, economic or social systems of States and universality were prominently mentioned among other principles to be observed in the process of co-operation among States.

426. In regard to the proposed formulation that co-operation should not be subject to any conditions which might affect the sovereign equality of States, one representative emphasized that, in law, any condition which had been legally accepted was valid. That was so, for instance, in the case of a condition restricting the use of aid to the specific purpose for which it had been granted; such a condition, in his view, did not prejudice the sovereign equality of States.

427. Certain representatives considered that another aspect of economic co-operation was that States were obliged to refrain from any discrimination in their relations with other States, in particular discrimination by reason of differences in political, economic and social systems or in levels of economic development (see also paras. 430 to 434 below). Discriminatory measures against any State were contrary to the spirit and letter of the Charter and were bound to be a serious obstacle to international trade.

428. Other representatives believed that the above view did not take account of the factual situation, which involved tariffs, economic controls and many other mechanisms necessary to international trade and development. Also, many existing arrangements were based on distinctions between one State and another. For example, there were trade arrangements between developing countries, between developed countries and between mixed groups, all of which distinguished between types of States. Relations between States at differing levels of development were dealt with at length in the Final Act of UNCTAD, and the General Agreement on Tariffs and Trade reached at Geneva on 3 October 1947[43] included a special chapter on the subject of developing countries. One representative thought, therefore, that it might be difficult if not impossible to deal adequately with that complicated situation within a single sentence or within the time available to the Committee.

429. The alleged obligation to refrain from any discrimination by reason of differences in levels of economic development seemed to another representative to contradict a growing tendency in the world to allow the granting of preferences to developing countries. One representative, however, replied that the granting of preferences to developing countries could not be regarded as discrimination.

3. The question of universality of co-operation

430. Paragraphs 1 and 2 (*c*) in the proposals of Czechoslovakia and paragraph 2 in the proposal of Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic and Yugoslavia (see paras. 415 and 417) contained provisions to the effect that differences of political, economic and social systems did not derogate from the duty to co-operate, and the first of these proposals also provided that such differences could not be a basis for discrimination by States in their relations with other States.

431. A number of representatives held the view that co-operation should be universal and that all States should participate in it. They believed that in view of the immensity of the political, economic, social and cultural problems facing mankind, those problems could be solved only through concerted action by all States, and that it was in the interests of the international community to make the duty as universal as possible. It followed, in their view, that all States were entitled to equal participation in international co-operation, and that they should use all available means for the purpose, including United Nations bodies and other agencies. Bilateral relations were also very useful for the same purpose. One representative added that while Member

[43] United Nations, *Treaty Series*, vol. 55.

States could not impose duties on non-members, they could at least seek to set norms of conduct which would extend beyond the scope of co-operation within the United Nations system alone. Moreover, Member States did in fact co-operate with non-member States, and it might be useful if such relations could be provided for in the formulation of the principle. Another representative pointed out that no limits were placed by Article 55 of the Charter on participation in achieving the goals to be promoted under that Article, and noted, in particular, the word "universal" in Article 55 (*c*), which he understood as extending the obligation to co-operate to all countries, whether they were Members of the United Nations or not.

432. Several representatives favoured a clear indication that differences in levels of economic and social development and in political, economic and social systems must not constitute an obstacle to bilateral and multilateral co-operation, and that every State, regardless of its social structure, had an unqualified right to take part in the settlement of international questions affecting its legitimate interests, in relevant multilateral agreements, and in international organizations, without discrimination (see, also, paras. 427-429 above).

433. On the other hand, a number of other representatives felt that the duty to co-operate in accordance with the Charter was an obligation limited to Members of the United Nations, and should be formulated as such. That did not, in their view, limit the scope of the co-operation in which Members could engage. There were many States which were members of the specialized agencies and not Members of the United Nations, and they participated vigorously in international co-operation. They did not, however, fall within the purview of the duty which the Committee was discussing. International co-operation as a legal duty, in the view of some representatives, was not founded on customary international law but was a result of mutually accepted treaty obligations, such as those contained in the Charter itself. With regard to the criticism that no specific mention was made in their proposals of the obligation of co-operation between States, irrespective of their political or social systems, it was said that no such reference was made in the Charter and, in any event, it was unnecessary because the point was self-evident.

434. One representative was not opposed to universality of co-operation, but considered that present realities must be taken into account, especially the fact that the ideological division of the world prevents complete universality and makes it a controversial matter. He therefore suggested that the task of studying the question of universality should be left to the General Assembly.

4. *The legal nature of the duty to co-operate*

435. Several representatives expressed the view that international co-operation was not an optional activity, nor was it merely a moral obligation. With the adoption of the Charter and other important international instruments, it had become a legal obligation and a part of international law. Co-operation developed from a voluntary act into a legal duty which was necessary in the process of adjustment to the existing patterns and requirements of international relations, resulting from the common interest of the international community as a whole. The duty derived its legal force from the provisions of the Charter, particularly Article 56. The language of that Article left no doubt regarding two sets of obligations in relation to the principle: the obligation of States to co-operate among themselves for the achievement of the purposes of international co-operation; and the obligation of States to co-operate with the Organization itself for the attainment of those same purposes. Moreover, the Charter was a multilateral treaty conferring rights on States parties and imposing duties on them, particularly the duty to co-operate. The form that co-operation should take depended on the needs of particular countries and on the resources of each country, the provisions of its own laws and its commitments made through international agreements.

436. One representative said that since every nation profited from co-operation, it would not seem necessary to treat it as an obligation; at least it was an obligation which had been voluntarily undertaken under the Charter with a view to the realization of a common ideal and the creation of a better world. Every State which had subscribed to the Charter must regard co-operation as a duty, but the impulse must come from the country itself and not from outside.

437. Several other representatives questioned the binding character of the duty to co-operate and said that it would be undesirable and dangerous to attempt to express that duty as a principle of law. Co-operation was in their view both the cause and the effect of friendly relations, of which it also constituted an element, but in the political and social spheres rather than in the spheres of legal obligations and international law. The principle considered by the Committee was only declaratory in nature and identified a moral duty with a realistic pattern of international behaviour. Reference in this connexion was made to various provisions of the Charter. It was said that whereas the purposes described in Article 1, paragraphs 1 and 2, were reflected in corresponding legal principles in Article 2, the general objective of international co-operation did not reappear as a legal principle in Article 2. The Charter provisions regarding international co-operation constituted a general declaration of the Organization's competence. Article 55 of the Charter established an obligation binding on the Organization rather than on Member States, and Article 56 concerned the duties of States in relation to that obligation of the international Organization.

5. *Expression of the duty to co-operate in international instruments*

438. Some representatives discussed in detail the development of the duty to co-operate and its embodiment in the United Nations Charter and in other international instruments. It was recalled in this respect that the establishment of the League of Nations after the First World War had been a recognition of the need for co-operation among States in order to settle political questions. The United Nations then assumed special responsibilities in regard to co-operation both in the political field and in the economic, social and cultural spheres. Specific reference was made by several representatives to Articles 1, 55 and 56 of the Charter, as well as to the Preamble and Articles 11, 13, 57 to 59, 62 and 76. Among the post-Charter instruments the following were mentioned: the Pact of the League of Arab States, the Charter of the Organization of American States, the Charter of the Organization of African Unity, declarations of the Bandung, Belgrade and Cairo Conferences, the Final Act of the United Nations Con-

ference on Trade and Development and the joint declaration of the seventy-seven developing countries, issued at the conclusion of the Conference. A number of General Assembly resolutions were also recalled, including resolution 1236 (XII) of 14 December 1947, on peaceful and neighbourly relations among States, resolution 1301 (XIII) of 10 December 1958, which had recommended that all Member States should take practical measures "to foster open, free and friendly co-operation and understanding in the fields of economy, culture, science, technology and communications", and resolution 1505 (XV) of 15 December 1960, in which it had been pointed out that "many new trends in the field of international relations have an impact on the development of international law".

439. It was said that the above-mentioned instruments reflected the development of the principle of co-operation, with increasing stress placed on co-operation in the field of trade and development and economic co-operation in general. One representative thought that the challenge which the Committee must meet was that of formulating in legal terms, and in the light of developments since the adoption of the Charter and of the promises of the future, norms which would record existing patterns and forms of co-operation in such a way that they would retain their relevance and validity for the future. Another representative recognized that States had a duty to co-operate more effectively with other States, but had doubts regarding the possibility of expanding on the principle as expressed in the Charter. However, if the balance preserved in the Charter was maintained, he would not be opposed to an attempt to formulate more clearly the general objectives set out in the Charter.

6. *Co-operation in economic and trade matters and assistance to developing countries*

440. All the proposals before the Special Committee referred to co-operation in economic and trade matters and assistance to developing countries: Czechoslovakia, in sub-paragraphs 2 (*a*) and (*b*) (see para. 415 above); Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland, and the United States of America in sub-paragraphs 2 (*a*) and (*b*), and 3 (*a*) and (*b*) (see para. 416 above); Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic and Yugoslavia, in paragraphs 1, 3 and 4 (see para. 417 above); Chile, in paragraphs 1, 2 and 3 (see para. 418 above).

441. Several representatives stressed that peaceful relations must rest on sound economic foundations and that there must be greater concentration on the economic aspect of co-operation. The concept of co-operation required that States should co-operate in the promotion of economic growth.

442. Certain representatives considered, as an important aspect of co-operation, the provision of aid by the developed countries to the developing countries: such aid was considered by them as essential to bridge the gap separating the two groups of countries, to lay the legal foundation for political co-operation and to ensure the maintenance of international peace and security. One representative said that millions of people were living in conditions of poverty, disease and ignorance, particularly in countries which had recently won their independence after years of foreign domination, and had begun the task of construction in an endeavour to acquire in a few years what they had been without for centuries. For that purpose they needed to be able to obtain foreign capital on reasonable terms, free from political conditions, and to sell their products for fair prices. That task could only be carried out through the collective efforts of the international community. He therefore thought that the Special Committee should emphasize the element of collective responsibility in its formulation of the principle of co-operation. Another representative thought that since the new States had helped to build the economies of certain countries in the past, it was natural that those countries should return to them a little of that which they had taken.

443. One representative, however, did not favour the limitation of efforts to promote economic and social progress to the developing countries, and thought that co-operation in this field should encompass both the developing and developed States. Another representative indicated his preference for a formulation designed to take account of the problem of global economic development, which would describe in general terms the sort of action which was incumbent upon all States, and which would fulfil the objectives stated in Article 55 of the Charter.

7. *Co-operation in the social, cultural, educational, scientific, technological and related fields*

444. Particular reference to the duty of States to co-operate in the fields described above was made during the debate, and some or all of these fields were referred to in all the proposals and amendments before the Committee: Czechoslovakia, in sub-paragraph 2 (*a*) (see para. 415 above); Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, in sub-paragraph 2 (*a*) and 3 (*a*) (see para. 416 above); Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic and Yugoslavia, in paragraphs 1 and 3; and Chile, in sub-paragraph 2 (*a*) (see para. 418 above). It was said that, in the field of science and technology, it was only by active international co-operation for the attainment of peaceful ends that mankind could overcome such problems as famine, disease and the lack of natural resources, as well as the problem of conquering the universe. Science belonged to man in the universal sense of the word and could no longer be the privilege or monopoly of a few; it should be used in the service of all mankind and to increase man's capacity to survive and progress. Furthermore, it was recognized that man's attempt to attain a higher standard of living was a direct factor in maintaining peaceful relations among States. One representative said that, in the cultural field, the desirability of exchanges had always been recognized: there it was not a question of redistribution of wealth but rather of preserving the distinct features of each culture.

445. It was recalled that the above-mentioned spheres of international co-operation were covered by resolution 1164 (XII) of 26 November 1957, which bore the significant title "Development of international co-operation in the fields of science, culture and education"; and that further development of relations in those fields would assist the promotion of economic and social welfare as well as better mutual understanding among nations and the maintenance of peace. The 1964 United Nations Conference on Trade and Development had been the result of the application of that principle. One representative referred to the work done by the International Labour Organisation and the World Federation

of Trade Unions to promote social development and social reforms. Another representative observed that, with regard to co-operation in the social field, the declarations of a non-binding character and the conventions of a binding character which had been adopted by the International Labour Organisation were among the most valuable fruits of the efforts made along those lines.

446. One representative pointed out that the question was at present being studied in detail by other United Nations bodies, including UNCTAD and industrial development organs; that being so, it might perhaps be premature for the Special Committee to adopt definitive conclusions on that subject.

8. *Co-operation in the political field and in the maintenance of international peace and security*

447. Co-operation in these fields was proposed by a number of representatives without being discussed in great detail. Reference, in particular, to co-operation in order to maintain international peace and security appeared in paragraph 1 of the proposal by Czechoslovakia; in paragraph 1 and sub-paragraphs 3 (*c*) and (*d*) of the joint proposal by Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America; in paragraph 1 of the joint proposal by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic and Yugoslavia; and in paragraph 1 of the amendments by Chile (see paras. 415-418 above).

448. One representative said that co-operation in the political field and in the maintenance of peace and security was an area where States could and should contribute to the strengthening of the United Nations. Disarmament, in particular, was a sphere in which progress was possible only through co-operation. According to another representative, co-operation in political matters should be maintained irrespective of differing political systems among States. As examples of active co-operation in the political sphere he cited diplomatic contacts, international conferences, exchanges of visits by Heads of State and the work of the Inter-Parliamentary Union aimed at facilitating exchanges of experience between parliaments.

9. *Respect for and observance of human rights and fundamental freedoms*

449. No substantive discussion on this aspect of the principle, favoured by certain representatives for inclusion in its formulation took place in the Special Committee, although specific mention of it appeared in sub-paragraph 2 (*c*) of the proposal by Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (see para. 416 above).

10. *Participation in and contribution to the work of effective international institutions and procedures*

450. Certain views were expressed on participation in and contribution to the work of effective international institutions and procedures, including the United Nations and its specialized agencies, to which reference was made in sub-paragraph 3 (*a*) of the joint proposal by Australia, Canada, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America (see para. 416 above). International organizations were described as instruments for international co-operation. Reference was also made to Article 56 of the Charter which spoke of joint and separate action by Members of the Organization; to Article 57, which referred to the specialized agencies; and to Article 71, which mentioned international and national non-governmental organizations. Among existing institutions and organs the roles of the General Assembly, the Economic and Social Council, the specialized agencies and the Conference on Trade and Development were the subject of particular comment.

451. One representative felt that the definition of the machinery through which States could carry out their obligations under the principles should not be too rigid. To determine the method of co-operation to be used in a particular field, the nature of the field should be taken into account. Another representative believed that the reference to effective international institutions in a substantive formulation of the principle was inappropriate, as this would introduce into the text of the principle a criterion which was incompatible with the method used by the Committee in the case of the other principles.

C. Decision of the Special Committee

1. *Statement by the Chairman of the Drafting Committee*

452. At the fiftieth meeting of the Special Committee, on 22 April 1966, the Chairman of the Drafting Committee informed the Special Committee that the work of the Drafting Committee on the last two principles considered, which had been new issues for the Special Committee, namely the principles relating to co-operation among States and to the duty of States to fulfil in good faith the obligations assumed by them in accordance with the Charter, had now reached its concluding stages. The Drafting Committee, through its working groups, had spent much of the limited time available examining all aspects of those principles. The problems which had emerged after a frank exchange of views had been approached objectively and discussion of them had made it possible to narrow some of the differences which had at first appeared insurmountable. It seemed that the gap could be bridged. It had been heartening to observe that on several points all members had been able to accept proposals in isolation. Many texts had been dropped because a provision on a particular point had made acceptance of the full text difficult within the time available. The absence of a consensus text on the two principles considered was no reflection on the favourable prospects which, it was generally agreed, clearly existed for future deliberations on them to follow the useful work already done.

2. *Statement by the Chairman of the Special Committee*

453. At its fifty-second meeting, on 25 April 1966, the Special Committee heard a statement by the Chairman of the Special Committee concerning further efforts to obtain a consensus on the formulation of the principle relating to co-operation among States. That statement is contained verbatim in paragraph 570 below.

3. *Decision*

454. Also at its fifty-second meeting, the Special Committee took note of a report by the Drafting Committee (see para. 567 below) that it had been unable to present an agreed formulation of the principle relating to co-operation (see chapter IX below for the discussion of this report in the Special Committee).

4. *Systematic survey of proposals*

455. A systematic survey of the proposals on this principle which were referred to the Drafting Committee follows hereafter:

A. General formulation of the principle

1. *Czechoslovakia* (A/AC.125/L.16, part V, para. 1)

"States have the duty to co-operate with one another, irrespective of their different political, economic and social systems, in the various spheres of international relations in order to maintain international peace and security".

2. *Australia, Canada, Italy, United Kingdom, United States of America* (A/AC.125/L.28, para. 1)

"Each Member of the United Nations has the duty to co-operate with other Members in accordance with the Charter of the United Nations in order to create the conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, including the maintenance of peace and security".

3. *Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic, Yugoslavia* (A/AC.125/L.29, para. 1)

"Each State has the duty to co-operate with other States in all spheres of international life in order to maintain world peace, and to secure the economic and social advancement of all peoples".

4. Amendment by Chile (A/AC.125/L.30, para. 1) to the nine-Power draft (A/AC.125/L.29, para. 1)

"In paragraph 1, after the words 'with other States', insert the words 'and with the United Nations'."

B. Co-operation in the economic, social, cultural and related fields and assistance to developing countries

1. *Czechoslovakia* (A/AC.125/L.16, part V, para. 2)

"Consequently, States shall, in particular:

"(*a*) Co-operate with other States ... in the economic, social and cultural fields as well as in the field of science and technology, and promote economic and social progress of the developing countries".

2. *Australia, Canada, Italy, United Kingdom, United States* (A/AC.125/L.28, paras. 2, 3 (*b*))

"Accordingly, all Members pledge themselves to take joint and separate action in co-operation with the United Nations for the achievement of:

"(*a*) Higher standards of living, full employment, and conditions of economic and social progress and development;

"(*b*) Solutions of international, economic, social, health and related problems; and international cultural and educational co-operation;

"...

"In order to make this co-operation fully effective, each Member should, *inter alia*:

"...

"(*b*) Formulate its economic policy and its policy in respect of any economic assistance which it gives or receives, so as to contribute to the acceleration of economic growth and the equitable elevation of standards of living throughout the world and the economic and social progress and development of other States, and so as to ensure the prudent and efficient use of economic means available to it".

3. *Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic, Yugoslavia,* (A/AC.125/L.29, para. 4)

"States shall co-operate in the promotion of economic growth throughout the world, especially that of the developing countries."

4. Amendment by Chile (A/AC.125/L.30, para. 3) to the nine-Power draft (A/AC.125/L.29, para. 4)

"(*a*) After the word 'co-operate', insert the words 'among themselves and with the United Nations';

"(*b*) After the words 'economic growth', insert the words 'and in raising levels of living'."

C. Co-operation in the maintenance of international peace and security and in the field of disarmament

1. *Czechoslovakia* (A/AC.125/L.16, part V, para. 2 (*a*))

"Consequently, States shall, in particular:

"(*a*) Co-operate with other States in the maintenance of international peace and security ...".

See, also, section A, paragraph 1 above.

2. *Australia, Canada, Italy, United Kingdom, United States* (A/AC.125/L.28, para. 3 (*c*), (*d*))

"In order to make this co-operation fully effective, each Member should, *inter alia*:

"...

"(*c*) participate in and contribute to the work of the United Nations towards disarmament; and

"(*d*) contribute to the maintenance of international peace and security in accordance with the Charter".

See, also, section A, paragraph 2 above.

3. *Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic, Yugoslavia* (A/AC.125/L.29, para. 1). See section A, paragraph 3 above.

D. Respect for and observance of human rights and fundamental freedoms

1. *Australia, Cameroon, Italy, United Kingdom, United States* (A/AC.125/L.28, para. 2 (*c*))

"Accordingly, all Members pledge themselves to take joint and separate action in co-operation with the United Nations for the achievement of:

"...

"(*c*) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

E. Relation between the duty to co-operate and other principles

1. *Czechoslovakia* (A/AC.125/L.16, part V, para. 2 (*b*))

"Consequently, States shall, in particular:

"...

"(*b*) Apply fully and consistently, in economic co-operation and international trade, the principles of equality and mutual advantages, respect for each other's interests, and non-interference with the internal affairs of other States".

2. *Australia, Cameroon, Italy, United Kingdom, United States* (A/AC.125/L.29, para. 4)

"The duty of a State to co-operate with other States in accordance with the Charter in no way implies or involves any derogation from the principle of sovereign equality of States, or from the duty to refrain from intervention in the domestic affairs of other States".

3. *Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic, Yugoslavia* (A/AC.125/L.29, para. 3)

"International economic, social and technical co-operation and trade among States shall be free from any conditions which might affect the sovereign equality of States".

4. Amendment by Chile (A/AC.125/L.30, para. 2) to the nine-Power draft (A/AC.125/L.29, para. 3)

"In paragraph 3,

"(*a*) Replace the words 'International economic, social and technical co-operation and trade' by the words 'International co-operation in all spheres of international life, especially in the economic, social and technical spheres and in trade';"

"(*b*) After the word 'conditions', insert the words 'or limitations'."

F. Non-discrimination and differences in the political, economic or social systems of States

1. *Czechoslovakia* (A/AC.125/L.16, part V, para. 2 (*c*))

"Consequently, States shall, in particular:

"(*c*) Refrain from any discrimination in their relations with other States, in particular discrimination by reason of differences in political, economic and social systems or in levels of economic development".

2. *Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, United Arab Republic, Yugoslavia* (A/AC.125/L.29, para 2)

"Differences in the political, economic or social systems of States as well as in their levels of economic and social development shall not impede international co-operation".

G. Participation in and contribution to the work of effective international institutions and procedures

1. *Australia, Cameroon, Italy, United Kingdom, United States* (A/AC.125/L.26, para. 3 (*a*))

"In order to make this co-operation fully effective, each Member should *inter alia*:

"(*a*) participate in and contribute to the work of effective international institutions and procedures, including the United Nations and its specialized agencies, designed for the achievement of solutions to economic, social, health and related problems, or for the promotion of international cultural and educational co-operation".

VII. The principle of equal rights and self-determination of peoples

A. Written proposals and amendments

456. In connexion with the above principle three written proposals were submitted: one by Czechoslovakia; one jointly by Algeria, Burma, Dahomey, Cameroon, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; and one by the United States of America (A/AC.125/L.32). Lebanon submitted an amendment to the United States of America proposal. The texts of these proposals and of the amendment are set out below.

457. Proposal by Czechoslovakia (A/AC.125/L.16, part VI):

"1. All peoples have the right to self-determination, namely the right to choose freely their political, economic and social systems, including the rights to establish an independent national State, to pursue their development and to dispose of their natural wealth and resources. All States are bound to respect fully the right of peoples to self-determination and to facilitate its attainment.

"2. Colonialism and racial discrimination are contrary to the foundations of international law and to the Charter of the United Nations, and constitute impediments to the promotion of world peace and co-operation. Consequently, colonialism and racial discrimination in all their forms and manifestations shall be liquidated completely and without delay. Territories which, contrary to the Declaration on the Granting of Independence to Colonial Countries and Peoples, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power.

"3. Peoples have an inalienable right to eliminate colonial domination and to carry on the struggle, by whatever means, for their liberation, independence and free development. Nothing in this Declaration shall be construed as affecting the exercise of that right.

"4. States are prohibited from undertaking any armed action or repressive measures of any kind against peoples under colonial rule."

458. Joint proposal by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.31 and Add.1 to 3):

"1. All peoples have the inalienable right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their national territory.

"2. In accordance with the above principle:

"(*a*) The subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism, constitutes a violation of the principle of equal rights and self-determination of peoples in accordance with the Charter of the United Nations and, as such, is a violation of international law.

"(*b*) Consequently peoples who are deprived of their legitimate right of self-determination and complete freedom are entitled to exercise their inherent right of self-defence, by virtue of which they may receive assistance from other States.

"(*c*) Each State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country.

"(*d*) All States shall render assistance to the United Nations in carrying out its responsibilities to bring about an immediate end to colonialism and to transfer all powers to the peoples of territories which have not yet achieved independence.

"(*e*) Territories under colonial domination do not constitute parts of the territory of States exercising colonial rule."

459. Proposal by the United States of America (A/AC.125/L.32):

"1. Every State has the duty to respect the principle of equal rights and self-determination of peoples.

"2. Applicability of the principle of equal rights and self-determination of peoples in particular cases, and fulfilment of its requirements, are to be determined in accordance with the following criteria:

"A. (1) The principle is applicable in the case of:

"(*a*) A colony or other Non-Self-Governing Territory; or

"(*b*) A zone of occupation ensuing upon the termination of military hostilities; or

"(*c*) A trust territory.

"(2) The principle is *prima facie* applicable in the case of the exercise of sovereignty by a State over a territory geographically distinct and ethnically or culturally diverse from the remainder of that State's territory, even though not as a colony or other Non-Self-Governing Territory.

"(3) In the foregoing cases where the principle is applicable,

"(*a*) The power exercising authority, in order to comply with the principle, is to maintain a readiness to accord self-government, through their free choice, to the people concerned, make such good faith efforts as may be required to bring about the rapid development of institutions of free self-government, and, in the case of Trust Territories, conform to the requirements of Chapter XII of the Charter of the United Nations;

"(*b*) The principle is satisfied by the restoration of self-government, or, in the case of territories not having previously enjoyed self-government, by its achievement, through the free choice of the people concerned. The achievement of self-government may take the form of:

"(1) Emergence as a sovereign and independent State;

"(2) Free association with an independent State; or

"(3) Integration with an independent State.

"B. The existence of a sovereign and independent State possessing a representative Government, effectively functioning as such to all distinct peoples within its territory, is presumed to satisfy the principle of equal rights and self-determination as regards those peoples."

460. Amendments submitted by Lebanon (A/AC.125/L.34) to the United States of America proposal (A/AC.125/L.32)

"1. In the introductory phrase of paragraph 2 A (1), replace 'The principle is applicable in the case of' by 'The principle is applicable on'.

"2. At the beginning of paragraph 2 A (1) (*b*), add the following: 'the indigenous population of'."

B. Debate

1. *General comments*

461. The principle of equal rights and self-determination of peoples was discussed by the Special Committee at its fortieth and forty-first meetings on 7 and 11 April respectively and at its forty-third and forty-fourth meetings on 12 and 13 April 1966. All the representatives who spoke in the debate recognized the importance of the principle as proclaimed in Article 1, paragraph 2, of the Charter, and the desirability of codifying it.

462. Many representatives emphasized that the principle of equal rights and self-determination of peoples was no longer merely a moral or political postulate, but had become a recognized and universal principle of contemporary international law. Today, full respect for the principle was a prerequisite for the maintenance of international peace and security, the development of friendly relations among States, and economic, social and cultural progress throughout the world.

463. Some representatives referred to the historical, philosophical and political origins of the principle. They mentioned salient developments connected with this principle, citing the Declaration of Independence proclaimed by the United States in 1776, the French Revolution and the writings of various philosophers and thinkers. The principle became linked to the concept of nationality, which played an important political role in the nineteenth and early twentieth centuries. Although it had not been incorporated in the Covenant of the League of Nations and the mandates system established under that instrument covered only a limited number of territories, the principle of equal rights and self-determination came to occupy, after the First World War, an important place among the guiding principles of international policy. Having been set forth explicitly in Article 1, paragraph 2 and Article 55 and implicitly in Chapters XI, XII and XIII of the Charter it became part of contemporary positive international law.

464. With reference to the relevance of the principle in the modern world, a number of representatives stated that it was closely connected with one of the outstanding events of the present age, the emancipation of colonial peoples, and that it therefore applied primarily to the peoples which were still under colonial domination and were struggling for independence. It was said that the principle constituted the aspiration and the ultimate goal of countries struggling against colonialism and exploitation. To subject peoples and territories, self-determination represented the assertion of sovereignty, political independence and territorial integrity and the absence of external intervention. Proclaimed in the United Nations Charter, the principle had been broadened in scope in recent times by declarations, resolutions, treaties and legal texts and by the political action of United Nations organs.

465. Other representatives felt that it would be a serious mistake and contrary to the Charter to limit the principle to colonial situations. They stressed that, if it was desired to formulate a genuine principle of international law, the statement of the principle should not be subordinated to, or circumscribed by, certain contemporary political events which by their very nature were temporary and transitory. Consequently, in proceeding to codify the principle, the Special Committee should not bear in mind only the position of dependent or Trust Territories. These representatives held that the principle applied both to the peoples of Non-Self-Governing and Trust Territories and to relations among independent and sovereign States, and its essence was based on the necessity of taking into consideration the desires of the peoples concerned before making territorial changes.

466. Some of the above-mentioned representatives also pointed out that a too rigid conceptual framework for the application of the principle could lead to loss of flexibility. Since Non-Self-Governing Territories varied enormously in resources, some peoples might neither wish nor be able to assume the full responsibilities of independent statehood and might prefer to maintain an association with another country. Those representatives therefore felt that the term "self-determination" should not be taken as necessarily implying full independence.

467. Some representatives emphasized that the principle of self-determination could not be used as a protective mantle to transform an unlawful situation or a situation imposed by force into a lawful one. The application of the principle should not affect the territorial integrity and the legitimate territorial claims of States. Those representatives stated that self-determination was defined from the territorial viewpoint as the right of a people to determine the national affiliation of the space which it inhabited and, consequently, to demand territorial changes and oppose any cession of territory to which it did not expressly consent.

468. The principle of equal rights and self-determination of peoples also implied, according to some representatives, respect for the right of other peoples to self-determination. One representative stated that a people could not be said to have exercised self-determination as long as it remained subject to colonial rule or to régimes which prevented its full exercise of the right to choose its own political, social, economic and cultural system through universal suffrage.

469. Some representatives remarked that the principle of equal rights and self-determination of peoples was a corollary of sovereign equality, because there could be no equality without independence. One representative stated that equal rights of States must mean that they had the same legal capacity whether or not the rights in question were strictly equivalent in the practical sense. Lastly, one representative emphasized the relationship between the principle of equal rights and self-determination of peoples and the development of the ideals of solidarity and interdependence between States.

470. As regards the actual formulation of the principle many representatives thought that Article 1, paragraph 2, of the Charter and General Assembly resolution 1514 (XV) of 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples should be used as a basis. Some also referred, in this connexion, to the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of

their Independence and Sovereignty, adopted in General Assembly resolution 2131 (XX) of 21 December 1965.

471. Several representatives considered that the enunciation of the principle should not be limited to an affirmation of its universal and compulsory nature but that certain rights and obligations implicit or inherent in the principle should also be mentioned in detail. In the formulation, the most recent decisions of organizations and conferences that had dealt with the question should be taken into account. In their opinion, the main task would be to enumerate, in the formula adopted, all the basic components nowadays constituting the content of the principle, in order to ensure its implementation and strengthen its application.

472. Some other representatives recognized that the principle of equal rights and self-determination of peoples was rooted in justice and law, and particularly in the right of collective expression vested in every human group. They nevertheless thought that it was not always easy to translate such fundamental concepts into a body of legal rules intended to govern relations between sovereign States. Any codification of a legal principle must necessarily indicate which group enjoyed the rights and obligations established in the principle and the conditions and manner in which they were to be exercised. Some of those representatives believed that the work of formulation would consist principally in determining the content and scope of the legal obligation inherent in the principle. In the view of others, it consisted in specifying the conditions of applicability and in prescribing, in general terms, the legal conditions and consequences of its application.

473. As some of the above-mentioned representatives pointed out, if the existence of a permanent and universal right to self-determination, based on the Charter and international practice, was proclaimed, it was absolutely essential to specify who should enjoy that right, against whom it could be invoked and what the conditions were for exercising it. Otherwise the existence of that right could be invoked to justify, for example, a given State's territorial acquisitiveness or to dislocate sovereign States within which various ethnic communities had been living together for a long time. This view was also shared by some representatives who considered that the Special Committee's function was to begin by closely defining the actual principle before determining the specific obligations it imposed upon States.

474. In the course of the discussion of this principle documents of the San Francisco Conference concerning the drafting of the Charter and Article 1, paragraph 2, and Articles 55, 56 and 73 and Chapters VI, XI, XII and XIII of the United Nations Charter and the following General Assembly resolutions were quoted: 648 (VII) of 10 December 1952, "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government"; 742 (VIII) of 27 November 1953, "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government"; 1514 (XV) of 14 December 1960, "Declaration on the Granting of Independence to Colonial Countries and Peoples"; 1541 (XV) of 15 December 1960, "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (*e*) of the Charter"; 1654 (XVI) of 21 December 1961, "The Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples"; 2017 (XX) of 1 November 1965, "Measures to implement the United Nations Declaration on the Elimination of All Forms of Racial Discrimination"; 2105 (XX) of 20 December 1965, "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples"; 2131 (XX) of 21 December 1965, "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty".

475. Reference was also made to the following instruments and conferences:

(1) Instruments: the Covenant of the League of Nations (1919),[44] the Atlantic Charter (1941),[45] the Charter of the Organization of American States (1948), the Declarations of Bandung (1955), Belgrade (1961) and Cairo (1964) and the Charter of the Organization of African Unity (1963);

(2) Conferences: the First (1899),[46] Ninth (1948)[47] and Tenth (1954)[48] International Conferences of American States, the San Francisco Conference (1945)[49] and the Conferences of Heads of State or Governments of Non-Aligned Countries (1961, 1964).

2. Questions relating to the general formulation of the principle on which observations were made during the debate

476. During the debate a number of general questions were raised relating to the general formulation of the principle. These are summarized below.

(a) *Peoples and nations as beneficiaries of the principle of equal rights and self-determination of peoples*

477. Some representatives expressed the view that the principle proclaimed in Article 1, paragraph 2, of the Charter was applicable to both States and peoples. In their opinion, that had been confirmed by the numerous resolutions adopted on the subject by the General Assembly. Consequently, States had a duty to apply the principle in their relations both with independent States and with peoples which had not yet succeeded in setting up independent States. One representative said that it was to be deduced from the documents of the San Francisco Conference that, in the eyes of the authors of the Charter, the principle of equal rights and that of self-determination constituted a single norm and, consequently, that the purpose of Article 1, paragraph 2, of the Charter could not be other than to proclaim the equality of peoples as such, and their right to self-determination. Equality of rights, therefore, extended in accordance with the Charter to States, nations and peoples.

478. Some representatives were of the view that, although the Charter and international law in general dealt with relations among States, the primary relevance

[44] *American Journal of International Law* (Washington, D.C.), vol. 13, Supplement, 1919.

[45] League of Nations, *Treaty Series*, vol. CCIV.

[46] *The International Conferences of American States, 1889-1928*, edited by J. B. Scott (New York, Oxford University Press, 1931).

[47] *Annals of the Organization of American States* (Washington, D.C.), vol. I, 1949.

[48] *Ibid.*, vol. VI, 1954.

[49] *Documents of the United Nations Conference on International Organization.*

of the principle of equal rights and self-determination of peoples was to peoples under colonial rule. In the opinion of those representatives, the fact that the documents of the San Francisco Conference did not make clear the meaning of the word "peoples" in Article 1, paragraph 2, and Article 55 of the Charter, and that it was difficult to achieve an agreed definition of the term, should in no way impede the application of the principle to colonial peoples. It was accordingly stated that, read together with Article 73 of the Charter, the principle seemed to mean that substantial groups with a national character desiring to govern themselves and able to do so should be accorded self-government. It was added that the term "nations" in Article 1, paragraph 2, of the Charter could be defined as applying to peoples which possessed the same customs, religion and language, but which were not politically independent. In that connexion, one representative emphasized that while the principle of self-determination of peoples was perhaps implicit in the provisions of Article 73—although that might be controversial—those provisions did not allow any deductions to be made concerning the duties of Member States, as far as the general application of the principle was concerned.

479. Lastly, another representative observed that a people was not an entity in itself and that the whole question centred on the true condition of man. Thus, as certain traditional concepts had disappeared, man's inalienable rights had received increasing recognition and, as a result, peoples had been granted certain rights and freed from certain yokes.

(b) *The principle of self-determination as (i) the right of peoples to independence and (ii) the right of peoples to choose their own political, economic and social system*

480. Several representatives stressed that the right to independence was naturally an essential aspect of the principle of self-determination, but that the two notions were not legally identical. The principle of self-determination had a second aspect which must be taken into account when the principle was formulated, namely, the right of peoples to choose freely their political, economic and social systems. Thus, even when the process of decolonization was completed, the principle of self-determination would remain fully valid. That permanent aspect of the principle must be taken into account in its formulation. It would be contrary to the essence of the principle if, once a people had attained its independence, it was deprived of self-determination in the domestic sphere. In that regard, those representatives pointed out that this "domestic" aspect of the principle of self-determination was intimately bound up with the principle of sovereign equality of States and the principle of non-intervention. External independence and internal autonomy were thus the two essential aspects of the principle of self-determination.

481. One representative considered that the "domestic" aspect of the principle of the right of peoples to self-determination, namely, the right of every people freely to choose its form of government, was part of the public or constitutional law of each State and was only of indirect concern to international law. According to this representative, that aspect of the principle included the following rights proper to each State: (*a*) the right to choose its own political, economic and social system; (*b*) the right to adopt whatever legal system it wished without any limitation other than respect for fundamental human rights; (*c*) the right to give its foreign policy the direction it deemed necessary, and to conclude and denounce international treaties, without any restrictions other than those deriving from the generally recognized rules of international law; and (*d*) the right to dispose of its wealth and natural resources in conformity with its own interests and international law. With regard to the second aspect of the principle, which concerned international law, the right of peoples to self-determination, according to the representative in question, was identical with their right to belong to the State of their choice—i.e., the right of self-determination in the narrower sense. That right, in its turn, comprised the following rights of peoples: (a) the right of any people not to be exchanged or transferred against their wishes; (b) their right to secede from the State to which they belong in order to attach themselves to another State or to form an independent State.

(c) *Colonialism as the denial of the right of self-determination*

482. Several representatives considered that it should be laid down in some form in the statement of the principle that colonialism, by its very nature, constituted a denial of the right to self-determination. It was emphasized that colonialism was still a living reality for many peoples and not merely an academic question, and all attempts to justify the origin of colonialism on grounds such as bringing religion to the indigenous populations, an alleged civilizing mission or the incapacity of indigenous peoples to govern themselves, were repudiated. Colonialism could not be defended as an act of civilization since it included the imperialist concept of exploitation.

(d) *Neo-colonialism and other forms of colonialism*

483. Some representatives said that in formulating the principle of equal rights and self-determination of peoples the Special Committee should reaffirm that neo-colonialism and all other forms of colonialism were unlawful. As the colonial empires—the classic examples of colonialism—had tended to disappear or to shrink, the vestiges of colonialism had assumed, according to those representatives, an unorthodox form, but one which was equally to be condemned. One representative observed that the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly had made it unlawful for the granting of independence to colonial countries and peoples to be accompanied by the imposition of political, military or economic servitudes on former dependent territories. He further pointed out that in that Declaration, the General Assembly has also rejected all pretexts for prolonging colonial rule which were based on alleged inadequacy of political, economic, social or educational preparedness of the dependent countries or peoples.

(e) *Right to secession*

484. In the course of the debate some representatives expressed the view that the principle of equal rights and self-determination set forth in the United Nations Charter did not sanction an unlimited right of secession by peoples forming part of independent and sovereign States and that such a right could not be inferred as a provision of *lex lata* contained in that principle. One of those representatives pointed out that secession supported or encouraged by other States would surely

be in open contradiction with respect for territorial integrity, which was basic to the principle of sovereign equality of States.

485. On the contrary, other representatives considered that the right to secession was one of the rights implicit in the principle. They felt that self-determination implied the right of a people of a given State to secede from that State in order to attach themselves to another State or to form an independent State.

486. One representative felt that it would be dangerous to recognize the right to secession in international law in a general and unlimited manner since the rights of peoples within States were a matter to be dealt with by the domestic constitutional law of those States. However, the same representative asserted that such a right was unquestionable in a particular but very important case, namely, that of peoples, territories and entities subjugated by force in violation of international law. In that case, according to that representative, peoples had the right to regain their freedom and constitute themselves as independent and sovereign States. Finally, another representative considered that the international community was mature enough to distinguish between genuine self-determination and secession in the guise of self-determination.

(f) *Relationship with the principle of non-intervention*

487. During the debate, some representatives referred to the principle of non-intervention in connexion with the principle of equal rights and self-determination. One representative considered that the principle of non-intervention could not be used to protect denials of the right of peoples to self-determination. That right was merely the collective aspect of the concept of human rights and the international community had largely accepted the inapplicability of the principle of non-intervention in the event of the violation of human rights. Mention was also made in that context of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty which had been adopted by the General Assembly on 21 December 1965 (resolution 2131 (XX)). On the contrary, another representative pointed out that under the Charter scheme there was no justification for any separate and special treatment of colonial or other situations involving the principle of self-determination, with regard to the principle of non-intervention and the use of force. Finally, a third representative felt that direct intervention in support of ethnic groups living in neighbouring countries should not be permitted under cover of the principle of self-determination.

(g) *Condemnation of subversive activities and indirect intervention*

488. Certain representatives felt that any formulation of the principle of equal rights and self-determination should condemn subversive activities and indirect intervention which were sometimes carried out under cover of that principle. Such practices not only negated the principles of the Charter and the principle of the solidarity of peoples but also represented a threat to international peace and security.

(h) *Relationship with the safeguarding of fundamental human rights*

489. In the course of the debate references were made to the relationship existing between the principle of equal rights and self-determination of peoples and respect for fundamental human rights and justice. Thus, it was stated that the principle of self-determination was a natural corollary of the principle of human freedom and that the subjection of peoples to foreign rule constituted a negation of fundamental human rights. One representative pointed out that Article 55 of the Charter spoke of the creation "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations" and that the recognition of the fundamental rights and freedoms of every human being was an essential element in establishing a stable social order in each nation and in the community of nations. Moreover, the freedom of nations had advanced considerably during recent years, but human freedoms were still not safeguarded in some parts of the world subjected to colonial régimes or in those where the populations were exposed to inhuman practices such as apartheid.

(i) *Distinction between dependent territories which are administered in accordance with the Charter and those which are not*

490. One representative stressed the necessity of distinguishing, in the formulation of the principle, between the situation of territories which were administered in accordance with Chapters XI to XIII of the Charter and those which were not. In his opinion, those Chapters of the Charter were necessarily consistent with the principle of equal rights and self-determination of peoples. He considered that, in particular, the international trusteeship system was an honourable and accepted part of the machinery established by the Charter. Another representative stated that the trusteeship system established in the Charter was now but a remnant of history on the point of disappearing.

3. *Elements which were formally proposed for inclusion in the principle*

(a) *General content of the principle*

491. Paragraph 1 in the proposal submitted by Czechoslovakia and in the proposal submitted by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see paras. 457-458 above) contained provisions relating to the general content of the principle.

492. According to the proposal of Czechoslovakia, the principle would imply the right of all peoples to choose freely their political, economic and social systems, including the right to establish an independent national State; the right of all peoples freely to pursue their development in accordance with their interests, and the right freely to dispose of their national wealth and resources. The proposal of the Afro-Asian countries stipulated that all peoples had the right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their territory.

493. One representative considered that the formulation of the principle should include a reaffirmation of the full sovereignty of peoples over their natural resources, as stipulated in the proposal of Czechoslovakia, while another expressed the view that this right was implicit in the "internal" aspect of the principle, i.e., in the right of every people to choose the political, economic and social system most suited to it.

494. Some representatives indicated that they were in general agreement with the contents of the afore-

mentioned proposals, but others did not consider those proposals satisfactory. In the view of the latter representatives, it was necessary to adopt, for the formulation of the general content of the principle, a broader approach which would cover all sides of it and would be more in consonance with the provisions of the Charter. It was also stressed by some of those representatives that the use of expressions like "all people have the right to self-determination" could raise almost insuperable practical difficulties.

(b) *Colonialism and racial discrimination as violations of the Charter and of international law*

495. Paragraph 2 of the proposal by Czechoslovakia (see para. 457 above) and sub-paragraph 2 (*a*) of the proposal by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 458 above) concerned this question. Some representatives said that the illegality of colonialism and racial discrimination had become a generally accepted rule of contemporary international law derived from the United Nations Charter. In that connexion it was stated that racial discrimination was in many cases a legacy of colonialism, and inhuman practices such as apartheid were condemned. It was recalled that this legal conviction of the international community had been reflected in declarations adopted by the General Assembly, for example, in the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV) of 14 December 1960) and in the Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII) of 20 November 1963), and that bodies had been set up within the United Nations to liquidate both those pernicious practices. Therefore, those representatives agreed that the formulation of the principle should contain a condemnation of colonialism and racial discrimination in all their forms and manifestations and an affirmation of the necessity of putting an end to them.

496. Other representatives reserved their position in respect of the aforesaid proposals or considered them unacceptable. One of those representatives stated that his position was based on the view that the terminology of the proposals was not in harmony with that of General Assembly resolution 1514 (XV).

(c) *Right to eliminate colonial domination and right of self-defence against it*

497. Paragraph 3 of the proposal by Czechoslovakia (see para. 457 above) and sub-paragraph 2 (*b*) of the proposal by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 458 above) referred respectively to the rights to eliminate, and to self-defence against, colonial domination. Some representatives considered these rights to be an essential element, or a corollary of the principle of self-determination. It was stated that the inclusion of those rights in the principle was necessary and in accordance with the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and of General Assembly resolution 2105 (XX) of 20 December 1965. On the other hand, other representatives denied the existence of these rights or said that they introduced an unduly subjective element. In their view, the proposals were not compatible with the principle concerning the threat or use of force as stipulated in the Charter. One representative reserved his position on the proposals in view of their possible implications with respect to situations falling within the scope of Article 51 of the Charter.

(d) *Prohibition of armed action or repressive measures against peoples under colonial rule*

498. Paragraph 4 of the proposal by Czechoslovakia (see para. 457 above) contained a provision concerning this prohibition.

499. Some representatives stressed that States must cease all armed action or repressive measures directed against peoples demanding the recognition of their right to self-determination, recalling that this obligation was expressly mentioned in the Declaration on the Granting of Independence to Colonial Countries and Peoples. In their view, the use of force against colonized peoples justified the exercise of the right of self-defence and entitled them to moral and material assistance on the part of States and international organizations.

500. Consequently, some representatives held the view that the formulation of the principle should contain a prohibition of the use of force to deprive peoples of their national identity or to keep them under colonial domination. In support of this view, they mentioned that Article 73 (*a*) of the Charter expressly stipulated that the inhabitants of the Non-Self-Governing Territories must be protected against "abuses", and that there was no more flagrant abuse than the forcible repression of the national liberation of peoples. In this connexion it was also said that the presence of military bases impeded the attainment of independence. Other representatives, however, stated that they could not accept the proposal since the Charter did not contemplate any special and different treatment for colonial or other situations involving the principle of self-determination in relation to the legitimate use of force.

(e) *The duty to refrain from any action against the national unity and territorial integrity of another country*

501. Sub-paragraph 2 (*c*) of the proposal by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 458 above) enunciated this duty as relating to the principle of equal rights and self-determination.

502. Some representatives stressed that the formulation of the principle should impose on all States the duty to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country. Any such action would be incompatible with the purposes and principles of the Charter, as was stated in the Declaration on the Granting of Independence to Colonial Countries and Peoples. On the other hand, other representatives expressed in general their disagreement with the proposal, especially in the light of its possible implications with respect to the principle of the prohibition of the threat or use of force as prescribed in the Charter.

(f) *The right of peoples to receive assistance in their struggle against colonialism*

503. Sub-paragraph 2 (*d*) of the proposal by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya,

Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 458 above) stated that all States should render assistance to the United Nations to bring about an end to colonialism and to transfer all powers to peoples which had not yet achieved independence. The representative of Czechoslovakia pointed out also that paragraph 3 of his proposal (see para. 457 above) likewise reflected the right of peoples under colonial rule to carry on their struggle to exercise their right of self-determination and to receive material and moral assistance towards the achievement of that goal.

504. Some representatives stated that, given the direction in which the application of the principle of self-determination in United Nations and State practice had developed in recent years, and bearing in mind the fact that the United Nations Organization had made a notable contribution by giving active political and moral assistance to peoples struggling for their independence, it should be recognized in connexion with this principle, or as a logical corollary of it, that peoples which were struggling for their freedom were entitled to receive assistance from other States and that those States had a duty to render assistance to the United Nations in its efforts in favour of the liquidation of colonial régimes. General Assembly resolutions 648 (VII) of 10 December 1952, 742 (VIII) of 27 November 1953, 1514 (XV) of 14 December 1960, 1956 (XVIII) of 11 December 1963 and 2105 (XX) of 20 December 1965 were mentioned in that connexion. One representative said that violation of the principle of self-determination by colonial Powers, particularly through the threat or use of force, entitled the colonized peoples to liberate their territories from foreign occupation and to receive assistance from other States and international organizations.

505. It was also stated that ensuring the exercise of self-determination of peoples was a duty of solidarity and a true duty of the international community, since colonialism was contrary to the Charter and constituted a violation of international law. If the efforts of the international community to suppress colonialism were impeded it would therefore be permissible to render aid and assistance to those struggling to exercise their lawful rights.

506. Other representatives did not agree with the language of the proposal since, in their view, it was based on a too restricted concept of the principle of equal rights and self-determination of peoples.

(g) *Obligation of States to respect and facilitate the attainment of self-determination*

507. Paragraph 1 of the proposal of Czechoslovakia (see para. 457 above) contained a reference to the responsibility of States to facilitate the attainment of self-determination.

508. Several representatives stated that it was the duty of all States, and particularly of colonial Powers, to enable oppressed peoples to exercise peacefully and freely their right of self-determination with a view to their achieving full independence. It was pointed out in that connexion that many Declarations and resolutions of the General Assembly had requested the colonial Powers to co-operate and to take immediate steps for the liquidation of colonialism. Other representatives expressed reservations regarding the proposal since, in their view, it was founded on a too limited notion of the principle of equal rights and self-determination of peoples.

(h) *The question whether dependent territories may be considered integral parts of the metropolitan country*

509. Paragraph 2 of the proposal of Czechoslovakia (see para. 457 above) and sub-paragraph 2 (*e*) of the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 458 above) contained provisions relating to the status of dependent territories.

510. Several representatives took the view that the formulation of the principle should include a provision stating that territories still under colonial domination should not be regarded as parts of the territory of States exercising colonial rule. Any attempt to regard dependent territories as an integral part of the metropolitan territory would be based on a mere fiction and would constitute a violation of the norms and principles of international law. Moreover, the Charter of the United Nations and the practice of its organs were based on the legal presumption that territories still under colonial domination could not be regarded in law as integral parts of the territory of the colonial Power concerned, but must be regarded as separate entities. It was emphasized that this rule was of great practical and legal importance; for instance, situations arising as a result of the use of force by a colonial Power against such territories would be regarded as international, and not domestic, matters, and therefore the rule would not hamper effective action by the competent United Nations organs. In support of this interpretation, one representative cited the fact that the inhabitants of dependent territories do not enjoy the same rights as those of the metropolitan colonial Power. Furthermore, it was pointed out that it was necessary to avoid repetitions of arbitrary fragmentations of States such as those which resulted from the 1885 Berlin Treaty.[50]

511. Another representative expressed the view that the proposals seemed to indicate the proposition that the juridical situation of a territory which under internal law was an integral part of a State did not constitute in itself a bar to the application of the principle of self-determination of the peoples within such territory. He considered that the same concept was to be found in paragraph 2 A (2) of the proposal of the United States (see para. 459 above). In his opinion, the latter constituted a better formulation, as it avoided the elimination of the juridical protection afforded a certain territory by existing norms of international law. Criticism was also made of the fact that certain of the proposals did not distinguish between the several categories of dependent territories in existence.

512. One representative supported the proposals on the understanding that they referred to a geographical fact which destroys the legal fiction that overseas territories form part of the metropolitan territory; he added, however, that it could not be ignored that sovereignty was exercised by the administering Power, but such exercise should fulfil the conditions imposed on it by Chapter XI of the Charter.

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[50] *American Journal of International Law* (Washington, D.C.), vol. 3, Supplement, 1909.

(i) *Respect for the applicability of the principle, its conditions and legal consequences, and satisfaction of the principle of equal rights and self-determination of peoples*

513. Paragraph 2 of the proposal by the United States (see para. 459 above) contained a number of provisions concerning respect for and applicability of the principle of equal rights and self-determination of peoples. The representative of Lebanon introduced an amendment (paras. 1 and 2) to certain parts of the proposal relating to the applicability of the principle (see para. 460 above).

514. The proposal of the United States proclaimed the duty of every State to respect the principle of equal rights and self-determination of peoples, and specified in paragraph 2 the conditions of applicability of the principle. The sponsor of the proposal explained that it distinguished between situations in which the applicability of the principle was subject to being rebutted and those in which it was not. The fundamental premise was that when a territory over which a State exercised sovereignty exhibited certain basic divergencies from the bulk of that State's territory, there was at least a legitimate question whether the principle of equal rights and self-determination of peoples was being satisfied. If upon further examination it was shown, for example, that certain conditions described in the proposal in fact existed, then it followed that the requirements of the principle were met. In this respect, the sponsor of the proposal indicated that such a premise had been already proclaimed by the United Nations, particularly in General Assembly resolution 1541 (XV) of 15 December 1960, but that it had not been formulated as yet in legal terms in relation to the principle of equal rights and self-determination of peoples. It was also indicated that the provisions in the proposal which described the measures to be adopted to implement the principle in accordance with the Charter were based on Chapters XI and XII of the Charter.

515. Finally, the proposal provided also that "the existence of a sovereign and independent State possessing a representative Government, effectively functioning as such as to all distinct peoples within its territory" is presumed to satisfy the principle of equal rights and self-determination of peoples. The sponsor of the proposal stated that the Charter, by the inclusion of the concept of self-determination of "peoples", presupposed certain rules by which to judge the legitimacy of the modes of political organization which were imposed upon peoples within the framework of a world community composed of sovereign States, and that the proposal was intended precisely to express those rules.

516. Some representatives supported the proposal since, in their opinion, it represented a serious effort to reach a universal, complete and balanced formulation of the principle, and corresponded to a general concept in accordance with the Charter and the resolutions of the General Assembly. Others opposed it because in their view, it did not even attempt to define the content of the principle and aimed at limiting its application, which would be tantamount to a return to the era of colonial domination, and it did not contain any provision to the effect that colonialism is contrary to international law.

517. One representative, who supported in general the proposal, nevertheless stated that self-determination and the rejection of colonialism were so closely linked together that the development of the former could not be understood without the condemnation and extinction of the latter. He also stated that the expression "in particular cases" in the introductory sentence of paragraph 2 weakened the idea which was expressed. The same representative stated further that, in connexion with the free association and integration mentioned in that paragraph 2 (*b*) which related to the satisfaction of the principle, account should be taken of the statements in principles VII, VIII and IX of the annex to General Assembly resolution 1541 (XV).

518. In connexion with the standards for judging the legitimacy of modes of political organization, some representatives agreed that the free and genuine expression of the popular will was an essential element of the principle. In their view, the existence of a representative Government would guarantee that the principle of equal rights and self-determination was genuinely applied in the case of a sovereign and independent State.

C. Decision of the Special Committee

1. *Statement by the Chairman of the Drafting Committee*

519. At the 49th meeting of the Special Committee, on 21 April 1966, the Chairman of the Drafting Committee informed the Special Committee that, because of lack of time, the Drafting Committee had not been able to examine in any detail all the essential aspects of the principle of equal rights and self-determination of peoples. The informal discussions had nevertheless been extremely useful, and some early indications of definite conclusions had already begun to emerge. However, the Drafting Committee was unable to place any recommendations before the Special Committee at the present time. He hoped that there would be sufficient time and opportunity in the future for the principle to receive the full treatment it deserved.

2. *Decision*

520. At its 52nd meeting, on 25 April 1966, the Special Committee took note of a report by the Drafting Committee (see para. 567 below) that it had been unable to present an agreed formulation of the principle of equal rights and self-determination of peoples (see chapter IX below for the discussion of this report in the Special Committee).

3. *Systematic survey of proposals*

521. A systematic survey of the proposals on this principle which were referred to the Drafting Committee follows hereafter.

A. General statement of the principle

1. *Czechoslovakia* (A/AC.125/L.16, part VI, para. 1)

"1. All peoples have the right to self-determination, namely the right to choose freely their political, economic and social systems, including the rights to establish an independent national State, to pursue their development and to dispose of their natural wealth and resources. All States are bound to respect fully the right of peoples to self-determination and to facilitate its attainment".

2. *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Lebanon, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia* (A/AC.125/L.31, para. 1)

"1. All peoples have the inalienable right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their national territory.

3. *United States of America* (A/AC.125/L.32, para. 1)

"1. Every State has the duty to respect the principle of equal rights and self-determination of peoples.

B. Applicability of the principle

1. *United States* (A/AC.125/L.32, para. 2 A (1) and (2))

"2. Applicability of the principle of equal rights and self-determination of peoples in particular cases and fulfilment of its requirement, are to be determined in accordance with the following criteria:

"A. (1) The principle is applicable to the case of:

"(*a*) A colony or other Non-Self-Governing Territory; or

"(*b*) A zone of occupation ensuing upon the termination of military hostilities; or

"(*c*) A trust territory.

"(2) The principle is *prima facie* applicable in the case of the exercise of sovereignty by a State over a territory geographically distinct and ethnically or culturally diverse from the remainder of that State's territory, even though not as a colony or other Self-Governing Territory".

2. *Lebanon* (amendment A/AC.125/L.34 to A/AC.125/L.32)

"1. In the introductory phrase of paragraph 2 A (1), replace 'The principle is applicable in the case of' by 'The principle is applicable on'.

"2. At the beginning of paragraph 2 A (1) (*b*), add the following: 'The indigenous population of'."

C. Mode of compliance with the principle

United States (A/AC.125/L.32, para. 2 A (3) (*a*))

"(3) In the foregoing cases where the principle is applicable,

"(*a*) The power exercising authority, in order to comply with the principle, is to maintain a readiness to accord self-government, through their free choice, to the people concerned, make such good faith efforts as may be required to bring about the rapid development of institutions of free self-government, and, in the case of Trust Territories, conform to the requirements of Chapter XII of the Charter of the United Nations".

D. Violations of the principle

1. *Czechoslovakia* (A/AC.125/L.16, part VI, para. 2)

"2. Colonialism and racial discrimination are contrary to the foundations of international law and to the Charter of the United Nations, and constitute impediments to the promotion of world peace and co-operation. Consequently, colonialism and racial discrimination in all their forms and manifestations shall be liquidated completely and without delay...".

2. *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Lebanon, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia* (A/AC.125/L.31, para. 2 (*a*))

"2. In accordance with the above principle:

"(*a*) The subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism, constitutes a violation of the principle of equal rights and self-determination of peoples in accordance with the Charter of the United Nations and, as such, is a violation of international law."

E. Right of self-defence against colonial domination

1. *Czechoslovakia* (A/AC.125/L.16, part VI, para. 3)

"3. Peoples have an inalienable right to eliminate colonial domination and to carry on the struggle, by whatever means, for their liberation, independence and free development. Nothing in this Declaration shall be construed as affecting the exercise of that right".

2. *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Lebanon, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia* (A/AC.125/L.31, para. 2 (*b*))

"2. In accordance with the above principle:

"...

"(*b*) Consequently peoples who are deprived of their legitimate right of self-determination and complete freedom are entitled to exercise their inherent right of self-defence, by virtue of which they may receive assistance from other States".

F. Armed action or repressive measures against colonial peoples

Czechoslovakia (A/AC.125/L.16, part VI, para. 4)

"4. States are prohibited from undertaking any armed action or repressive measures of any kind against peoples under colonial rule".

G. Protection of territorial integrity

Algeria, Burma, Cameroon, Dahomey, Ghana, India, Lebanon, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia (A/AC.125/L.31, para. 2 (*c*))

"2. In accordance with the above principle:

"...

"(*c*) Each State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country".

H. Assistance to the United Nations

Algeria, Burma, Cameroon, Dahomey, Ghana, India, Lebanon, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia (A/AC.125/L.31, para. 2 (*d*))

"2. In accordance with the above principle:

"...

"(*d*) All States shall render assistance to the United Nations in carrying out its responsibilities to bring about an immediate end to colonialism and to transfer all powers to the peoples of territories which have not yet achieved independence".

I. Status of dependent territories

1. *Czechoslovakia* (A/AC.125/L.16, part VI, para. 2)

"... Territories which, contrary to the Declaration on the Granting of Independence to Colonial Countries and Peoples, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power".

2. *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Lebanon, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia* (A/AC.125/L.31, para. 2 (*e*))

"2. In accordance with the above principle:

"...

"(*e*) Territories under colonial domination do not constitute parts of the territory of States exercising colonial rule."

J. Satisfaction of the principle

United States (A/AC.125/L.32, para. 2 A (3) (*b*) and 2 B)

"(*b*) The principle is satisfied by the restoration of self-government, or, in the case of territories not having previously enjoyed self-government, by its achievement through the free choice of the people concerned. The achievement of self-government may take the form of:

"(1) Emergence as a sovereign and independent State;

"(2) Free association with an independent State; or

"(3) Integration with an independent State.

"B. The existence of a sovereign and independent State possessing a representative Government, effectively functioning as such as to all distinct peoples within its territory, is presumed to satisfy the principle of equal rights and self-determination as regards those peoples."

VIII. The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

A. Written proposals

522. Three written proposals concerning the principle considered in the present chapter were submitted by Czechoslovakia; jointly by Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia; and jointly by the United Kingdom of Great Britain and Northern Ireland and the United States of America. The texts of these proposals are set out below, in the order of their submission to the Special Committee.

523. Proposal by Czechoslovakia (A/AC.125/L.16, part VII):[51]

"1. Every State shall strictly observe the generally recognized principles and norms of international law and shall fulfil, in good faith, its obligations arising from international treaties freely concluded by it on the basis of equality and in conformity with the above principles.

"2. Every State has the duty to conduct its international relations in accordance with the Charter of the United Nations and with the principles contained in the present Declaration."

524. Joint proposal by Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia (A/AC.125/L.35):

"1. Every State shall fulfil, in good faith, its obligations ensuing from international treaties, concluded freely and on the basis of equality, as well as obligations ensuing from other sources of international law.

"2. Any treaty which is in conflict with the Charter of the United Nations shall be invalid, and no State shall invoke or benefit from such treaties.

"3. Each State has the duty to conduct its international relations in accordance with the United Nations Charter and with the principles enunciated in the present Declaration."

525. Joint proposal by the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.125/L.37):

"1. Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter.

"2. In particular:

"A. (1) The obligations of treaties and other obligations of international law may not be lawfully avoided on grounds of incompatibility with either national law or national policy;

"(2) Upon the faithful performance of such obligations rests the right to exact and enjoy similar performance by others.

"B. States Members of the United Nations and its specialized agencies have the duty

"(1) To fulfil in good faith the obligations placed upon them by the constitution, rules of procedure, and mandatory decisions of those organizations, and

"(2) So to conduct their participation that the organizations themselves act in conformity with their constitutional rules of procedure and mandatory decisions and that the constitutional rights of other Members are not impaired.

"C. Where obligations arising out of international agreements are in conflict with the obligations imposed upon Members of the United Nations by the Charter of the United Nations, the latter obligations shall prevail."

[51] Part VII of the proposal by Czechoslovakia was entitled "The principle that States shall fulfil in good faith their international obligations".

B. Debate

1. *General comments*

526. The Special Committee discussed the principle considered in the present chapter at its forty-fifth to forty-seventh meetings, between 13 and 15 April 1966.

527. Representatives were generally agreed that the principle under discussion was of very great importance, both legally and politically. It underlay the whole structure of international law and was closely linked to the maintenance of international peace and security, the peaceful settlement of disputes and the development of co-operation among States. Respect for the principle would lead to international relations based on mutual trust. This was particularly necessary in the case of relations between States having different political, economic and social systems.

528. Several representatives said that while it was perhaps tautological to declare that States were obliged to fulfil their obligations as was done in Article 2, paragraph 2, of the Charter, such a statement had particular significance in reaffirming the rule *pacta sunt servanda* which gave legal force to the Charter.

529. A number of representatives regretted that the Special Committee was unable to give more time to the consideration of the principle as its session was drawing to a close. One of these representatives stated that if the principle were enunciated only in general terms of the rule *pacta sunt servanda* and the concept of good faith, it would be easy to conclude that there was general agreement. Going beyond generalities, however, many problems arose which required deep study. The validity of treaties; the questions of their interpretation, modification and termination; the relationships between treaty law and municipal law, between treaties and customary law and between treaties and the Charter; and the concept of good faith, which went beyond the law of treaties, were some of the problems which should be explored. The International Law Commission was approaching conclusions on many of these problems, and it might be wiser for the Special Committee not to embark upon the elaboration of a text which would inevitably bear the mark of haste and improvisation.

530. It was said by another representative that a study of the principle concerned showed that it was composed of three distinct rules of international law: the rule *pacta sunt servanda,* the rule of good faith, and the rule that the obligations covered by the principle should be in conformity with the Charter. In the Charter these three rules were to be found successively in the third paragraph of the Preamble, in Article 2, paragraph 2, and in Article 103.

531. The view was expressed that any formulation of the principle accepted by the Special Committee should incorporate the Charter provisions and adapt them to contemporary international law. The drafters of the Charter had intended to draw some distinctions between the rules concerned. In the Preamble they had restated the rule *pacta sunt servanda* in its strictest sense, stressing its applicability to obligations arising both from treaties and from other sources of international law. In Article 2, paragraph 2, they had stressed the importance of the concept of good faith. In Article 103 they had added a new element which created a hierarchy in the legal obligations of States. These elements had to be brought together in a broad state-

ment of the duty of all States, and not only Members of the United Nations, to fulfil their obligations in good faith.

532. One representative said that his delegation considered that the principle in question required, as one of its elements, a balancing of the fundamental postulate *pacta sunt servanda* with the maxim *rebus sic stantibus*. He also drew attention to the remarks of the International Law Commission in the commentary on Article 55 of its draft articles on the law of treaties,[52] where the Commission had stressed that it was desirable to underline the obligation to observe treaties in good faith and not *stricti juris*. The same could be said for obligations assumed under the Charter.

2. *Scope of the principle*

533. Some discussion took place in the Special Committee on the scope of the principle under consideration. One representative said that it related to obligations assumed in accordance with the Charter. It might therefore be asked to what extent it applied to other obligations. It was clear that Article 2, paragraph 2, of the Charter, from which the principle basically derived, related only to obligations which States had assumed under the Charter. However, the principle of good faith was not limited to Charter obligations. It also applied to treaty obligations generally, as was shown by article 55 of the draft articles on the Law of Treaties prepared by the International Law Commission, and to obligations deriving from other sources of international law. Furthermore, Article 103 of the Charter, which established the supremacy of Charter obligations, showed that the principle under consideration was not limited to such obligations, but extended to obligations under treaties other than the Charter.

534. Another representative pointed out that there were some differences of wording between the principle referred to the Special Committee and the terms of Article 2, paragraph 2, of the Charter. Thus, for example, the former referred to "States", while the latter referred to "Member States". While the latter mentioned the rights and advantages accruing to States in their capacity as Members, the former was silent on this subject. These differences, however, did not introduce any real discrepancy between the principle and the Charter Article. As the text of Article 2, paragraph 2, of the Charter had finally emerged at San Francisco, a general rule had been placed within a setting essential to the nature of the Organization: if every Member did not fulfil its obligations assumed under the Charter, the expected advantages did not accrue to all. In this context the rule was really based on the principle of co-operation. However, it likewise related to the principle of *pacta sunt servanda*, and it was in this wider setting that it had been referred to the Special Committee by the General Assembly.

535. One representative expressed the opinion that, while the wording of the principle before the Committee was possibly ambiguous, the principle was not meant to be confined to Charter obligations. This conclusion emerged from the history of the drawing up of that wording. In the negotiations that had preceded the drafting of General Assembly resolution 1815 (XVII) of 18 December 1962, from which the wording of the principle derived, there had been differences of opinion as to whether the principle should be formulated to refer to all States or only to Member States. It had been agreed, by way of compromise, that a comma should be placed after the words "assumed by them". Unfortunately that comma had somehow subsequently disappeared from the text.

3. *The concept of good faith*

536. Reference was made in all the proposals before the Special Committee to the fulfilment of obligations "in good faith": Czechoslovakia, in paragraph 1; Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia, in paragraph 1; and the United Kingdom and United States, in paragraphs 1 and 2 (see paras. 523-525 above).

537. There was some comment in the Special Committee on the concept of good faith, both in general terms and in relation to its definition and the determination of the existence of lack of good faith.

538. The concept of good faith, according to some representatives, had been repeatedly affirmed in a large number of international treaties, declarations and conferences, and in many General Assembly resolutions. Respect for the concept was now a necessity in international life and international co-operation must be based on good faith; it was a duty under the Charter and any bad faith by States in the application of the Charter would be demonstrated by the absence of that co-operation. If good faith was vital in private law, it was even more so in relations between States, since the means of ensuring the fulfilment of obligations at the domestic level, through the courts and law-enforcement agencies, were virtually non-existent in the international sphere.

539. It was also said that the concept of good faith implied the existence of a new source of law which was to be found in the conscience of peoples. A moral principle had become a legal norm. The significance of this change had to be measured against the history of deceit and bad faith in the diplomacy of the past.

540. One representative said that the credit for the introduction of the concept of good faith in the principle under discussion must go to the jurists of Latin America. At San Francisco, the representative of Colombia had stressed that it was not enough to say that States should fulfil their obligations, the concept of good faith had to be introduced to fill a juridical vacuum which would otherwise exist. Furthermore, it could not be said that the concept was implicit in all obligations and did not require explicit mention, because there was one school of political philosophy which attached no value whatever to good faith.

541. It was argued that the concept of good faith might not be easy to define precisely. As with some other basic terms, it was simpler to illustrate than to define. Nevertheless, it was easy to grasp the essence of the concept in question, which imposed on States a duty to fulfil their obligations conscientiously and in a reasonable manner. It was in that sense that the Permanent Court of Arbitration had referred in 1904, in the Venezuelan Preferential Case, to the good faith which ought to govern all international relations.[53]

542. One representative said that the concept of good faith had more moral than legal content. The

[52] *Official Records of the General Assembly, Nineteenth Session, Supplement No. 9.*

[53] *The Hague Court Reports* (First Series), edited by J. B. Scott (New York, Oxford University Press, 1916).

moral content could be found, for example, in the draft Declaration of the Rights and Duties of American States of 1946 and in a declaration of 1942 by the Inter-American Juridical Committee, reaffirming the fundamental principles of international law. The difficulty of definition lay in determining the legal extent of good faith, and whether this could be done by an all-embracing definition or by reference to examples of bad faith, or both. Good faith did not allow a State to rely on its national law, or on a change in circumstances for which it was itself responsible, in order to escape certain obligations.

543. It was also pointed out that difficulties of determining what constituted good faith arose in domestic law as well as in international law. In international law particular problems arose in establishing that bad faith existed and in determining the sanction to be applied to a State acting in bad faith. It was not sufficient to assert that a State was acting in bad faith. The existence of bad faith had to be proved by establishing the existence of acts of omission or commission by one State to the detriment of another. In this sense, the concept of bad faith had a part to play in the law relating to State responsibility.

4. *Compliance with obligations arising out of the Charter of the United Nations*

544. Paragraph 2 in the proposals of Czechoslovakia and paragraph 3 in the joint proposal submitted by Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, the United Arab Republic and Yugoslavia (see paras. 523-524 above) contained identical provisions to the effect that each State had a duty to conduct its international relations in accordance with the Charter of the United Nations and with the principles of international law concerning friendly relations and co-operation among States. Paragraph 2 B in the proposal of the United Kingdom and the United States (see para. 525 above) referred to a duty of States to fulfil in good faith the obligations assumed by them in accordance with the Charter. It also referred to a duty of States Members of the United Nations and of the specialized agencies to fulfil in good faith the obligations placed upon them by the constitution, rules of procedure and mandatory decisions of those organizations and to so conduct their participation that the organizations themselves acted in conformity with their constitutions and did not impair the constitutional rights of other Members.

545. The above provisions were not the subject of much discussion. With respect to the first of them, it was said that it was intended to stress that States, in the conduct of their foreign relations, were under a duty to comply with principles which were of a peremptory nature.

546. With respect to the second provision, one representative recalled that, at the San Francisco Conference, it had been said that Article 2, paragraph 2, of the Charter meant not merely that one Member which fulfilled its duties and obligations might exercise certain privileges and rights, but also that if all the Members of the Organization fulfilled their obligations all Members would receive the benefit. Those obligations were of a twofold nature. First, there were the obligations between State and State, not only to obey the rules set out in the Charter, but also to obey decisions of United Nations organs made in conformity with the Charter. Secondly, States must act in such a way that the Organization and its constituent organs did not infringe the Charter or the respective powers of those organs. The same twofold obligations arose for members of the specialized agencies. It was important to spell out the obligations arising from the application of the principle of good faith to membership in the United Nations system.

5. *Compliance with obligations arising out of treaties and other sources of international law*

547. All the proposals before the Committee contained provisions relating to the duty of States to comply in good faith with obligations arising out of treaties and other sources of international law. The provisions in paragraph 1 of the proposal by Czechoslovakia, and in paragraph 2 of the joint proposal by Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, the United Arab Republic and Yugoslavia (see paras. 523-524 above) were of a general character, and much of the discussion in relation to them arose in connexion with the question of unequal treaties which is considered in the next section of the present chapter.

548. The provision in paragraph 2 A of the proposal by the United Kingdom and the United States (see para. 525 above) was to the effect that treaty and other obligations arising out of international law could not be avoided on grounds of incompatibility with national law or national policy and that the right to exact and enjoy performance by others of their obligations rested upon the faithful performance of such obligations.

549. A number of general observations were made on the duty to comply with obligations arising out of treaties and other sources of international law. It was said that the rule *pacta sunt servanda* and the concept of good faith were corner-stones of the United Nations system. In view of the provisions contained in the third paragraph of the Preamble to the Charter, in Article 2, paragraphs 2 and 6, and in Article 103, it was clear that the drafters of the Charter had intended to place post-war international relations on a sound foundation by stressing the responsibility of all States to observe strictly the rules of international law.

550. It was also said that the rule of *pacta sunt servanda* was one of the oldest principles of international law, which had survived since antiquity. The Preamble to the Covenant of the League of Nations had expressly stated that scrupulous respect for treaty obligations was one of the means of promoting international co-operation and achieving international peace and security. The rule now found clear expression in the Charter, and had been confirmed in numerous resolutions of the General Assembly and in the writings of recognized jurists. It was one of the basic foundations of normal peaceful relations among States and no Government could fail to accept it. Failure to observe it would make such relations impossible. Violations of the rule could jeopardize international peace and security and could lead to wars of aggression.

551. According to one representative, the Charter had created a new international order, based on respect for the sovereign equality of States, protection of their territorial integrity and political independence, maintenance of international peace and security and the enabling of peoples who had been deprived of the right of self-determination to exercise that right and to exercise their sovereignty over their territory and national resources. The rule of *pacta sunt servanda* was of particular importance under this new order, as its strict application would make it possible for peace and justice to prevail.

552. Another representative expressed the view that the obligations, other than those arising from treaties which States were bound to comply with, included both those of customary international law and those of the generally recognized principles of international law embodied in the Charter and in such basic documents as 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 Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (General Assembly resolution 2131 (XX) of 21 December 1965).

553. One representative declared that any formulation adopted by the Special Committee should define the basic relationship between international legal obligations and the national law or national policy of States. Just as one could not conceive of a national legal order in which citizens reserved the right to participate in the legal order or not, one could not think of an international legal order in which States were not similarly bound. A further fundamental of the international legal system, which provided all its members with various benefits in the form of rights, was that that system could survive only to the extent that the burdens which it imposed on each were duly borne.

6. *Limitations upon the duty to comply with treaty obligations*

(a) *The question of unequal treaties*

554. Paragraph 1 in the proposal of Czechoslovakia and paragraph 1 in the joint proposal of Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia (see paras. 523-524 above), contained provisions which had the effect of limiting the duty to comply with treaty obligations, to obligations arising out of treaties freely concluded on a basis of equality.

555. A number of representatives stressed that any general statement relating to a duty to fulfil obligations arising out of treaties should contain qualifications of this nature. It was said that commitments resulting from aggression, colonial domination or inequalities between States were excluded from the principle under consideration. Some colonial Powers invoked the rule *pacta sunt servanda* in demanding compliance with leonine agreements concluded with their former colonial territories. Such actions were in contravention of the principle of good faith, since the agreements in question were iniquitous in their terms and had been obtained in violation of the principle of sovereign equality of States. The African and Asian States had fared badly under treaty law. Local rulers, in order to strengthen their own position or as the result of compulsion, had often concluded treaties detrimental to their subjects. The binding force of treaties rested on consent freely given, but in the case of many treaties imposed on colonial territories that free consent had not been present.

556. One representative said that the question was of particular interest to his country, which had been the object of economic blockades and acts of armed aggression for refusing to comply with spoliatory measures included in agreements concluded by a former régime. In the light of this experience, the Special Committee should assist developing countries in rejecting inequitable agreements that had been imposed on them. The International Law Commission, in articles 37 and 45 of its latest draft on the law of treaties,[54] had provided that a treaty was void if it conflicted with a peremptory norm of international law.

557. It was further said that the attainment of independence by many countries had necessitated a reappraisal of State succession to treaty rights and obligations. There was no universal succession upon independence to treaty rights and obligations which had been extended to colonial territories under colonial clauses. On the other hand, it was equally incorrect to argue that all treaty rights and obligations extended to a colonial territory lapsed upon attainment of independence. Many new States had accepted automatic succession, particularly with respect to conventions of a humanitarian character. They must, however, reserve the right to abrogate or renegotiate unequal treaties to which they had been subjected by their former colonizers.

558. Other representatives thought it was undesirable to insert any particular qualifications concerning freedom of consent in a statement of the duty to comply with treaty obligations. If a qualification were to be inserted at all, it should be of a general character and should refer to the many rules of treaty law by which the validity of international agreements was determined, rather than single out an interpretation of one part thereof and thus give it disproportionate emphasis. It was also said that it would unnecessarily complicate the work of the Special Committee if it were to embark on a discussion of the grounds of validity or invalidity of treaties. The view, in particular, that certain allegedly "unequal treaties" were invalid was a controversial point. It was preferable to await the outcome of the work of the International Law Commission before seeking to insert particular qualifications in the duty to fulfil treaty obligations. While the Committee was not bound by the conclusions of the International Law Commission, it could not ignore the work which the Commission had devoted to the law of treaties and which had been far more thorough than any study the Special Committee could undertake.

(b) *The question of treaties concluded in bad faith*

559. One representative suggested that the Special Committee might consider inserting a provision recognizing the possibility of abrogating treaties which had been concluded in bad faith. Good faith should play a part not only in the fulfilment of obligations, but also in the process of their creation. However, no formal proposal to this effect was placed before the Special Committee.

(c) *Supremacy of Charter obligations*

560. Paragraph 2 in the proposal of Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia (see para. 524 above) contained a provision to the effect that any treaty in conflict with the Charter was invalid and that no State should invoke or benefit from such a treaty. A provision in paragraph 2 C of the proposal of the United Kingdom and the United States (see para. 525 above) was to the effect that Charter obligations prevailed, in the event of conflict, over obligations arising out of other international instruments.

561. There was no disagreement in the Special Committee on the question of the supremacy of Charter

[54] *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9.*

obligations. It was said that this derived directly from Article 103 of the Charter, and that, without a provision relating to it, any formulation adopted by the Special Committee would be incomplete. Among the obligations of the Charter was the obligation to carry out its terms, even if that meant some deviation from obligations under other agreements.

562. One representative expressed the view that it could be inferred by analogy from Article 103 of the Charter that international treaties prevailed over national law. Another representative referred to the view expressed by Kelsen[55] that treaties between Members of the United Nations which were inconsistent with the Charter, if preceding the Charter, were abrogated by it, and, if subsequent to the Charter, were null and void. Attention was also drawn to an Article in the Covenant of the League of Nations corresponding to Article 103 of the Charter, and mention was made of similar clauses in the draft articles on the law of treaties prepared by the International Law Commission. It was further said that States had a duty not to invoke instruments which did not accord with the Charter.

563. Several representatives, however, did not consider that it was correct to infer from Article 103 that treaties between Member States containing provisions inconsistent with Charter provisions were necessarily invalid as a whole. They preferred a formulation which indicated, instead, the precedence accorded to Charter obligations.

C. Decision of the Special Committee

1. *Statement by the Chairman of the Drafting Committee*

564. At the 50th meeting of the Special Committee, on 22 April 1966, the Chairman of the Drafting Committee reported to the Special Committee on the work of the Drafting Committee concerning the duty of States to fulfil in good faith the obligations assumed by them in accordance with the Charter and on the principle relating to co-operation among States. His statement on that occasion is contained in paragraph 452 above.

2. *Decision*

565. At its 52nd meeting on 25 April 1966, the Special Committee took note of a report by the Drafting Committee (see para. 567 below) that it had been unable to present an agreed formulation of the principle considered in the present Chapter (see Chapter IX below for the discussion of this report in the Special Committee).

3. *Systematic survey of proposals*

566. A systematic survey of the proposals on this principle which were referred to the Drafting Committee follows hereafter.

A. Conduct of international relations

1. *Czechoslovakia* (A/AC.125/L.16, part VII, para. 2)

"2. Every State has the duty to conduct its international relations in accordance with the Charter of the United Nations and with the principles contained in the present Declaration".

2. *Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia* (A/AC.125/L.35, para. 3)

"3. Each State has the duty to conduct its international relations in accordance with the United Nations Charter and with the principles enunciated in the present Declaration".

B. Compliance with treaty and other obligations

1. *Czechoslovakia* (A/AC.125/L.16, part VII, para. 1)

"1. Every State shall strictly observe the generally recognized principles and norms of international law and shall fulfil, in good faith, its obligations arising from international treaties freely concluded by it on the basis of equality and in conformity with the above principles".

2. *Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia* (A/AC.125/L.35, para. 3)

"1. Every State shall fulfil, in good faith, its obligations ensuing from international treaties, concluded freely and on the basis of equality, as well as obligations ensuing from other sources of international law".

3. *United Kingdom of Great Britain and Northern Ireland and United States of America* (A/AC.125/L.37, para. 2, A and B)

"2. In particular:

"A. (1) The obligations of treaties and other obligations of international law may not be lawfully avoided on grounds of incompatibility with either national law or national policy;

"(2) Upon the faithful performance of such obligations rests the right to exact and enjoy similar performance by others.

"B. States Members of the United Nations and its specialized agencies have the duty

"(1) to fulfil in good faith the obligations placed upon them by the constitution, rules of procedure, and mandatory decisions of those organizations, and

"(2) so to conduct their participation that the organizations themselves act in conformity with their constitutional rules of procedure and mandatory decisions and that the constitutional rights of other Members are not impaired".

C. Compliance with Charter obligations

United Kingdom of Great Britain and Northern Ireland, United States of America (A/AC.125/L.37, para. 1)

"1. Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter.

D. Supremacy of Charter obligations

1. *Burma, Ghana, India, Madagascar, Nigeria, Syria, Lebanon, United Arab Republic and Yugoslavia* (A/AC.125/L.35, para. 3)

"2. Any treaty which is in conflict with the Charter of the United Nations shall be invalid, and no State shall invoke or benefit from such treaties."

2. *United Kingdom of Great Britain and Northern Ireland, United States of America* (A/AC.125/L.37, para. 2 C)

"C. Where obligations arising out of international agreements are in conflict with the obligations imposed upon Members of the United Nations by the Charter of the United Nations, the latter obligations shall prevail".

IX. Conclusion of the work of the 1966 Special Committee

A. Final report of the Drafting Committee

567. At its fifty-second meeting, on 25 April 1966, the Special Committee considered the report of the Drafting Committee on the principle of non-intervention (see para. 353 above for the text of this report) and the following final report (A/AC.125/8) submitted by the Drafting Committee:

[55] H. Kelsen, *The Law of the United Nations* (New York, Praeger, 1950).

"In concluding its work, the Drafting Committee submits to the Special Committee the following observations:

"1. The Drafting Committee regrets that it has been able to present agreed formulations only on two of the seven principles referred to it.

"2. The debates in the Special Committee as well as in the Drafting Committee have greatly contributed to clarifying the problems at issue.

"3. The Drafting Committee established small informal working groups, one or another of which examined at length each of the seven principles.

"4. The intensive discussions in the Drafting Committee and its working groups have demonstrated that the differences between the various viewpoints have been materially reduced.

"5. Among the factors which hampered the achievement by the Drafting Committee of a greater measure of agreement was lack of sufficient time for additional deliberation and negotiation."

568. The remarks made by the Chairman of the Drafting Committee, introducing the report of the Drafting Committee on the principle of non-intervention to the Special Committee at its forty-seventh meeting on 16 April 1966, have been described in paragraph 354 above, of the present report. He introduced the final report of the Drafting Committee to the Special Committee at its fiftieth meeting on 22 April 1966. Apart from his comments on the work of the Drafting Committee concerning the principle of co-operation among States and the duty of States to fulfil their obligations in good faith—which are recorded in chapter VI, paragraph 452 above, of the present report—he said that the final report of the Drafting Committee spelled out in clear terms some of the vital observations which, it had been generally agreed, were called for at the conclusion of the Drafting Committee's work. The members of the Drafting Committee hoped that those observations would prove useful in the study of the various reports which the Drafting Committee had submitted.

B. Statements by the Chairman of the Special Committee and by the representative of Lebanon

569. The Special Committee decided to include verbatim in its report statements made at its fifty-second meeting, on 25 April 1966, by the Chairman of the Special Committee, and also by the representative of Lebanon who spoke on behalf of the non-aligned countries represented on the Committee. These statements are set out below.

570. Statement by the Chairman of the Special Committee:

As the representatives know, the Drafting Committee did not reach agreement on formulations of the first, fifth, sixth and seventh principles. On the third principle, relating to non-intervention, the Drafting Committee submitted a report (A/AC.125/5) stating that no agreement was reached on the additional proposals made with the aim of widening the area of agreement of General Assembly resolution 2131 (XX).

I feel compelled to state for the record of this Committee —since I made the suggestion on Saturday, 23 April 1966, which the Committee was kind enough to accept—that I consulted various delegations in order to reach an agreement on one principle. That relates to the fifth principle, namely, the duty of States to co-operate with one another in accordance with the Charter. I must confess that despite the somewhat peremptory nature of the title of this principle, the co-operative efforts of the members of the Special Committee to obtain a satisfactory formulation on this principle have been stultified, for the present. The history of this is a little too long. I would only say that the last proposition which I suggested to various delegations reads as follows—and this is purely for the information of the Committee and for the record. Paragraph 1 under this principle reads:

"States have the duty to co-operate with one another, irrespective of their different political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress and the general welfare of nations."

Paragraph 2 reads:

"To this end,

"(*a*) States shall co-operate with other States in the maintenance of international peace and security".

May I be permitted to skip paragraph 2 (*b*), which proved to be the contentious paragraph, and after I read the whole proposition I will explain the different formulations which were submitted to the delegations. Paragraph 2 (*c*) reads:

"States Members of the United Nations have the duty to take joint and separate action, in co-operation with the United Nations, in accordance with the relevant provisions of the Charter".

The last paragraph, paragraph 3, reads:

"States should co-operate in the economic, social and cultural fields, as well as in the field of science and technology, and for the promotion of international, cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries".

If I may revert to paragraph 2 (*b*), I suggested two formulations. The first one reads:

"States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality and non-intervention, with a view to ensuring the realization of international co-operation, free from discrimination based on differences in political, economic or social systems".

The second reads:

"States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality and non-intervention, with a view to realizing international co-operation, free from discrimination based on differences in political, economic and social systems".

To be brief, and also to point out the main differences, what is pinpointed is whether one should accept the words "ensuring the realization of" or the words "with a view to realizing".

I regret to report to the Committee that, for various reasons, certain members of the Committee found it difficult to accept one formulation or the other. I am sorry about that. We were very near agreement, but we could not agree on one or the other formulation. I am not laying the blame for this failure at the door of any delegation. Every delegation has co-operated with me and I am most grateful to all the delegations which tried to find a way to reach a compromise solution, as we did on the other two formulations upon which we agreed. Unfortunately, we could not reach an agreement on this one.

I have made this statement purely for information purposes and for the record of the Committee".

571. Statement by the representative of Lebanon.

The delegation of Lebanon thanks you deeply, Mr. Chairman, for the information which you have been kind enough to give to the Special Committee on the principle relating to international co-operation. It was a sad moment when we learned that your efforts and the efforts of those who participated with you on all sides did not bring this item to a fruitful conclusion.

As you well know, Sir, we have been aware of the tremendous and strenuous efforts which you have been undertaking day and night in order to conclude the consideration of this principle. This fact did not escape either the eyes or the ears, or for that matter the hearts, of the non-aligned countries.

In view of the failure of the Special Committee to reach an agreement on this principle, and in the light of the statement you made, I have the privilege and the honour to make the following statement on behalf of the non-aligned countries.

The delegation of Lebanon, on behalf of the delegations of the non-aligned countries represented in this Special Committee, namely, the delegations of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia, wishes to place on record the following statement.

We have witnessed with considerable regret the recent turn of events regarding the draft formulation of the principle of international co-operation. As representatives are well aware, strenuous efforts have been made by various delegations during the past week with a view to reaching a compromise formulation on this principle satisfactory in essence to all. It seems to us that, at least on this principle, we were very close to arriving at such a formulation. The last-minute failure in this respect must, therefore, be a source of profound regret to all of us, especially when we consider the importance of the work we are engaged in.

We do not propose to pass judgement on any delegation or delegations in this connexion. However, on behalf of the non-aligned delegations, including my own, we wish to state the following.

First, no one can dispute the express terms of reference of resolution 2103 (XX). That resolution, which contains our mandate, clearly certifies that the Special Committee has the right to resort to the normal rules of procedure of the General Assembly, which include, *inter alia*, the voting procedure. The meaning of this provision and the reason for which it was included in resolution 2103 (XX) are also well known to all of us, and I need not dwell on them. It was specifically included in order to ensure that the Special Committee's right to resort to the voting procedure should not be challenged by anyone.

Second, in spite of this clear mandate the non-aligned delegations have exercised the utmost restraint and have, on several occasions, willingly modified their original positions in order to facilitate general agreement in the Special Committee as well as in the General Assembly. They have not sought to utilize their comparative majority in the Special Committee, and have refrained up until now from resorting to a vote.

The recent developments in connexion with this principle have demonstrated, in our view, the difficulties which might arise if the attempt to attain general agreement were pursued to such lengths that, in the final analysis, one State could exercise a veto power over the Committee's work. That is not, in our understanding, how this principle should work. The attempt to secure general agreement does not mean the imposition of the unanimity rule and, ultimately, the imposition of the will sometimes of a small minority on an overwhelming majority, as the case might develop within the Committee in the light of the consideration of these items.

It should be based on the willingness of all concerned to strive for common ground, which should not be impeded by what appears to be a matter of semantics. In any event, we consider it extremely regrettable that our work should have been hampered by such considerations which, as far as we can see, do not go to the real substance of the matter.

We indicated earlier the restraint exercised by the non-aligned countries in not availing themselves of the powers at their disposal. We will continue to exercise such restraint and will not seek at this late stage to resort to our undoubted right to ask for a vote on this question. However, we should like to state unequivocally that, under the circumstances, it would not be conducive to the progress of our task to adhere to the method of seeking general agreement. We feel that, as manifested in the work of the Committee, the method of seeking general agreement tends to distort the real value to be attached to the various positions, besides landing us in the kind of difficulties to which I have just now referred.

The non-aligned countries would like to make their position abundantly clear on this question and on other questions which the Committee had to consider during its present session, namely, that at the forthcoming session of the General Assembly the work which was supposed to be concluded by the Special Committee shall not be hampered by rigid positions taken by one or another delegation.

Having as their objective the early formulation and adoption of the declaration, the non-aligned delegations undertake to resort to the voting procedure in the General Assembly, and in future meetings of the Special Committee if such meetings should be decided upon, in order to ensure the realization of that objective.

On behalf of the non-aligned countries I wish to say, further, that the pressure of time under which we were working did not make it possible for us to contact our friends from the Latin American Group in order to co-ordinate efforts with them and to take a joint position on what we can qualify easily as the latest sad development in the work of this Committee. We hope that this will not be interpreted as a lack in readiness to co-operate with them but as a last minute failure in co-ordination due to lack of time. As a matter of fact, we have been co-operating together throughout the work of the Special Committee and we on our part have appreciated this co-operation. We do hope that they will forgive, particularly, the delegation of Lebanon which was supposed to ensure such co-ordination, for its failure to do so, and that they will be in a position to pronounce themselves along the same lines taken by the non-aligned delegations."

C. Debate

572. In the debate on the final report of the Drafting Committee (see para. 567 above), and on its report on the principle of non-intervention (see para. 353 above), those representatives who participated not only commented on these reports, but also made general remarks on the work of the Special Committee. These comments and remarks are recorded below in the order in which representatives spoke at the fifty-second meeting.

573. The representative of the United Kingdom recalled, with reference to the report of the Drafting Committee on the principle of non-intervention that on 18 March 1966 his delegation had voted against the resolution on non-intervention (see para. 341 above) for reasons which it had made amply clear at that time. His delegation would wish to reaffirm the position which it adopted during the Special Committee's debate on the principle of non-intervention, with particular reference to its attitude towards General Assembly resolution 2131 (XX), it would be recalled that his delegation had abstained during the vote on that resolution at the twentieth session of the General Assembly. His delegation accepted the final report of the Drafting Committee in its present form but regretted that agreement had been reached on only two of the seven principles. He wished, in particular, to endorse the ideas expressed in paragraphs 4 and 5 of that document. With regard to the Chairman's statement concerning the duty to co-operate, he paid tribute to the great efforts which had been made by the Chairman personally to help the Committee find a wording satisfactory to all. The difficulties which had arisen mainly concerned paragraph 2 (*b*). There would have been a greater chance of success if certain members of the Committee had insisted less on that particular point. It was the view of his delegation that principles of an economic nature, such as that relating to discrimination, should be pursued in the appropriate economic bodies within the United Nations family. In so far as the wording of the various formulae seemed to resemble general principle 2 adopted at the United Nations Conference on Trade and Development,[56] it would be recalled that his delegation had abstained in the vote on that prin-

[56] *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11).

ciple. His delegation had been willing to give serious consideration to the various compromise texts proposed by the Chairman and others in relation to paragraph 2 (*b*) but, unfortunately, it had not been possible to achieve general agreement. His delegation had taken note of the statement by the representative of Lebanon and appreciated the restraint exercised by the non-aligned countries in not pressing for a vote. In the view of his delegation there was no reason to suppose that a vote would have led to better results. International law was not made by majority vote. The method of proceeding by general agreement, although slow and, at times, frustrating, was the best method.

574. The representative of Italy said that he wished to comment on a few points arising from the Lebanese representative's statement. It was not his intention to discuss whether or not the Special Committee was entitled, under General Assembly resolution 2103 (XX), which defined its terms of reference, to resort to voting. The Committee might be so entitled but the more important question was how that procedure would help the debate. He was convinced that a distinction should be made between substantive and procedural matters. On matters of procedure, voting would not be detrimental to the Committee's work, but on matters of substance, the particular nature of the task entrusted to the Committee by the General Assembly should be borne in mind. Since that task was to codify the principles of international law, the majority vote procedure might not be in the interest of the United Nations or of the international community. That view was based on his belief that the debates both at Mexico City in 1964 and at the present session indicated that the area of agreement on the seven principles could be further widened either in the Special Committee itself or in any other body of a similar nature by the method of consensus and that such a result could be achieved more easily if the Committee improved its working methods from the technical standpoint. On the other hand, voting would not help and might even hinder progress.

575. The representative of France, commenting on the report of the Drafting Committee on the principle of non-intervention (see para. 353 above), recalled the statements made by his delegation during the debates on the principle of non-intervention. When France had voted in the General Assembly for the adoption of resolution 2131 (XX), it had done so because it wished to see intervention in the domestic affairs of States condemned. His delegation would not go back on its vote but simply wished to reiterate its view that the resolution was in no way intended to be a juridical statement of the principle of non-intervention and that owing to its general character, a legal definition was essential. That task had been entrusted to the Special Committee. Had the Committee been able to give precision to what had been left vague in resolution 2131 (XX) it would have fulfilled its mandate. It could not be used simply for recording views. In the circumstances, it was best that the matter should be taken up again at the twenty-first session of the General Assembly. Turning to the statements of the Chairman and the Lebanese representative, he too regretted that agreement was so limited. However, there was no point in expressing more regret than the circumstances warranted. It was a pity, of course, that the efforts of both the Chairman of the Special Committee and the Chairman of the Drafting Committee to narrow divergencies were not recorded in the Special Committee's report and that that report also failed to indicate the procedures used in the search for agreement. All in all, however, the present report and that of Mexico City (A/5746) would together form a very useful compendium for those who would take up the work where the Committee had left off. France, as much as any other country, favoured constructive compromises and it was in that area that the *raison d'être* of an agreement should be sought. The fact that the search for a compromise had its limits should cause no regrets, as there was a point beyond which a too skilfully drafted text could be very dangerous and words were liable to various interpretations. There should be no regret, therefore, that the Committee had escaped that danger. Lastly, he considered that the Special Committee had left pointers to what might be the components of an eventual consensus and its efforts, therefore, had not been in vain.

576. The representative of Australia said that the Chairman's statement concerning the work on the principle of co-operation among States was equally applicable to the other principles to which the working groups had devoted such effort. The lack of agreement on the wording of that principle was only one of a number of instances in which discussions had not led to a narrowing of differences between the various viewpoints. His delegation, in order to avoid any misunderstanding, wished to state that in its view no one had attempted, in the course of the Special Committee's work, to question the terms of reference defined in resolution 2103 (XX) or the Committee's right to resort to the voting procedure whenever it deemed it appropriate to do so. Like the French representative, he agreed with the Lebanese delegation that the efforts to reach a consensus could have been successful only if there had been a willingness to make concessions on all sides. It was a fact, and paragraph 4 of the conclusions of the Drafting Committee (see para. 567 above) confirmed it, that as a result of the discussions viewpoints that had originally been very far apart had been brought closer together. Nevertheless, there was a stage in that process at which it was no longer possible to reach a compromise. Beyond that stage, it was to be feared that any further concessions would only lead to a bad law. If, as the Lebanese representative had assumed, efforts on the principle of co-operation had broken down on a matter of pure semantics his delegation deeply regretted it. In the consideration of other principles, however, the points at which efforts at a compromise had failed concerned substantive matters which were sometimes of very great importance. It was therefore legitimate to suppose that the same would have happened in the consideration of the principle of co-operation but for the outstanding efforts which had been devoted to that principle. His delegation was not in the least ashamed at the results of the Special Committee's work, as the obstacles which had been encountered were clearly indicated in the final report of the Drafting Committee (see para. 567 above). As regards the principle of non-intervention, his delegation had stated in the General Assembly and in the Special Committee that it was not in a position to accept General Assembly resolution 2131 (XX) as a final legal text.

577. The representative of the USSR said that he endorsed the Drafting Committee's conclusions and, in particular, shared its regret that only two principles had been formulated in a way that was acceptable to all. His delegation fully supported the statement made

by the representative of Lebanon on behalf of the delegations of the non-aligned countries. In particular, it agreed with him in attaching great importance to the fact that resolution 2103 (XX), which defined the Special Committee's terms of reference, empowered it to take votes; the reasons why the Committee had been given that power were clear to all those who had taken part in the 1964 session or in the debate on the draft resolution in the Sixth Committee, and to those who had read the records of those meetings. His delegation, for its part, had done everything it could to permit the formulation of the principles under consideration in conformity with the task of codification entrusted to the Special Committee. A certain tendency to interfere with the orientation of the Committee's work had become apparent on several occasions, and reference had already been made to it during the session. Although it had long been obvious and recognized that the principles of international law should be universal, some representatives had tried to limit that universality; for example, by making some of the principles applicable to States Members of the United Nations only. That attitude was certainly not consistent with the task entrusted to the Committee by the General Assembly. Efforts had also been made to divert the Special Committee from the objectives set forth in Article 13 of the Charter and to lead it back to the past by preventing it from taking into account social and legal developments which could not be ignored in the task of codifying international law. For example, when the principle of self-determination had been considered, an effort had been made to return to positions antedating the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960) which represented an important United Nations contribution to the development of international law. Similarly, during the consideration of the principle of co-operation among States, it was not the meaning of the words which had proved a stumbling-block to the jurists of the Special Committee: an attempt had been made to ignore the principle prohibiting discrimination in trade, which had been clearly established by the Geneva Conference on Trade and Development. Furthermore, on several occasions, practical political considerations had unfavourably influenced the Committee's work, particularly with regard to the principle that obligations should be fulfilled in good faith, which was now being violated by the use of force, despite the obligations assumed. Despite the difficulties encountered, he felt the universalist tendency had prevailed and that the results of the Special Committee's work represented progress towards the adoption of a Declaration concerning the principles which had been studied.

578. The representative of Czechoslovakia said that his delegation had taken part in the session with the firm intention of doing everything it could to enable the Committee to comply with the terms of reference given it by the General Assembly; to that end it had submitted a draft declaration and taken part in the negotiations undertaken with a view to reaching agreement. Although agreement had been reached on the formulation of two principles only, the Committee had unequivocally agreed that the General Assembly's Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131 (XX)) was a valid basis for the legal principle of non-intervention. His delegation regretted that it had not proved possible to reach agreement at the last moment on the principle of co-operation and the principle that obligations should be fulfilled in good faith, especially since the Special Committee had been very close to reaching an acceptable formulation of those principles. In his view, the negative result was due above all to the tenacious efforts which had been made to reduce the scope and importance of the principle considered. One of the session's positive results was the comparison of the many proposals submitted concerning the various principles under consideration, which provided an accurate picture of the main trends of international law and in particular those which reflected the progressive development of the principles under consideration. The latter had been supported by the majority and that was an important step forward.

579. The representative of Canada said that, in trying to formulate in seven weeks the seven principles before it, the Special Committee had set itself a very ambitious goal and it was not surprising, therefore, that it had been unable to attain it completely. However, there was no cause for discouragement; on the contrary. The great efforts made by the Drafting Committee had done much to clarify the various positions, and the exchanges of views had been very thorough and profitable. Although it was not always clear from the official records, the Committee had succeeded in working out the points on which future efforts should be concentrated. His delegation hoped that the results achieved by the Committee would not be wasted but would be passed on to those who continued its work. The Special Committee had reached general agreement on partial formulations of two principles. The scope of the agreement on the principle of sovereign equality was hardly any wider than that agreed on at Mexico City in 1964, but it should be stressed that it was based on a much more thorough consideration of the principle. His delegation had already expressed its views on the principle of the peaceful settlement of disputes; it was glad that the members of the Committee had been able to agree on a formulation, but pointed out that the latter was not exhaustive and lacked certain key elements which it would have liked to see included. The Drafting Committee had also carefully considered the principle of non-intervention. Its members had spared no effort to broaden the scope of the agreement reached in resolution 2131 (XX), and several supplementary proposals had been submitted and considered. He hoped that those proposals would be available to the body that would continue the work on that principle. In both the First Committee and the Special Committee, his delegation had had occasion to state that it had supported resolution 2131 (XX) as a statement of the political conviction and will of the General Assembly, but that it had never intended that the Committee should not carefully consider that resolution from a legal point of view in order to reformulate it in appropriate terms.

580. The representative of the United States considered that the current session of the Special Committee was in no sense ending in failure. The fact that agreement had been reached on the legal formulation of two principles was in itself a considerable success. Moreover, when one considered that the members of the Committee had come very close to agreement on the other five principles, the conclusion that its work had been most constructive was justified. With regard to the Drafting Committee's report on the principle of non-intervention (see para. 353 above), the United States delegation

wished to reaffirm the position it had taken on the resolution of 18 March 1966 (see para. 341 above) regarding the possibility of accepting General Assembly resolution 2131 (XX) as the Special Committee's legal text on the principle of non-intervention: the United States still considered resolution 2131 (XX) a political decision which should be framed in terms of legal principles. He regretted that it had not been possible to achieve agreement on the principle of co-operation. His delegation had been prepared to consider all—and to accept some—of the formulations proposed, on the assumption, of course, that general agreement could be achieved. The fact that the efforts made had not met with success should not be seen as a failure and no member of the Special Committee had failed to show a spirit of co-operation in the matter. In conclusion, he drew attention to the wisdom of the attitude adopted by the non-aligned countries. The restraint they had demonstrated was fully justified. The slowness with which results were achieved by the method of general agreement might well give rise to impatience but those results had a value far greater, when questions of international law were involved, than that of results achieved by merely recording majority opinion.

581. The representative of Venezuela said he believed that the Special Committee had made good use of the time available to it. He saw no reason for pessimism regarding the limited results achieved, for the codification of international law was an arduous and lengthy task. Despite substantial political differences, all had clearly shown good faith and there was justification for the hope that the aim would one day be achieved. Veneuzela had already indicated that it was prepared to alter the position it had adopted at Mexico City in 1964, if that would help to bring points of view closer together.

582. The representative of the United Arab Republic said that his delegation endorsed the final report of the Drafting Committee (for text, see para. 569 above). The work of the Committee could hardly be described as either a failure or a success. The criterion for success was not the endeavour to achieve the impossible, or even the probable, but to achieve the possible. Agreement had been reached on the principle of sovereign equality and on the principle of the peaceful settlement of disputes: that was an achievement, as was the adoption of the resolution of 18 March (see para. 341 above), in which the Committee had, in very clear terms, affirmed its acceptance of General Assembly resolution 2131 (XX). In the case of the other principles, it should, in his opinion, have been possible to make progress on the principles of co-operation and good faith, yet the Committee had been unable, in the end, to agree on the formulation of those two principles. The Committee and the General Assembly should therefore make a special effort to determine the reasons for that failure. To that end, some of the working methods that had been used in the Committee should be examined and evaluated, with special emphasis on the current tendency to abandon the arrangements laid down in the General Assembly's rules of procedure and substitute for them the method of informal negotiations. His country had always favoured negotiation and consultation as a means of reaching agreement, but that method should not be made to prevail to such an extent that the arrangements provided by those who had drawn up the rules of procedure and the Charter were paralysed. With regard to the consensus method, his delegation had always felt that every effort should be made to achieve such agreement—and it was in that belief that it had participated both formally and informally in the work of the Drafting Committee—without any prejudice to the application of the rules of procedure. Two factors had obstructed the method of general agreement: the tendency of some delegations not to support general agreements previously reached, and some delegations' mistaken impressions of that method. Those delegations had tended to use the negotiations as a means of vetoing the general will of the other delegations. The Committee and the General Assembly would have to take those two factors into account when they came to decided on the working method to be adopted in the future.

583. The representative of Mexico, referring to the Drafting Committee's report on the principle of non-intervention (see para. 353 above), said that during the discussion of that principle her delegation had stated that it might be preferable not to attempt a new formulation, since the declaration in resolution 2131 (XX) represented the widest possible measure of consensus, as the long and difficult negotiations which had been required to achieve agreement proved. Since it had not been possible to broaden the scope of the agreement achieved in resolution 2131 (XX) her delegation wished to reaffirm that, in its opinion, by virtue of the number of States which had voted in its favour, the scope and profundity of its contents and, in particular, the absence of opposition, resolution 2131 (XX) reflected a universal legal conviction which qualified it to be regarded as an authentic and definite principle of international law. She also regretted that the Committee had been able to reach agreement on only two principles. The discussions to which the other principles had given rise had been useful, however, and she hoped that in the near future, in more favourable circumstances, agreement would be achieved on all of them.

D. Decision of the Special Committee

584. At the conclusion of its fifty-second meeting the Special Committee decided to take note of the final report of the Drafting Committee (for text, see paragraph 567 above) and its report on the principle of non-intervention (for text, see paragraph 353 above).

ANNEX I

Membership of the 1966 Special Committee

Country	*Representative*	*Alternates*	*Advisers*
Algeria	Mr. Tewfik Bouattoura	Mr. Khalfa Mammeri	
Argentina	Mr. José Maria Ruda	Mr. Raúl A. Y. Quijano Mr. Carlos A. Goñi Demarchi	Mr. Rafael M. Gowland
Australia	Sir Kenneth Bailey	Mr. M. J. McKeown	