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ANNEXES

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Agenda item 87:* Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States**

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DOCUMENT A/6799

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

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Chapter I. Introduction

A. Adoption and organization of the report

1. Pursuant to General Assembly resolution 2181 (XXI) of 12 December 1966, the Special Committee on Principles of International Law concerning Friendly Relations among States held its second session at the United Nations Office at Geneva from 17 July to 19 August 1967. At its 80th meeting, on 19 August 1967, the Special Committee considered and approved the draft report presented by its Rapporteur, subject to the inclusion in the final version of the decisions of the Special Committee.

2. The introduction to this report briefly recalls the background of the work of the Special Committee, and it then describes its composition and terms of reference, and the organization of the session. The remainder of the report is organized in general in accordance with the terms of reference of the Special Committee at its 1967 session and with the agenda adopted for that session (see paras. 13 and 16 below). Chapter II, which is divided into four sections, deals with the consideration of the four principles of international law referred to in paragraph 5 of General Assembly resolution 2181 (XXI), with a view to completing their formulation. Chapter III deals with the consideration, in accordance with paragraph 6 of that resolution, of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX). Chapter IV, which is divided into two sections, deals with the consideration, in accordance with paragraph 7 of General Assembly resolution 2181 (XXI), of additional proposals with a view to widening the areas of agreement in the formulations of the 1966 Special Committee in regard to the two remaining principles. Chapter V deals with the draft preambles and draft general provisions submitted by members of the Special Committee with a view to their forming part of a draft declaration on the seven principles. Finally, chapter VI deals with the concluding stage of the Special Committee's session, including its decisions and the adoption of its report to the General Assembly.

B. Background of the work of the Special Committee

3. The item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" was discussed by the General Assembly at its seventeenth, eighteenth, twentieth and twenty-first sessions. These discussions resulted *inter alia* in the adoption of General Assembly resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965 and 2181 (XXI) of 12 December 1966.[1]

4. By resolution 1815 (XVII) the General Assembly resolved to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

The same resolution also listed the following seven principles:[2]

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

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

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

(*d*) The principle of sovereign equality of States;

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

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

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

5. The first four of the above principles were studied by the General Assembly at its eighteenth session. At that session the Assembly adopted resolution 1966 (XVIII), whereby it decided to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which was requested to study the first four principles and to "draw up a report containing, for the purpose of the progressive development and codification of the four principles so as to secure their more effective application, the conclusion of its study and its recommendations". By the same resolution the Assembly decided to consider the report of the Special

[1] Other resolutions adopted by the Assembly in connexion with the item are resolution 1816 (XVII) of 18 December 1962, on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law, and resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding. As these resolutions are not related to the terms of reference of the Special Committee at its 1967 session, they are not set out in the body of the present report.

[2] The principles are listed in the above paragraph in the order in which they were studied by the 1964 and 1966 Special Committees and in the General Asssembly at its eighteenth, twentieth and twenty-first sessions; the order of the principles as given in paragraph 1 of resolution 1815 (XVII) is somewhat different.

Committee at its nineteenth session, and also to study at that session the last three of the seven principles listed in paragraph 4 above.

6. The Special Committee established under General Assembly resolution 1966 (XVIII), referred to hereafter in the present report as the "1964 Special Committee",[3] met in Mexico City at the invitation of the Government of Mexico, from 27 August to 2 October 1964, and adopted a report to the General Assembly.[4] That report stated that the 1964 Special Committee, in regard to the fourth principle referred to it (the principle of sovereign equality of States), had unanimously adopted, on the recommendation of its Drafting Committee, a text setting out points of consensus and a list itemizing various proposals and views on which there was no consensus but for which there was support.[5] That was the only principle on which such a text was adopted by the 1964 Special Committee. On the first principle, that prohibiting the threat or use of force, the Drafting Committee submitted two papers to the 1964 Special Committee;[6] the first of them (Paper No. 1) contained a draft text formulating points of consensus, but the second (Paper No. 2) stated that the 1964 Committee had been unable to reach any consensus on the scope or content of the principle. By majority votes the 1964 Special Committee decided to put the second paper to the vote first and then adopted that paper.[7] On the second principle (relating to the peaceful settlement of disputes) and the third principle (that of non-intervention in matters within the domestic jurisdiction of any State), the 1964 Special Committee was likewise unable to reach any consensus.[8]

7. The report of the 1964 Special Committee was not considered by the General Assembly at its nineteenth session. In view of the situation prevailing at that session,[9] the Secretary-General included the item relating to the report in the provisional agenda of the twentieth session of the General Assembly.

8. At its twentieth session, the General Assembly considered the report of the 1964 Special Committee, and also studied the last three principles set out in paragraph 4 above. In conjunction therewith, the Assembly studied an item entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities", which had been proposed by Madagascar for inclusion in the agenda of the nineteenth session of the General Assembly,[10] but in regard to which no decision on inclusion had been taken at that session; when proposed again by Madagascar for inclusion in the agenda of the twentieth session,[11] the item was included in the agenda as item 94.

9. At its twentieth session the General Assembly adopted resolution 2103 (XX). By part A of that resolution, the General Assembly decided to reconstitute the 1964 Special Committee, which would be composed of the members of that Committee and of Algeria, Chile, Kenya and Syria, to complete the consideration and elaboration of the seven principles set forth in paragraph 4 above. The Special Committee as thus reconstituted was requested to continue the consideration of the first four principles, "having full regard to matters on which the previous Special Committee was unable to reach agreement and to the measure of progress achieved on particular matters", to consider the last three principles, and to submit a comprehensive report on the results of its study of the seven principles, "including its conclusions and recommendations, with a view to enabling the General Assembly to adopt a declaration containing an enunciation of these principles". By part B of the same resolution the General Assembly requested the reconstituted Special Committee to take into consideration the request for inclusion in the agenda of the item proposed by Madagascar, which is mentioned in paragraph 8 above, and the discussion of that item at the twentieth session.

10. The Special Committee as reconstituted by General Assembly resolution 2103 (XX)[12] held a session at United Nations Headquarters from 8 March to 25 April 1966, and adopted a report to the General Assembly.[13] That report stated, in paragraph 272, that the Special Committee, in regard to the second principle referred to it (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), had unanimously adopted, on the recommendation of its Drafting Committee, a text setting out points of consensus and a list of proposals and amendments on which the Drafting Committee reached no consensus.[14] The report also stated that the Special Committee had unanimously adopted another text on the fourth principle (the principle of sovereign equality of States),[15] which made an addition to the text on that principle adopted by the 1964 Special Committee. In regard to the third principle (the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter) the 1966 report stated that the Special Committee had adopted a resolution[16] whereby it decided that the Special Committee would abide by General Assembly resolution 2131 (XX) of 21 December 1965 (the resolution entitled "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty"), and instructed the Drafting Committee to direct its work on the principle "towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX)"; the Drafting Committee reported that no agreement was reached on any additional proposals.[17] In regard to the remaining four principles, the Special Committee was likewise unable to reach any consensus.[18]

11. The General Assembly, at its twenty-first session, considered the report of the Special Committee on its 1966 session, and adopted resolution 2181 (XXI). The provisions of this resolution are set out below in section D of this chapter, on the subject of terms of reference.

C. Composition of the Special Committee

12. In accordance with General Assembly resolutions 1966 (XVIII) and 2103 (XX), the Special Committee is composed of the following thirty-one Member States: Algeria, Argentina, Australia, Burma, Cameroon, Canada, Chile, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Kenya, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Syria, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia. The list of representatives at the 1967 session is contained in the annex to the present report.

D. Terms of reference given to the Special Committee by General Assembly resolution 2181 (XXI)

13. By resolution 2181 (XXI), the General Assembly took note of the report of the Special Committee on its 1966 session, of the formulations it adopted concerning two principles, and of its decision that, with regard to the principle of non-intervention in matters within the domestic jurisdiction of any State, it would abide by General Assembly resolution 2103 (XX), to continue its work. Also by resolution 2181 (XXI), the General Assembly:

"5. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committees, to complete the formulations of:

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

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

"(*c*) The principle of equal rights and self-determination of peoples;

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

"6. *Requests* the Special Committee to consider proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX);

"7. *Requests* the Special Committee, having considered, as a matter of priority, the principles referred to in paragraphs 5 and 6 above, to examine any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning 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 and the principle of sovereign equality of States;

"8. *Requests* the Special Committee, having regard to the work already accomplished by the 1966 Special Committee as specified in paragraph 3 above [a paragraph which took note of the formulations of two principles and of the decision regarding a third], to submit to the General Assembly at its twenty-second session a comprehensive report on the principles entrusted to it for study and a draft declaration on the seven principles set forth in Assembly resolution 1815 (XVII) which will constitute a landmark in the progressive development and codification of those principles;"

14. Also at its twenty-first session, the General Assembly adopted resolution 2160 (XXI) of 30 November 1966, entitled "Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination". The operative paragraph of part II of that resolution requested the Secretary-General

"to include the present resolution and the records of the debate on the item entitled 'Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination' in the documentation to be considered in the further study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, with a view to the early adoption of a declaration containing an enunciation of these principles."

That resolution and those records were accordingly included in the documentation of the 1967 session of the Special Committee, and were considered by it.

E. Organization of the 1967 session of the Special Committee

15. By operative paragraph 9 of its resolution 2181 (XXI), the General Assembly requested the Special Committee

"to meet at Geneva or any other suitable place for which the Secretary-General receives an invitation".

No such invitation having been received, the Special Committee met at the United Nations Office at Geneva, and held twenty-eight public meetings in the course of a five-week session from 17 July to 19 August 1967. At its first meeting, on 17 July, it elected the following officers:

Chairman: Mr. Paul Bamela Engo (Cameroon)

Vice-Chairmen: Mr. Souheil Chammas (Lebanon), Mr. Ernesto de la Guardia (Argentina)

Rapporteur: Mr. Milan Šahović (Yugoslavia)

The session was opened on behalf of the Secretary-General by Mr. Constantin A. Stavropoulos, Legal Counsel. Mr. Anatoly P. Movchan, Director of the Codification Division of the Office of Legal Affairs, served as Secretary. After the latter's departure from Geneva on 2 August 1967, Mr. G. W. Wattles, Principal Officer in the Office of the Legal Counsel, served as Secretary.

16. At the first meeting of the session (53rd meeting) the Special Committee adopted the following agenda (A/AC.125/L.39):

1. Opening of the session
2. Election of the Chairman
3. Adoption of the agenda

[3] The 1964 Special Committee was composed of the following twenty-seven Member States: Afghanistan, Argentina, Australia, Cameroon, Canada, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

[4] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

[5] *Ibid.*, para. 339.

[6] *Ibid.*, para. 106.

[7] *Ibid.*, paras. 107 and 108.

[8] *Ibid.*, paras. 201 and 292.

[9] *Ibid., Nineteenth Session, Annexes*, annex No. 2, document A/5884, para. 6.

[10] *Ibid.*, documents A/5757 and Add.1.

[11] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5937.

[12] The Special Committee then had the same composition as for the 1967 session, namely, the thirty-one Member States listed in paragraph 12 below.

[13] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230.

[14] *Ibid.*, para. 248.

[15] *Ibid.*, para. 403.

[16] *Ibid.*, para. 341.

[17] *Ibid.*, para. 353.

[18] *Ibid.*, paras. 155, 454, 520 and 565.

4. Election of the two Vice-Chairmen and of the Rapporteur
5. Organization of work
6. Consideration, pursuant to General Assembly resolution 2181 (XXI) of 12 December 1966, of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations
   A. Consideration, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committees, of the four principles listed below with a view to completing their formulation:
      (*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purpose of the United Nations;
      (*b*) The duty of States to co-operate with one another in accordance with the Charter;
      (*c*) The principle of equal rights and self-determination of peoples;
      (*d*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter [paragraph 5 of General Assembly resolution 2181 (XXI).
   B. Consideration of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX) [paragraph 6 of General Assembly resolution 2181 (XXI)].
   C. Consideration of any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning 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 and the principle of sovereign equality of States, having considered as a matter of priority, the principles referred to in A and B above [paragraph 7 of General Assembly resolution 2181 (XXI)].
   D. Submission to the General Assembly at its twenty-second session of a comprehensive report on the principles entrusted to the 1967 Special Committee for study and a draft declaration on the seven principles set forth in Assembly resolution 1815 (XVII) [paragraph 8 of General Assembly resolution 2181 (XXI)].
7. Adoption of the report of the 1967 Special Committee to the General Assembly.

17. The Special Committee discussed the organization of its work at the first three meetings of the session, and on 18 July 1967 adopted a programme of work establishing the order of discussion of the seven principles before it, together with the dates of the plenary meetings to be allocated to each. The order in which the principles were discussed was as follows:

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

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

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

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

(*e*) Consideration of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX);

(*f*) Consideration of any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning 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, and the principle of sovereign equality of States.

18. At the second meeting of the session the Special Committee reconstituted its Drafting Committee with the following membership: Argentina, Australia, Czechoslovakia, France, Ghana, India, Italy and the Netherlands (a joint membership, with each of the two delegations taking part on certain principles), Japan, Kenya, Lebanon, Mexico, Syria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. It was later decided that, during the time that the representative of Lebanon was prevented by his other duties from attending the session, his place on the Drafting Committee should be taken by the representative of Algeria. At the sixth meeting of the session (58th meeting) the Special Committee elected Sir Kenneth Bailey (Australia) as Chairman of the Drafting Committee.

19. As soon as the Special Committee completed the initial discussion of each of the six items listed in paragraph 17 above, it referred them to the Drafting Committee, which after an exchange of views appointed a working group to deal with each of them. The working groups reported to the Drafting Committee, which then made a series of reports to the Special Committee. The reports of the Drafting Committee are reproduced in each of the four sections of chapter II (see paras. 107, 161, 231 and 285 below) and in chapter III (see para 365 below) and chapter IV (see para 438 below). The action of the Special Committee in regard to the reports of the Drafting Committee is recorded in chapter VI (see para. 474 below).

F. Statement by the Chairman at the openinig of the 1967 session of the Special Committee

20. At the second meeting of the session of the Special Committee (54th meeting), the Chairman, Mr. Paul Bamela Engo (Cameroon) made a statement about the work to be accomplished. He said that, as the Committee was meeting at a time when the din of warfare was resounding across the globe, the members should take up their mission as men of vision, and with a sense of mission, in order to accomplish the Committee's task, which was a noble one and vital to the survival of modern civilization and of man himself. Conscious of the difficulties that had been encountered in previous stages of the work, he suggested that a realistic approach must be adopted at the 1967 session; the issues and the arguments on them were well known, and at the present session the members should direct their minds to outstanding problems. The bulk of the time, in his view, should be allocated to the Drafting Committee and its working groups. The present session should be made the "action session", and the watchword should be "achievement". He then proposed the order of discussion of items which was adopted by the Special Committee. In conclusion, the Chairman mentioned four factors which should govern the deliberations. First, he urged brevity in the exercise of the right to speak, without reiteration of points made earlier, and suggested that each speaker should limit himself to ten or fifteen minutes and prepare his statement early enough to avoid waste of time. Secondly, he urged members to direct their minds as much as possible to new ideas and new proposals. Thirdly, he said that new proposals should be submitted well in advance. Fourthly, there would be ample opportunity for detailed examination of views and proposals in the Drafting Committee.

Chapter II. Consideration of the four principles enumerated in paragraph 5 of General Assembly resolution 2181 (XXI), with a view to completing their formulation

Section 1. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations[19]

A. *Written proposals and amendments*

21. In regard to the above principle, five proposals and an amendment in written form were before the Special Committee at its present session, namely: (*a*) the proposal contained in part I of the draft declaration submitted by Czechoslovakia to the Special Committee in 1966; (*b*) the joint proposal by Australia, Canada, the United Kingdom and the United States submitted to the Special Committee in 1966; (*c*) the proposal contained in part I of the draft declaration submitted by the United Kingdom (A/AC.125/L.44); (*d*) the amendment submitted by Italy and the Netherlands to the foregoing United Kingdom proposal (A/AC.125/L.51); (*e*) the joint proposal contained in part I of the draft declaration submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia at the Special Committee's 1967 session (A/AC.125/L.48), the wording of that proposal being identical with the joint proposal submitted to the Special Committee in 1966 by Algeria, Burma Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia and reproduced in paragraph 26 of the report of the 1966 Special Committee; (*f*) the joint proposal submitted by Argentina, Chile, Guatemala, Mexico and Venezuela (A/AC.125/L.49/Rev.1). The texts of the foregoing proposals are given below in the order in which they were submitted to the Special Committee, the text of the amendment following the proposal it was intended to amend.

22. 1966 proposal by Czechoslovakia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 25.*]

23. Joint proposal by Australia, Canada, the United Kingdom and the United States submitted in 1966 (this proposal contained in full the text of Paper No. 1, section I, in paragraph 106 of the report of the 1964 Special Committee, with certain additions, which appear in italics in the text given below):

1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

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

(*a*) Wars of aggression constitute international crimes against peace.

(*b*) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursions into the territory of another State *or across international lines of demarcation, and to refrain from acts of armed reprisal or attack.*

(*c*) Every State has the duty to refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State *or across international lines of demarcation,* or from conniving at or acquiescing in organized activities directed towards such ends, when such acts involve a threat or use of force.

(*d*) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State *or other international lines of demarcation,* or as a means of solving its international disputes, including territorial disputes and problems concerning frontiers between States.

3. Nothing in the foregoing paragraphs is intended to affect the provisions of the Charter concerning the lawful use of force, *when undertaken by or under the authority of a competent United Nations organ or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence.*

24. Proposal by the United Kingdom of Great Britain and Northern Ireland (A/AC.125/L.44):

1. Every State has a duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

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

(*a*) Wars of aggression constitute international crimes against peace, for which there is responsibility under international law. Consequently, States shall refrain from inciting or waging wars of aggression.

(*b*) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursion into the territory of another State, or across international lines of demarcation, and to refrain from acts of armed reprisal or attack.

(*c*) Every State has the duty to refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State or from conniving at or acquiescing in organized activities directed toward such ends, when such acts involve the threat or use of force.

(*d*) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State or other international lines of demarcation or as a means of solving its international disputes, including territorial disputes and problems concerning frontiers between States.

3. Nothing in the foregoing paragraphs is intended to prejudice the lawful use of force when undertaken by or under the authority of a competent United Nations organ

[19] An account of the consideration of this principle by the 1964 Special Committee appears in chapter III of its report (*Official Records of the General Assembly, Twentieth Session, Annexes,* agenda items 90 and 94, document A/5746) and by the 1966 Special Committee in chapter II of its report (*Ibid., Twenty-first Session, Annexes,* agenda item 87, document A/6230).

or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence.

25. Amendment by Italy and the Netherlands (A/AC.125/L.51) adding the following to the United Kingdom proposal (A/AC.125/L.44):

4. In order to ensure the implementation of the prohibition of the threat or use of force and to contribute to the maintenance of international peace and security, the Members of the United Nations:

(*a*) Shall comply fully and in good faith with the provisions of the United Nations Charter concerning the political, economic, social and educational advancement of Non-Self-Governing Territories, and shall do their utmost, in the light of the relevant resolutions of the General Assembly, to ensure the peaceful exercise of self-determination on the part of the inhabitants of those Territories;

(*b*) Should favour the free exchange of information and ideas essential to international understanding and peace, and take appropriate steps to discourage propaganda against peace, in the light of General Assembly resolutions 110(II), 290(IV), 381(V) and 819(IX);

(*c*) Shall comply in good faith with the obligations placed upon them by the Charter with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system fully effective.

5. In order to promote the development of the rule of law in the international community, all States should endeavour to secure the early conclusion of a universal treaty of general and complete disarmament, accompanied by the provisions necessary for the effective supervision and control of disarmament measures, for the maintenance of peace and security and for the peaceful settlement of international disputes, and in the meantime should endeavour to agree upon such partial or collateral arms control and disarmament measures as would be susceptible of reducing international tension and of ensuring progress towards general and complete disarmament.

26. Joint proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia ((A/AC.125/L.48):

1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; such threat or use of force shall never be used as a means of settling international issues.

2. The meaning of the term "force" shall include:

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

(*b*) All forms of pressure, including those of a political and economic character, which have the effect of threatening the territorial integrity or political independence of any State.

3. Wars of aggression constitute international crimes against peace. Consequently, any propaganda which encourages the threat or use of force against the territorial integrity and political independence of another State is prohibited.

4. The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

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

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

7. Nothing in the present chapter shall be construed to include peoples and territories under colonial rule as an integral part of a State.

27. Joint proposal by Argentina, Chile, Guatemala, Mexico and Venezuela (A/AC.125/L.49/Rev.1):

1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; such threat or use of force shall never be used as a means of settling international issues.

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

(*a*) Wars of aggression constitute international crimes against peace for which there is responsibility under international law. Consequently, States shall refrain from provoking or engaging in wars of aggression and shall also prohibit, in the light of each country's constitutional system, any propaganda which encourages such acts.

(*b*) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursion into the territory of another State, or across international lines of demarcation.

(*c*) Every State shall also refrain from organizing, supporting, encouraging, financing, instigating or tolerating subversive or terrorist armed activities aimed at changing the régime of another State by violence and from intervening in a civil war of another State, when such acts of intervention involve a use of force.

(*d*) Every State has the duty to refrain from armed reprisals.

(*e*) The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever.

(*f*) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State or any other lines of demarcation, or as a means of solving its international disputes, including territorial disputes and problems concerning frontiers between States.

(*g*) Every State has the duty to refrain from the use or threat of force against those dependent peoples to which General Assembly resolution 1514 (XV) on the granting of independence to colonial countries and peoples is applicable.

(*h*) In accordance with the United Nations Charter, no territorial acquisitions or special advantages obtained by force or by other means of coercion shall be recognized.

(*i*) All States are under the obligation to continue negotiations for the early conclusion of a world disarmament treaty. In the meantime, they shall carry out measures to reduce international tension, and in particular refrain from promoting the unnecessary acquisition of military equipment.

3. (*a*) Nothing in the foregoing paragraphs is intended to prejudice the lawful use of force when undertaken by or under the authority of a competent United Nations organ or by a regional agency or in the exercise of the inherent right of individual or collective self-defence in accordance with the United Nations Charter.

(*b*) The right of individual or collective self-defence, recognized by Article 51 of the Charter, may be exercised only in confronting armed attack, without prejudice to the right of a State which is subject to subversive or terrorist acts supported by one or more other States, to take reasonable and appropriate measures to safeguard its institutions.

(*c*) The use of force by regional agencies, except in the case of self-defence, requires the express authorization of the Security Council, in accordance with Article 53 of the Charter.

B. *Debate*

1. *General comments*

28. The principle that States shall refrain in their international relations from the threat or use of force was discussed by the Special Committee at its 62nd to 66th meetings held on 26, 27, 28 and 31 July and 1 August 1967. The representatives who took part in the discussion made a number of comments on the principle in general, on the best way to undertake its codification and progressive development and on the proposals for its formulation submitted to the Special Committee.

29. Once again it was generally agreed that this principle was the corner-stone of the contemporary international legal order and of the co-operation, friendly relations and peaceful coexistence of States. The principle of the prohibition of the threat or use of force, being an essential element of the system established by the United Nations Charter, was in reality the basis of all the other principles of present-day international law. The importance and urgency of a proper formulation of this principle for maintaining and strengthening international peace and security were also generally recognized. Its codification and progressive development would facilitate its observance and application and exert a moderating influence on international life by offering protection against abuses of power, preventing conflicts and ensuring the complete equality of all States. Though recognizing the universal validity of the principle, some representatives pointed out that its progressive development was of particular importance for small States, developing States and States which had recently gained their independence after a long period of colonial rule.

30. In reviewing the historical process which, under the pressure of wars disastrous to mankind, had led from the *jus ad bellum* of the past to the *jus contra bellum* and *jus ad pacem* of our time, speakers referred to such landmarks as the Hague Conventions of 1899 and 1907[20] the Covenant of the League of Nations of 1919 and the 1928 Briand-Kellogg Pact (General Treaty for the Renunciation of War as an Instrument of National Policy).[21] This process, which began by limiting the *jus ad bellum*, ended by proscribing it, reaching its culmination in the United Nations Charter, Article 2, paragraph 4, of which states that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

31. Some representatives considered that in formulating the principle the Special Committee should take account of the changes in international life and law that had taken place in recent years and were reflected in such instruments and documents as the 1945 Charter of the Nürnberg Tribunal,[22] the 1946 Charter of the International Military Tribunal for the Far East,[23] the resolutions of the General Assembly, the Declarations of Bandung (1955),[24] Belgrade (1961)[25] and Cairo (1964)[26] and the Charter of the Organization of African Unity.[27] One representative pointed out that the principle would be strengthened by the adoption of a convention on the non-applicability of statutory limitation to war crimes and crimes against humanity, which was being drawn up by the Commission on Human Rights.

32. In view of the close relationship between the prohibition of the threat or use of force and the peaceful settlement of international disputes, some representatives considered that the principle should not be studied in isolation, but within the framework of the institutional system established by the United Nations Charter, so as to ensure its effective implementation in international relations. Consequently, it should be examined with particular reference to the Preamble, Articles 1 and 2 and Chapters VI and VII of the Charter. One representative said that the principle should not be construed as a mere limitation on the freedom of action of States; it should not be forgotten that it also implied a centralization in the competent organs of the United Nations of the faculty of assessment and decision regarding the power of coercion in the international community.

33. With regard to the relationship between the codification of the principle and the question of methods of interpretation of the Charter, one representative stressed the importance, for the purposes of that interpretation, of the views held by the majority of the present Members of the United Nations, in contradistinction to the preparatory work for the Charter done in 1945. In that connexion, he referred to article 28 of the draft articles on the law of treaties prepared by the International Law Commission,[28] which referred to preparatory work only as a supplementary means of interpretation. On the other hand, the opinion was expressed that amendment of the Charter should only be attempted in conformity with the procedure laid down in Article 108 of the Charter and not under the cloak of the codification and progressive development of international law.

34. During the discussion reference was made to resolution 2160 (XXI) adopted by the General Assembly on 30 November 1966 and entitled "Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination". Some representatives regarded resolution 2160 (XXI), adopted by the great majority of Member States, as an authoritative pronouncement on the illegality of the threat or use of force, which also emphasized the urgent need to strengthen the principles of the Charter and enforce their observance. Pointing out that that resolution requested the Secretary-General to include its text and the records of the debate on the item to which it related in the documentation for the 1967 Special Committee, the same representatives said that the resolution had a close and direct bearing on the Committee's work, especially that relating to the principle prohibiting the threat or use of force and to the principle of equal rights and self-determination of peoples. One representative expressed the view that the Special Committee should describe, in its report to the General Assembly, the measures

[20] J. B. Scott, *The Hague Peace Conferences of 1899 and 1907* (Baltimore, Johns Hopkins University Press, 1909), vol. II, *Documents*.

[21] League of Nations, *Treaty Series*, vol. XCIV (1929), No. 2137.

[22] United Nations, *Treaty Series*, vol. 82 (1951), II, No. 251.

[23] International Military Tribunal for the Far East, *Judgment*, annex No. A-5.

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

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

[26] A/5763 (mimeographed).

[27] United Nations, *Treaty Series*, vol. 479 (1963), No. 6947.

[28] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9*, part II, chapter II, pp. 14 and 49-54.

it had taken to give effect to that resolution. Some representatives invoked the resolution in support or justification of proposals submitted to the Special Committee.

35. Other representatives took the view that resolution 2160 (XXI) neither prejudged nor restricted the study of the principles of international law referred to the Special Committee by the General Assembly, and that, consequently, it should not be interpreted as having settled some of the controversial points raised by the formulation of the principle. The resolution was a statement of political will by the General Assembly, adopted after lengthy negotiations aimed at producing a text calculated to meet with general approval by avoiding those points on which the opinions of Member States were divided. Some representatives explained that they had voted in favour of the resolution on that understanding or had abstained. One representative said that his country had voted against the resolution, in part as an expression of its dissent from the process involved in drawing up the text, as it had previously abstained in the vote on General Assembly resolution 2131 (XX) for broadly similar reasons, and in part because of the deliberate ambiguity of the language employed.

36. With regard to the reasons why the Special Committee had not made much progress with the formulation of the principle, although it had been considered both in 1964 and in 1966, some representatives criticized the method of work adopted and thought that more appropriate techniques of codification and progressive development should be applied. Others, on the contrary, thought that it was political rather than technical reasons which had prevented the Special Committee from adopting a formulation of the principle; these representatives considered that there were advocates of policies of force who did not wish to see their freedom of action limited by a clear unequivocal statement of the principle. One of those representatives said that the absence of concrete results in the formulation of the principle must be attributed to the impossibility of reconciling the practice of the use of force by some States with the new needs of the struggle against that use and the improvement and progressive development of its legal prohibition as laid down in the Charter. Another representative said that if no consensus could be reached, he was willing to vote on the question.

37. Some representatives urged that the best way to make quick progress towards a formulation of the principle was to preserve the areas of agreement at previous sessions of the Special Committee; they referred particularly to Paper No. 1 of the Drafting Committee of the 1964 Special Committee,[29] to which, it was said, all members of the Special Committee had at one time or another agreed, and which formed the basis of one before the present session. That view was not shared by other representatives, who thought that such so-called compromise texts were unsatisfactory and did not provide an adequate basis for continuing the Special Committee's work; they stressed that the constituent elements of the principle were indivisible. Lastly, some representative said that their position on the various proposals submitted would depend on the extent to which those proposals adequately reflected the progressive development of the principle.

38. It was also said that if the Special Committee could reach agreement on certain elements of the principle, that would greatly facilitate the subsequent solution of the remaining problems raised by its formulation. In that connexion, one representative listed the following basic preliminary points on which opinion was divided: (*a*) the meaning of the expression "in their international relations"; (*b*) the meaning of the expression "against the territorial integrity or political independence of any State"; (*c*) the definition of the term "force"; (*d*) the meaning of the term "aggression"; (*e*) the use of force "in territorial disputes"; (*f*) the use of force "in the exercise of the right of individual or collective self-defence"; (*g*) the use of force "in self-defence against colonial domination"; (*h*) the question of "non-recognition of situations brought about by the use of force"; (*i*) "war propaganda"; and (*j*) "disarmament". Another representative said that those who were bent on endlessly protracting the Committee's work on the principle had gradually introduced new elements into the discussion, such as "lines of demarcation", "repressive measures" and "a competent organ of the United Nations", in order to frustrate agreement.

39. During the discussion, some representatives made an appeal that the Special Committee should concentrate all its attention on an analysis of the legal aspects of the principle. This appeal, they said, was intended to prevent the Special Committee from being used as a forum for propaganda, political polemics or statements on current international conflicts. In their opinion the Special Committee was not the proper place to deal with such conflicts. The Special Committee's terms of reference were to formulate general principles and rules of conduct, not to pass judgement on current events which were the concern of Governments and which came within the competence of other organs of the United Nations. Hence, the Special Committee should avoid the introduction of extraneous and irrelevant topics into the discussion which could result only in an unwarranted loss of time that would prevent the Special Committee from completing the real task assigned to it by the General Assembly. In the opinion of the representatives concerned, the present grave international situation could serve to throw into relief certain aspects of the Charter system to which due attention had not been paid hitherto, and to that extent they could properly be taken into account. But the Special Committee was not competent to pronounce on them explicitly or to condemn the conduct of any of the States involved.

40. That view was rejected by certain representatives who stressed the need for the Special Committee to bear in mind what they considered to be the realities of contemporary international life. They believed that it would be a serious and dangerous mistake for the Special Committee to study the principle in isolation from the world political situation and carry on its work in a political vacuum. It was therefore quite wrong, they argued, to assume that the Special Committee could consider the principle from a purely legal standpoint. The principles and rules of international law derived from the practice of States and the realities of international life. It was the objective conditions of those realities that provided the necessary basis for the progressive development of international law and the grounds on which to base a creative interpretation of the content of international law. The new rules which ensured peaceful coexistence between States with different political, social and economic systems were, precisely, the result of the objective conditions which had existed since the end of the Second World War. The Charter itself, in enunciating a series of democratic principles, was only reflecting the experience of its epoch. The peace-loving States now aspired to a further development of those principles on the basis of contemporary practice with a view to developing and enriching international law. Those who violated those fundamental principles of international law or did not strictly comply with them in practice were endangering international peace and security and it was they who were really responsible for the Special Committee's failure to achieve concrete results in formulating the principle.

41. During the exchange of views described in the two foregoing paragraphs, various representatives referred to the present situation in South-East Asia, the Middle East, Europe and certain parts of Africa and Latin America. Some deplored the constant military escalation in Viet-Nam and condemned it as an obvious example of the non-observance of the principle prohibiting the threat or the use of force. The armed intervention of an expeditionary force of over half a million men from a country thousands of miles away from the theatre of operations was, in the view of those representatives, a clear violation of the Charter—particularly Article 2, paragraph 4—of the Geneva Agreements, of international law and of the constitution of the country concerned. Asserting the inalienable right of the Viet-Nam people to decide its own destiny freely and without foreign interference, the same representatives expressed their solidarity with that people and condemned the armed intervention to which it had been subjected as an act of aggression. They maintained that no State could of itself decide to undertake operations of that kind, since the Charter provided that only the Security Council, by virtue of the powers conferred on it by Article 39 could determine the existence of a threat to peace or an act of aggression and decide what measures should be taken. The contention that the intervention had been carried out in response to an appeal for help from the Saigon authorities was considered unacceptable by those representatives because, in their view, those authorities were not sufficiently independent and did not represent the will of the people of Viet-Nam.

42. These assertions were considered improper and defamatory and were wholly rejected by other representatives who considered that the intervention and aggression in Viet-Nam which prevented the people of the South from freely exercising their right of self-determination had come from the North, and had thus given rise to the present situation. The presence of allied troops in Viet-Nam and other forms of assistance granted to the Government of the Republic of Viet-Nam by certain countries were due to an appeal from that Government and were intended to help the people of South Viet-Nam to determine their own future and to enable them to live in peace and security free from the threat of invasion or subversion of their institutions from the North. Moreover, the countries which were giving assistance to South Viet-Nam had on more than one occasion proposed that the matter should be discussed in the Security Council, whereas the countries which condemned that assistance had constantly opposed such discussion. All countries, large and small, could and should help to end that tragic situation instead of making unjustified assertions or passing adverse judgements. The fact that there was dissent in the countries which were assisting South Viet-Nam was evidence of the seriousness with which they had undertaken that mission of assistance and of the tradition of free speech maintained in their public life.

43. With regard to the recent crisis in the Middle East, some representatives said that the launching of hostilities by the armed forces of Israel constituted a violation of the principle prohibiting the use of force and an aggression against the territorial integrity of the neighbouring Arab States. The occupation of the territories of those States was described as a continuation of the act of aggression which could in no circumstances be countenanced. Those representatives called for the immediate, complete and unconditional withdrawal of the occupying forces to their former positions, regarding that as the most important condition for a peaceful settlement in the Middle East.

44. As far as the situation in Europe was concerned, some representatives welcomed the new spirit of *détente* and co-operation which had appeared after years of cold war. They considered that the main obstacle to a complete *détente* was to be found in the military circles of the Federal Republic of Germany which, disregarding the Potsdam Agreements of 1945, continued to advance territorial claims against neighbouring countries, claimed access to nuclear weapons and sought the right to represent the whole of Germany, refusing to recognize the existence of another independent German State, namely the German Democratic Republic. Those assertions were completedy rejected by other representatives who considered them to be slanderous, absurd and untimely. They pointed out that by accepting the 1954 London and Paris Agreements the Federal Republic of Germany had completely renounced the production of nuclear, bacteriological and chemical weapons, and that the Western European Union's Arms Control Agency had been established under those agreements precisely to ensure that they were strictly adhered to by member nations.

45. Other representatives condemned what they termed the recent attacks against the territorial integrity and independence of some African States, referring, in particular, to the situation in the Democratic Republic of the Congo and in Nigeria. Some representatives also referred to the armed struggle and guerrilla warfare which, in their opinion, were encouraged by a Government of the American hemisphere in an attempt to subvert the existing order and institutions of Latin American States and constituted intervention in violation of General Assembly resolution 2131 (XX).

2. *General statement of the prohibition of the threat or use of force*

46. The five proposals submitted (see paras. 22-24 and 26-27 above) began with a general statement of the principle concerning the prohibition of the threat or use of force, extending the obligation laid down in Article 2, paragraph 4, of the Charter to all States and not only to Members of the United Nations. Three proposals—that of Czechoslovakia submitted in 1966, that of Australia, Canada, the United Kingdom and the United States (see para. 23 above) and that of the United Kingdom (see para. 24 above)—limited the general statement of the principle to a transcription of the terms of Article 2, paragraph 4, of the Charter. The other two proposals, that of Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above) and that of Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above), after transcribing the

[29] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746, para. 106.

terms of Article 2, paragraph 4, of the Charter, added that "such threat or use of force shall never be used as a means of settling international issues". No observations on the wording of the general statement of principle were made during the debate.

3. *Definition of the term "force"*

(a) *Armed force; regular forces; irregular or volunteer forces; armed bands; indirect aggression*

47. The 1966 proposal of Czechoslovakia did not seek to define the various forms that armed force might take. Paragraph 2 (*a*) of the proposal of Algeria, Cameroon, Ghana, India, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above) provided that the term "force" should include *inter alia* the use of regular military, naval or air forces and of irregular or voluntary forces. Paragraph 2 (*b*) and (*c*) of the proposal of Australia, Canada, the United Kingdom and the United States (see para. 23 above) and of the proposal of the United Kingdom (see para. 24 above) contained provisions forbidding the organization of irregular or volunteer forces or armed bands for incursion into the territory of another State and certain acts of terrorism and acts instigating civil strife in other States, when such acts involve the threat or use of force. Lastly, according to paragraph 2 (*b*) and (*c*) of the proposal of Argentina, Chile, Guatemala, Mexico and Venezuela, States should refrain from all those acts as well as from intervening in a civil war of another State when such acts of intervention involved the use of force.

48. In the course of the debate some representatives argued that, although the problem of indirect aggression might not have been expressly considered at San Francisco, since the attention of the Conference had been concentrated on the problem of armed attack, the increasingly frequent recourse in international relations to more subtle and clandestine methods than armed attack made it necessary to condemn the forms of indirect aggression as well. As examples of indirect aggression, mention was made of organizing guerrillas in another State, supplying arms to rebel groups in another State, refusal by a State to prohibit the training in its territory of rebels against another Government, failure to prevent volunteers from fighting in another State, fomenting civil war and giving material or other assistance to rebels in another State. Accordingly, some representatives expressed themselves in favour of including in the wording of the principle a provision on the duty of States to refrain from instigating, assisting or organizing acts of indirect aggression involving the threat or use of force; these representatives supported one or other proposals submitted on the subject. Some of the representatives in question urged that the formulation should include a provision similar to that set forth in paragraph 2 (*c*) of Paper No. 1 prepared by the Drafting Committee of the 1964 Special Committee.

49. Other representatives condemned the organization of irregular forces or armed bands for incursion into the territory of another State, participation in civil strife and the commission of acts of terrorism, but considered it more appropriate to prohibit those acts in the context of the formulation of the principle of non-intervention, in view of the provisions made on the subject in paragraph 2 of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty adopted by the General Assembly in its resolution 2131 (XX) of 21 December 1965.

50. Other representatives, however, considered it undeniable that, although those acts constituted violations of the principle of non-intervention in matters within the domestic jurisdiction of any State, some of them could be, and in fact often were, accompanied by the use of force, and any formulation of the principle would be incomplete if they were omitted. One of these representatives pointed out that, when the drafting Committee of the 1964 Special Committee had prepared Paper No. 1, the General Assembly had not yet adopted resolution 2131 (XX).

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

51. Paragraph 5 of the 1966 proposal of Czechoslovakia and paragraph 2 (*b*) of the proposal of Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above) contained provisions to the effect that economic, political and other forms of pressure against the territorial integrity or political independence of any State were prohibited uses of force.

52. As in the 1964 and 1966 Special Committees, the discussion on these proposals centred on whether the term "force" should be limited to armed force or extended to cover economic, political and other forms of pressure. Several representatives considered it essential that, in the context of the principle prohibiting the threat or use of force, the term "force" should include all forms of pressure, particularly economic and political pressure, which had the effect of threatening the territorial integrity or political independence of any State; these representatives accordingly supported the proposals made on those lines. Mention was also made of diplomatic, material and ideological forms of pressure, and of those exerted through propaganda, as forms of pressure which should be prohibited. One representative pointed out that the various forms of illicit pressure should not be confused with such economic sanctions as the United Nations might impose in accordance with the Charter.

53. Other representatives, in contrast, held that the term "force" in Article 2, paragraph 4, of the Charter meant armed force and armed force alone; they said that they were therefore unable to accept any formulation of the principle prohibiting the threat or use of force which would distort the meaning given to the term "force" by the Charter and seek to extend it to economic, political or other forms of pressure. In the opinion of these representatives such pressure, or at least some forms of it, constituted violations of international law and of the Charter which should be adequately dealt with in the context of the principle of non-intervention in matters within the domestic jurisdiction of any State. It was pointed out in that connexion that those forms of pressure had been explicitly condemned in paragraph 2 of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty adopted by the General Assembly in its resolution 2131 (XX).

54. One representative emphasized that force was one and indivisible in the same way as were international peace and the political independence and territorial integrity of States. It was therefore desirable to arrive at a single definition of the term "force" which would include both armed force and certain illicit forms of pressure, even though the relationship between the principle prohibiting the threat or use of force and the principle of non-intervention in matters within the domestic jurisdiction of any State would seem to argue in favour of separate definitions of the various manifestations of "force". Later on it would be possible to complete the task by making an analysis of the notion of political and economic pressure.

55. The arguments advanced during the debate in favour of a broad interpretation of the term "force" in formulating the principle of the prohibition of the threat or use of force can be summed up as follows: (*a*) a considerable number of delegations, both in the Special Committee and in the General Assembly, had expressed themselves in favour of a broad interpretation of the term "force"; (*b*) that interpretation was supported by a large sector of opinion and by many writers; (*c*) that interpretation was recognized in recent international documents such as the Programme for Peace and International Co-operation adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries held at Cairo in 1964; (*d*) it was necessary to take into account the purposes aimed at in drafting the principle, so that the wording adopted could be made appropriate and useful by taking into account the practices and possibilities of international relations as they existed in reality; (*e*) it would not be realistic to limit the formulation of the principle to an examination of the provisions of the Charter, in an effort to make a distinction between *lex lata* and *lex ferenda*; (*f*) economic and political forms of pressure were sometimes as dangerous as armed force, particularly for developing countries, new States and peoples under colonial domination, and could accomplish the same illicit results; they constituted a violation of international law and a threat to the maintenance of international peace and co-operation; (*g*) the existence of international relations based on the free consent of independent sovereign States necessarily implied prohibition both of armed force and of other forms of pressure and coercion; (*h*) the authors of the Charter, in drafting Article 2, paragraph 4, had used the generic term "force" without any qualification, and consequently a broad interpretation of that term was perfectly compatible with the text of that provision; (*i*) there was nothing in the *travaux préparatoires* of the San Francisco Conference to preclude a broad interpretation of "force" in Article 2, paragraph 4, of the Charter; (*j*) the very fact that the San Francisco Conference had rejected a Brazilian amendment that a reference to economic forms of pressure be added was proof that such a reference was not considered necessary in view of the broad meaning of the term "force" in Article 2, paragraph 4, of the Charter; (*k*) the notion and conditions of self-defence had not yet been clearly defined, and hence no argument for the exclusion of the various forms of pressure could be based on that notion.

56. In their turn, those representatives who considered that the term "force" in Article 2, paragraph 4, of the Charter meant only armed force put forward the following arguments: (*a*) the intention of the authors of the Charter was clearly to limit the term "force" to armed force; (*b*) the *travaux préparatoires* of the Charter argued against those who held that, because the term "force" in Article 2, paragraph 4, was not qualified by the adjective "armed", that term should be given a broad interpretation which covered other forms of pressure; (*c*) the San Francisco Conference rejected a Brazilian amendment designed to broaden the prohibition laid down in Article 2, paragraph 4, by adding the words "and the threat or use of economic measures"; (*d*) the very fact that Brazil had found it necessary to submit its amendment was proof, and the rejection of that amendment conclusive proof, of the meaning which should be given to the word "force" in Article 2, paragraph 4, of the Charter; (*e*) in Article 44 of the Charter the term "force" was also used without any qualification, and there was no doubt that it referred exclusively to armed force; (*f*) if Article 2, paragraph 4, was analysed in the context of the other provisions of the Charter, the legal conclusion reached was that the term "force" used in that paragraph could be interpreted only to mean armed force; (*g*) a broad interpretation of the term "force" in Article 2, paragraph 4, of the Charter would completely alter the existing relationship between that Article and the provisions of Chapter VII of the Charter; (*h*) a broad interpretation of the term "force" in Article 2, paragraph 4 would also imply a broader interpretation of the inherent right of individual or collective self-defence provided for in Article 51 of the Charter, although it was obvious that the protection established in that Article was intended to operate solely in the case of the threat or illegitimate use of force and until such time as the Security Council had taken the necessary steps to maintain international peace and security; (*i*) a broad interpretation of the term "force" would undermine the integrity of the Charter as a legal instrument—an outcome which could not be accepted on the pretext of progressive development; (*j*) any attempt to amend the Charter must be made in accordance with the procedure laid down in Article 108; (*k*) most writers supported a limitative interpretation of the term "force" in Article 2, paragraph 4, of the Charter.

57. Lastly, some representatives considered that, by the aforementioned resolution 2160 (XXI), the General Assembly had in part solved the problem arising with regard to the meaning of the term "force". According to these representatives, that resolution, in reaffirming in operative paragraph 1 (*a*), that "armed attack by one State against another or the use of force in any other form contrary to the Charter of the United Nations constitutes a violation of international law", recognized that the term "force" includes not only "armed attack" but also "the use of force in any other form". That interpretation was rejected by those representatives who considered that resolution 2160 (XXI) was a statement of political will by the General Assembly and not a text which purported to lay down legal definitions of such terms as "force" (see para. 35 above). In the view of the last-mentioned representatives, the General Assembly did not, by adopting resolution 2160 (XXI), intend to express a view on the legal meaning of the term "force".

4. *Wars of aggression*

58. All the proposals submitted to the Special Committee contained references to wars of aggression: paragraph 2 of the 1966 proposal by Czechoslovakia; paragraph 2 (*a*) of the proposal by Australia, Canada, the United Kingdom and the United States (see para. 23 above); paragraph 2 (*a*) of the proposal by the United Kingdom (see para. 24 above); paragraph 3 of the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above); and paragraph 2 (*a*) of the proposal by

Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above). A common feature of all these proposals was the statement that wars of aggression constitute international crimes against peace. The Czechoslovak proposal referred in addition to the political and material responsibility of States and the penal liability of individuals in the planning, preparation, initiation and waging of wars of aggression. The proposals of the United Kingdom and of Argentina, Chile, Guatemala, Mexico and Venezuela also stated that there is responsibility under international law for wars of aggression and that States must refrain from inciting or waging such wars.

59. There was general agreement that wars of aggression constitute a flagrant violation of the Charter. It was also considered that in accordance with existing international law such wars must be regarded as crimes against peace. Some representatives considered that the Special Committee should proclaim the illegality of the preparation, instigation and execution of wars of aggression and condemn such acts.

60. Some representatives stressed the need to give proper legal expression to the concept of the political and material responsibility of States guilty of starting a war of aggression. One of those representatives emphasized that the absence of a proper formulation of the principle of responsibility for a war of aggression or other unlawful use of force benefited States which perpetrated such acts. The incitement of third parties to aggression and so-called preventive wars should, according to those representatives, also be condemned.

61. One representative was in favour of making an express reference to responsibility under international law for wars of aggression, so as to take into account the progress made on the subject in the Drafting Committee during the Special Committee's 1966 session. Another representative expressed various reservations concerning such an express reference, because of the difficulties which had been encountered in defining aggression. Lastly, a third representative thought that, in view of the efforts being made in the United Nations to arrive at a definition of aggression, it would be advisable to formulate the prohibition of wars of aggression in general terms, since any attempt to do so in greater detail at the present stage would inevitably lead to subjective evaluations and interpretations which would complicate the Special Committee's task.

5. *War propaganda*

62. Paragraph 2 of the 1966 proposal submitted by Czechoslovakia, paragraph 3 of the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above) and paragraph 2 (*a*) of the proposal by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) contained provisions concerning war propaganda. The Czechoslovak proposal prohibited any incitement to war or fomenting of war, and any propaganda for preventive war or for striking the first nuclear blow. The proposal submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia prohibited any propaganda which encourages the threat or use of force against the territorial integrity and political independence of another State. The proposal by Argentina, Chile, Guatemala, Mexico and Venezuela prohibited, in the light of each country's constitutional system, any propaganda which encourages wars of aggression. Lastly, paragraph 4 (*b*) of the amendment to the United Kingdom proposal submitted by Italy and the Netherlands (see para. 25 above) provided that the Members of the United Nations should favour the free exchange of information and ideas essential to international understanding and peace, and take appropriate steps to discourage propaganda against peace, in the light of General Assembly resolutions 110 (II), 290 (IV), 381 (V) and 819 (IX).

63. The question was referred to during the debate by some representatives who were in favour of including, in the formulation of the principle, a form of words prohibiting war propaganda. Some considered that to be one of the corollaries of the prohibition of aggression. In that connexion, it was pointed out that the General Assembly had already condemned all war propaganda in its resolutions 110 (II) of 3 November 1947 and 381 (V) of 17 November 1950, and that such propaganda was also condemned by the national laws of certain countries. One representative added that war propaganda was a part of preparations for aggression and should be treated as an international crime, as had been done in the Charter of the Nürnberg Tribunal and the Charter of the International Military Tribunal for the Far East, whose principles had been affirmed by the General Assembly in its resolution 95 (I) of 11 December 1946.

64. Some representatives maintained that the concept of freedom of expression was not a legal obstacle to the inclusion in the principle of a reference to the prohibition of war propaganda and pointed out that national laws prohibit the diffusion of false information in certain circumstances, without that being regarded as an enroachment on freedom of expression. In support of their view, these representatives quoted article 20, paragraph 1, of the International Covenant on Civil and Political Rights, unanimously adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966, which provides that "any propaganda for war shall be prohibited by law". One representative acknowledged that any such form of words involved an element of subjective appraisal, but thought that this subjective element would always be present in the interpretation of any law governing the dissemination of information.

65. Other representatives stressed that the process of informing world opinion of the acts perpetrated by the colonial Powers could not be regarded as war propaganda and prohibited as such. According to them, it was a matter of denouncing an injustice that was maintained by the threat or use of force. One representative considered as legitimate any propaganda in favour of the fight against colonial domination or in defence of national sovereignty and independence.

6. *Acts of reprisal*

66. Paragraph 5 of the 1966 proposal submitted by Czechoslovakia, paragraph 2 (*b*) of the proposal by Australia, Canada, the United Kingdom and the United States (see para. 23 above), paragraph 2 (*b*) of the proposal by the United Kingdom (see para. 24 above) and paragraph 2 (*d*) of the proposal by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) contained provisions prohibiting acts of reprisal or acts of armed reprisal or attack.

67. Few representatives referred to this question in their statements, but those who did so reaffirmed the illegality of such acts. One representative urged that the Special Committee should agree as soon as possible on a form of words expressly prohibiting acts of reprisal, especially armed reprisal. Another representative added that to meet the wishes of some delegations he was prepared to agree to the inclusion, in the formulation of the principle, of an express reference to acts of armed reprisal or attack, although he did not consider it absolutely necessary, since those acts were prohibited by the general statement of the principle. Lastly, a third representative considered that there was a sufficient number of decisions by the Security Council to warrant the prohibition of acts of armed reprisal or attack; but the expression of that prohibition necessarily required that every State should comply strictly with the duties not to encourage irregular forces or armed bands, not to organize civil strife, etc., set out in paragraph 2 (*b*) and (*c*) of the proposal by Australia, Canada, the United Kingdom and the United States and in paragraph 2 (*b*) and (*c*) of the United Kingdom proposal.

7. *Use of force in territorial disputes and boundary claims*

68. All the proposals submitted to the Special Committee contained provisions prohibiting the use of force in territorial disputes and boundary claims (see paras. 22-24 and 26-27 above). Paragraph 5 of the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above) also contained a sentence relating to the non-recognition of situations brought about by the threat or use of force in violation of the existing boundaries of a State. The comments on this point are discussed in the section relating to the inviolability of State territory and the non-recognition of situations brought about by the use of force (see paras. 75-77 below). Paragraph 2 (*d*) of the proposal by Australia, Canada, the United Kingdom and the United States (see para. 23 above), paragraph 2 (*d*) of the proposal by the United Kingdom (see para. 24 above) and paragraph 2 (*c*) of the proposal by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) referred expressly to "international lines of demarcation" in their formulation of this prohibition. Such a reference was also included in paragraph 2 (*b*) and (*c*) of the proposal by Australia, Canada, the United Kingdom and the United States and in paragraph 2 (*b*) of the United Kingdom proposal.

69. There was general agreement that the prohibition of the threat or use of force to violate the present or existing boundaries of a State should be expressly stated in any formulation of the principle adopted by the Special Committee. On the other hand, opinions were divided on the reference to "international lines of demarcation".

70. According to some representatives, "international lines of demarcation" could not be regarded as equivalent to State boundaries, and any reference to them would therefore be improper and dangerous. In practice, it was argued, there were different types of "international lines of demarcation" resulting from a variety of acts, and in many cases such lines had been established as a mere *de facto* situation by the unlawful use of force or by an act of aggression. "International lines of demarcation" brought about by aggression could not be recognized or protected by international law. Since such lines were established by particular agreements and were governed by special rules of international law, the inclusion of a reference to them in the formulation of the principle was considered unacceptable by those representatives. One of them specified that the question of "international lines of demarcation" should be considered in the context of the laws of war and not in connexion with the rules which international law lays down for peace.

71. Other representatives, on the contrary, stressed the necessity and advisability of expressing in the formulation of the principle the idea that every State has the duty to refrain from the threat or use of force to violate "international lines of demarcation". These lines existed in practice, and their peaceful maintenance was manifestly in conformity with the purposes of the United Nations. Their violation by force would therefore be as flagrant a breach of the principle enunciated in Article 2, paragraph 4, of the Charter as a violation of the present boundaries of a State. These representatives pointed out that most of the situations which had necessitated peace-keeping operations by the United Nations had arisen precisely in connexion with international lines of demarcation. In reality, it was argued, the object of establishing those lines was often to put an end to the use of force and to permit the application of the peaceful methods of settlement provided for in the Charter.

72. These representatives emphasized that there was no intention of placing such lines on the same footing as the boundaries of States; they recognized that "international lines of demarcation" belonged to different categories and that their juridical character differed from case to case. A reference to such lines in the formulation of the principle would in no way entail a pronouncement on the justification of the lines or affect in any way the juridical status of the territories they circumscribed or divided. Moreover, the question of prohibiting the use of force across such lines would not, in their view, be relevant to the problem of their duration, which, in accordance with the provisions and methods adopted for their establishment, might vary from case to case.

73. According to some representatives, the expression "international lines of demarcation" meant lines defined in armistice agreements, or other agreements terminating hostilities, which did not affect the status of the territories divided by such lines. Cease-fire positions as such did not in their view constitute an international line of demarcation in the sense in which that term was used in the proposals submitted to the Special Committee, although States which had accepted cease-fire measures had an obligation to observe them and to comply with the directives of the Security Council on the subject. Another representative expressed the view that such lines did not exist if they had not been established in conformity with international law and the Charter, since the establishment of a line of demarcation by the will of the aggressor would be a mere act of force without any legal foundation.

74. Lastly, one representative emphasized that a reference to "international lines of demarcation" was necessary precisely because such lines are not equivalent to State boundaries, and hence cannot be considered to be covered by the term "the existing boundaries of another State". Another representative considered the term "boundaries" excessively narrow, since in current usage it is applied solely to the territorial boundaries of States.

8. *Inviolability of State territory and non-recognition of situations brought about by the use of force*

75. Paragraph 4 of the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria,

the United Arab Republic and Yugoslavia (see para. 26 above) and paragraph 2 (*e*) of the proposal by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) contained a provision declaring the territory of a State to be inviolable and prohibiting military occupation, even if temporary, and other measures of force taken by a State against the territory of another State. The first of these proposals also provided that no territorial acquisitions or special advantages obtained either by force or by other means of coercion should be recognized. A similar provision, preceded by the words "in accordance with the United Nations Charter" was contained in paragraph 2 (*h*) of the Latin American proposal.

76. The inviolability of the territory of a State was regarded by a number of representatives as a logical consequence of the prohibition of violence by the Charter, which should be expressly referred to in the formulation of the principle of the prohibition of the threat or use of force in international relations. It was pointed out that this would be merely a reaffirmation of what had already been recognized in article 17 of the 1948 Charter of the Organization of American States,[30] the Charter of the Organization of African Unity and the declarations signed by the non-aligned countries at the Belgrade and Cairo Conferences. Moreover, according to these representatives, it was necessary to guarantee this inviolability and to state its inevitable corollary, namely, the non-recognition of territorial acquisitions obtained by the threat or unlawful use of force, for example, those resulting from an act of aggression. It was pointed out that the non-recognition of such acquisitions had first been proclaimed at the Inter-American Conference at Washington in 1889-1890,[31] and that, together with the rule of the inviolability of State territory, it had subsequently become an important principle of the international law of the American continent.

77. In the opinion of these representatives, territorial acquisitions or other advantages obtained by te threat or unlawful use of force could have no legal effect, since international law could not legalize the consequences of unlawful acts which were incompatible with the Charter. One representative also said that in such cases there must be *restitutio in integrum*. The traditional doctrine of the acquisition of legal title by conquest was rejected as an anachronism and contrary to the Charter. According to one representative, the principle of non-recognition of territorial acquisitions or special advantages obtained by aggression could not be disregarded on the pretext of an appeal for a general settlement or on the ground that a return to the *status quo ante* would again produce the former conditions of instability.

9. Disarmament

78. Provisions relating to disarmament were contained in paragraph 6 of the 1966 proposal submitted by Czechoslovakia, paragraph 2 (i) of the proposal submitted by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) and paragraph 5 of the amendment submitted by Italy and the Netherlands (see para. 25 above).

79. Some representatives pointed out that the problem of disarmament could not be avoided in an examination of the principle laid down in Article 2, paragraph 4 of the Charter. General and complete disarmament under effective international control would constitute the best guarantee of friendly relations and peaceful coexistence among nations. In view of its supreme importance, the obligation of States to work for an agreement on disarmament measures should be stated in the wording of the principle prohibiting the threat or use of force.

80. Other representatives also thought it appropriate to include, as a corollary to the principle, a statement of the obligation incumbent upon all States to continue negotiations for the early conclusion of a world disarmament treaty and, at the same time, to adopt measures to reduce international tension and, in particular, to refrain from promoting the unnecessary acquisition of military equipment. One of these representatives stressed that, so far as the countries of America were concerned, the obligation was based not only on Article 2, paragraph 4, and Article 26 of the Charter but also on the unanimous Declaration of the Presidents of America at Punta del Este, Uruguay, in 1967, in which they had emphasized the importance of reducing military expenditure. That repesentative also mentioned the Treaty for the Prohibition of Nuclear Weapons in Latin America (see A/6663), which had recently been signed by twenty-one American States.

10. Provisions relating to dependent territories

81. The paragraphs under this heading, particularly those relating to armed action or repressive measures against colonial peoples, should be read in conjunction with those on the use of force in self-defence against colonial domination (see paras. 100-106 below).

(a) *Armed force or repressive measures against colonial peoples*

82. Paragraph 3 of the proposal submitted by Czechoslovakia in 1966 provided that every State had the duty to refrain from all armed actions or repressive measures of any kind directed against peoples struggling against colonialism for their freedom and independence. Paragraph 2 (*g*) of the proposal submitted by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) stated that every State had the duty to refrain from the use or threat of force against those dependent peoples to which General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, was applicable.

83. A number of representatives supported the idea of including, in the formulation of the principle, the prohibition of the use of armed force or repressive measures in support of colonial domination or against peoples exercising the right of self-determination. It was also stated that persistent denial of the right of self-determination constituted an unlawful use of force which should be prohibited. According to those representatives, the illegality of the use of force against peoples struggling for their independence derived from the fact that it impeded the exercise of a legitimate right recognized by the principle of equal rights and self-determination of peoples. Moreover, the General Assembly had stated repeatedly that the use of force to deprive dependent peoples of their inalienable rights constituted a flagrant violation of the Charter and of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted in its historic resolution 1514 (XV). Some representatives contended that Article 2, paragraph 4, of the Charter prohibited the use of force in "international relations" and not only in relations between States, and consequently that the prohibition applied also to the use of force in relations between States and other entities such as, for example, peoples and territories under colonial rule that constituted entities separate and distinct from the administering Power.

84. Other representatives considered such an interpretation of Article 2, paragraph 4, of the Charter to be unacceptable. In their view, any attempt to extend the provisions of that paragraph to questions of self-determination would be at variance with every canon of interpretation and would flout Chapters XI, XII and XIII of the Charter. Article 2, paragraph 4, of the Charter was concerned with the use of force by one State against another and could not be interpreted as applying to situations which affected dependent peoples. The Charter did not govern situations resulting from internal disturbances in dependent territories unless they could be deemed a threat to peace. The suppression of the right of peoples to self-determination might be a violation of the Charter but was not necessarily a violation of Article 2, paragraph 4. Such situations should therefore be examined in connexion with the principle of equal rights and self-determination of peoples, not within the context of the principle prohibiting the threat or use of force. It was also emphasized that administering Powers had an overriding obligation to maintain law and order in territories subject to their jurisdiction which had not yet attained full self-government.

(b) *Status of territories under colonial rule*

85. Paragraph 7 of the proposal submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above) provided that nothing in the formulation of the principle of the prohibition of the threat or use of force should be construed to include peoples and territories under colonial rule as an integral part of a State.

86. During the discussion, some representatives urged that such a provision should be included in the formulation of the principle. One of these representatives said that, since the legitimate right of peoples to self-determination had been recognized, those peoples could not be regarded as constituting an integral part of the governing colonial Power's territory. The question of deciding which peoples had that right, he added, should be considered in connexion with the principle of equal rights and self-determination of peoples.

(c) *Compliance with Charter obligations with respect to the political development of dependent territories*

87. Paragraph 4 (*a*) of the amendment submitted by Italy and the Netherlands (see para. 25 above) provided that the Members of the United Nations should comply fully and in good faith with the provisions of the Charter concerning the political, economic, social and educational advancement of Non-Self-Governing Territories and should do their utmost, in the light of the relevant resolutions of the General Assembly, to ensure the peaceful exercise of self-determination on the part of the inhabitants of those Territories. The amendment was not commented upon during the discussion.

11. Compliance in good faith with obligations with respect to the maintenance of international peace and security and making the United Nations security system more effective

88. Paragraph 4 (*c*) of the amendment submitted by Italy and the Netherlands (see para. 25 above) provided that the Members of the United Nations should comply in good faith with obligations placed upon them by the Charter with respect to the maintenance of international peace and security, and should endeavour to make the United Nations security system fully effective. The amendment was not commented upon during the discussion.

12. Lawful uses of force

89. All the proposals submitted contained provisions on the lawful uses of force. During the discussion some representatives emphasized the need to include a clear and unequivocal reference to the circumstances under which the use of force was lawful.

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

90. Paragraph 7 of the proposal submitted by Czechoslovakia, in 1966, included among lawful uses of force the use of force pursuant to a decision of the Security Council made in conformity with the Charter of the United Nations. Paragraph 3 of the proposal submitted by Australia, Canada, the United Kingdom and the United States (see para. 23 above), paragraph 3 of the United Kingdom proposal (see para. 24 above), paragraph 6 of the proposal submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria and the United Arab Republic and Yugoslavia (see para. 26 above), and paragraph 3 of the proposal submitted by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) all referred to the lawful use of force by order of "a competent United Nations organ". The proposal of the non-aligned countries (see para. 26 above) mentioned the use of force "pursuant to a decision" by such an organ, and the other proposals mentioned the use of force "when undertaken by or under the authority of" such an organ.

91. As at previous stages of the work on friendly relations, some representatives considered that force could be lawfully used in certain circumstances pursuant to recommendations of the General Assembly, while others were of the view that only the Security Council, acting under Chapter VII of the Charter, was entitled to authorize the use of force in any form.

92. Some of the representatives who supported the view that the General Assembly had certain important powers in the matter expressed the hope that those who had objected in the Special Committee to the inclusion of a reference to "a competent United Nations organ" in the formulation of the principle would change their opinion in view of the recent convening of an emergency special session of the General Assembly under resolution 377 A (V).

93. One representative said that the recognition of the powers of the General Assembly in this respect would give the new countries a stronger voice in applying the principles which the Special Committee has been asked to codify, and would thus help to secure a more universal acceptance of the obligations imposed by those principles. He added that States would then be much less likely to act unilaterally with armed

[30] United Nations, *Treaty Series*, vol. 119 (1952), II, No. 251.

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

force. Another representative proposed that the formulation of the principle should specify that the use of force would be lawful when, pursuant to the provisions of Articles 42 and 53 of the Charter, the Security Council had ordered the use or threat of force in a preventive or enforcement action against a recalcitrant State or when, pursuant to the provisions of Articles 10 and 11 of the Charter, the General Assembly had made a recommendation with regard to the maintenance of international peace and security.

94. Lastly, another representative said that, strictly speaking, the lawful use of force by a competent United Nations organ did not constitute an exception to the prohibition of the use of force but rather the confirmation of the system of collective security established by the Charter.

(b) *Use of force on the decision of a regional agency*

95. The proposals submitted by Australia, Canada, the United Kingdom and the United States (see para. 23 above), by the United Kingdom (see para. 24 above) and by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) referred in their respective paragraphs 3 to the lawful use of force by a "regional agency" acting in accordance with the United Nations Charter. The proposal submitted by the Latin American countries (see para. 27 above) further specified that: "The use of force by regional agencies, except in the case of self-defence, requires the express authorization of the Security Council, in accordance with Article 53 of the United Nations Charter".

96. Some representatives supported the inclusion, in whatever formulation of the principle might be adopted, of a reference to the use of force by regional agencies acting in accordance with the Charter. Others stressed that the powers of regional agencies in matters relating to the use of force should be clearly defined through recognition of the legal position created for those agencies by Article 53 of the Charter. In that connexion, one representative pointed out that that legal position was based on the supremacy of the obligations arising from the United Nations Charter over any other treaty provision. Another representative said that the use of force to maintain peace should be wholly under United Nations control and that, in his view, the establishment of regional forces, even to perform peace-keeping functions, was contrary to the United Nations Charter.

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

97. All the proposals submitted to the Special Committee referred expressly to the lawful use of force in exercise of the right of individual or collective self-defence. In paragraph 7 of the proposal submitted by Czechoslovakia in 1966 and in paragraph 6 of the proposal submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above), the reference was accompanied by the proviso that, as specified by Article 51 of the Charter, the right existed only in case of "armed attack". Paragraph 3 of the proposal submitted by Argentina, Chile, Guatemala, Mexico and Venezuela (see para. 27 above) also stipulated that the right of individual or collective self-defence, recognized by Article 51 of the Charter, might be exercised only in confronting "armed attack"; but it immediately added the words: "without prejudice to the right of a State which is subject to subversive or terrorist acts supported by one or more other States, to take reasonable and appropriate measures to safeguard its institutions". No express proviso of this kind accompanied the reference to the inherent right of individual or collective self-defence mentioned in paragraph 3 of the proposals submitted by Australia, Canada, the United Kingdom and the United States (see para. 23 above) and by the United Kingdom (see para. 24 above).

98. During the debate, various representatives insisted that the right of self-defence should be limited to cases of "armed attack". One representative held that, in view of the exceptional nature of the right of self-defence, it should be interpreted restrictively and the conditions laid down in the Charter for its exercise should be strictly observed. In his view, it might only be exercised until the competent organ of the United Nations had taken adequate measures to restore the peace, though it would subsist if such measures were not taken. On the other hand, the rules of customary international law, such as the rule that the defensive action must be taken immediately and must be commensurate with the unlawful act which gave rise to the exercise of the right of self-defence, would continue to govern those aspects of that right which were not dealt with in the Charter.

99. Lastly, some representatives said that, while the right of self-defence provided for in Article 51 of the Charter might not be invoked to justify reprisals for acts of terrorism or subversion, recognition should be given in the formulation of the principle to the right of a State to protect its domestic institutions against acts of subversion or terrorism supported by another State, in which case the protection and defence would by their very nature be within the exclusive competence of the Government of the first State.

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

100. Reference to the right of peoples to defend themselves against colonial domination in the exercise of their right to self-determination was made in paragraph 7 of the 1966 proposal of Czechoslovakia, and in paragraph 6 of the proposal of Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 26 above). As in previous meetings of the Special Committee, opinion on this question was divided.

101. Various representatives said that it was very important to include in the formulation of the principle a provision whereby the prohibition of the use of force would not affect the right of peoples to defend themselves against colonial domination in the exercise of their right to self-determination. The right of peoples to defend themselves against colonial domination should be recognized, just as a similar right of States to protect themselves against the unlawful use of force directed against them had been recognized. Those representatives held that the right to self-determination of peoples under colonial domination could not be separated from the principle prohibiting the threat or use of force, since the assumptions underlying both of them were complementary or directly related. Such a right of self-defence of peoples subjected to colonial domination would constitute an exception to the prohibition of the use of force proclaimed in the principle, and would be applicable if the colonial Power took repressive measures against a people aspiring to self-determination. In their view, all peoples who enjoyed a lawful right to self-determination were entitled to that exceptional right.

102. Rejecting the thesis that colonies may be an integral part the territory of the metropolitan State, one representative pointed out that for new countries colonialism itself constituted aggression, and that the colonized peoples were therefore entitled to defend themselves against that aggression by the use of force in self-defence whenever necessary. In his view, as the persistence of colonialism was one of the causes of world conflict and was incompatible with the promotion of friendly relations amongst nations, the temporary use of force by colonized peoples in self-defence would in the long run help to secure peace and improve those relations. He also considered that the inability of a people, for lack of means, to exercise until recently its right of self-defence in no way meant that it had renounced that right, which did not cease to exist until the colonial situation which justified it had disappeared.

103. In support of the legitimacy of the struggle of peoples against colonial domination for their self-determination and independence, express reference was made to the United Nations Charter, General Assembly resolutions 1514 (XV) and 2105 (XX), the Charter of the Organization of African Unity, the Programme for Peace and International Co-operation adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held at Cairo in 1964, the fourth preambular paragraph and operative paragraph 2 (*b*) of resolution 2160 (XXI), recently adopted by the General Assembly, were also mentioned.

104. Other representatives denied the existence of the so-called right of self-defence against colonial domination, and opposed any reference to it in the formulation of the principle. In their view the principle prohibiting the threat or use of force was in no way connected with questions relating to colonial domination or the so-called right of self-defence against it. They held that the right of rebellion had no place in Article 51 of the Charter. Pointing out that Powers which still administered dependent territories were required by the Charter to promote the advancement of the peoples of those territories in a peaceful and orderly manner towards full self-government and independence, they considered that recognition of a right such as the so-called right of self-defence against colonial domination would impede the discharge of that obligation, since it would mean permitting or encouraging terrorism, riots and other acts in breach of the public peace. Furthermore, such a right would justify assistance by other States to national liberation movements by supplying them with the means for violent action; that would be contrary to the maintenance of friendly relations and to co-operation between States, and might constitute a serious threat to international peace and security.

105. Some representatives rejected the argument that General Assembly resolution 2160 (XXI) had settled the question in favour of recognition of self-defence against colonial domination, and asserted that that resolution had not laid down any legal definition of the struggle of dependent peoples for their emancipation.

106. Lastly, other representatives were of the opinion that Article 2, paragraph 4, of the Charter prohibited the use of force in "international relations" only, and in no way affected the right of a people to rebel if the colonial Power persisted in denying it the exercise of its right to self-determination.

C. *Report of the Drafting Committee*

107. At its 66th meeting, on 1 August 1967, the Special Committee referred the principle to the Drafting Committee. The Drafting Committee, having referred the principle to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

THE PRINCIPLE THAT STATES SHALL REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF ANY STATE OR IN ANY OTHER MANNER INCONSISTENT WITH THE PURPOSES OF THE UNITED NATIONS

The Drafting Committee considered the report of the Working Group (A/AC.125/DC.17) and decided to transmit it to the Special Committee for consideration.

Report of the Working Group

The Working Group considered all proposals on the same basis. It took as the basis for its work a comparative table prepared by the Secretariat. In view of the close interrelationship between the various components of the principle, it was understood that agreement on one particular point would not prejudice the position of members with regard to other points or to the statement of the principle as a whole. It was also understood that questions of drafting were of great importance.

1. *General prohibition of force*

There was agreement on the following statement:

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

It was also agreed that:

"Consequently, such as threat or use of force shall never be used as a means of settling international issues."

2. *Consequences and corollaries of the prohibition of the threat or use of force*

1. There was agreement in principle that a war of aggression constitutes a crime against the peace.

2. There was also agreement in principle on the inclusion of the concept of responsibility for wars of aggression.

3. There was no agreement whether a statement on war propaganda should be included.

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

There was agreement in principle that every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers between States. There was no agreement whether there should be a reference to international lines of demarcation in this connexion.

4. *Acts of reprisal*

There was agreement that every State has the duty to refrain from acts of armed reprisal, but agreement was not reached on whether a statement to this effect should refer also to acts of this nature not involving the use of armed force.

5. *Organization of armed bands*

There was agreement in principle that every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces for incursion into the territory of another State.

No agreement was reached whether a statement to this effect should be included under the principle prohibiting the threat or use of force, or under the principle of non-intervention in matters within the domestic jurisdiction of any State.

Nor was agreement reached on the application of this rule to situations where force is used to deprive peoples of dependent territories of the right to self-determination.

6. *Instigation of civil strife and terrorist acts*

There was agreement in principle that every State has the duty to refrain from involvement in civil strife and terrorist acts in another State. However, agreement was not reached as to whether a statement to this effect should be included under the principle prohibiting the threat or use of force or under the principle of non-intervention in matters within the domestic jurisdiction of any State. Nor was agreement reached with regard to its application to situations where force is used to deprive peoples of dependent territories of the right to self-determination.

7. *Military occupation and non-recognition of situations brought about by the illegal threat or use of force*

There was no agreement on the inclusion of a statement to the effect that the territory of a State may never be the object of military occupation or other measures of force on any grounds whatsoever.

Nor was there agreement whether a statement should be included requiring that situations brought about by an illegal threat or use of force would not be recognized.

8. *Armed force or repressive measures against colonial peoples, the position of territories under colonial rule, and the Charter obligations with respect to dependent territories*

There was no agreement on the inclusion of a statement on a duty of States to refrain from the use of force against peoples of dependent territories.

9. *Economic, political and other forms of pressure*

There was no agreement whether the duty to refrain from the threat or use of "force" included a duty to refrain from economic, political or any other form of pressure against the political independence or territorial integrity of a State. Nor was agreement reached on the inclusion of a definition of the term "force" in a statement of this principle.

10. *Agreement for general and complete disarmament under effective international control*

There was agreement on the inclusion of the concept of general and complete disarmament under effective international control as a corollary to the principle prohibiting the threat or use of force. There was also agreement to include in that statement a reference to measures to reduce international tensions and strengthen confidence among States. Such a statement could read as follows:

"All States [shall] [should] pursue negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt measures to reduce international tensions and strengthen confidence among States."

11. *Making the United Nations security system more effective*

There was agreement in principle on the desirability of making the United Nations security system more effective but no agreement was reached on whether a statement to this effect should be included in this context.

12. *Legal uses of force*

There was agreement on the need to include a list of specific exceptions under the relevant provisions of the Charter to the prohibition of the threat or use of force. There was no agreement on the concept of "self-defence of peoples against colonial domination in the exercise of the right of self-determination".

D. Comments in the Special Committee on the report of the Drafting Committee

108. Statements regarding the report of the Drafting Committee on this principle were made, in the order indicated, by the representatives of France, the United States, Japan and India at the 79th meeting, and by the representative of Italy at the 80th meeting. In addition to the foregoing statements, the representatives of Cameroon and Czechoslovakia expressed regret that no final agreement on the formulation of the principle had been reached.

109. The representative of France reserved his delegation's position on the report of the Drafting Committee, since the French text was not yet available.

110. The representative of the United States said that his delegation considered that the principle applied equally to violations of, and disputes concerning, international lines of demarcation, and to territorial disputes and boundary problems. He expressed the hope that all members of the Committee would eventually appreciate that there should be a reference to international lines of demarcation both in connexion with territorial disputes and in connexion with the duty to refrain from organizing irregular forces for incursion into the territory of another State. If such a reference were made in the former connexion, however, his delegation would not insist on a reference in the latter connexion.

111. The representative of Japan considered it most regrettable that instead of reaching agreement on the principle, the Drafting Committee had not even been able to reaffirm what he termed the consensus text agreed on at Mexico City.[82] He did not think that a formulation of a principle of international law intended to be generally applicable for years to come should be abandoned merely because of contemporary events. If, he said, a consensus text had been adopted in 1964, it could not become invalid in 1967 merely because an armed conflict had broken out in the Middle East. The fact that such a use of force was foreseeable was the very reason why the principle should be formulated.

112. The representative of India said that the principle had been clarified in important respects. A useful document had been produced by the Working Group and submitted to the Special Committee by the Drafting Committee, and that document would help the Special Committee to continue its efforts to work out an agreed formulation.

113. The representative of Italy stated that he maintained his reservation concerning the inclusion of the additional points mentioned in the proposal submitted by his delegation in 1966[83] and 1967 (see para. 25 above); he referred especially to war propaganda, disarmament and the effectiveness of the United Nations security system.

[82] See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746, para. 106.

[83] *Ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 29.

SECTION 2. THE DUTY OF STATES TO CO-OPERATE WITH ONE ANOTHER IN ACCORDANCE WITH THE CHARTER[84]

A. Written proposals and amendments

114. With respect to the above principle, the Special Committee had before it at the present session six proposals and three amendments in written form, namely: (*a*) the proposal contained in part V of the draft declaration submitted by Czechoslovakia in 1966; (*b*) the joint proposal by Australia, Canada, Italy, the United Kingdom and the United States submitted in 1966; (*c*) the joint proposal submitted in 1966 by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia; (*d*) the amendment by Chile to the foregoing joint proposal; (*e*) the proposal contained in part V of the draft declaration submitted by the United Kingdom (A/AC.125/L.44); (*f*) the amendment submitted by Italy (A/AC.125/L.46) to the foregoing United Kingdom proposal; (*g*) the amendment submitted by Canada (A/AC.125/L.52) to the foregoing United Kingdom proposal; (*h*) the proposed first paragraph by Romania (A/AC.125/L.45 and Corr.1); (*i*) the joint proposal contained in the draft declaration submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48). The texts of the above mentioned proposals and amendments are set out below, in the order in which they were submitted to the Special Committee, the texts of the amendments following those of the proposals to which they refer.

115. Proposal contained in the draft declaration submitted by Czechoslovakia in 1966:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 415.*]

116. Joint proposal by Australia, Canada, Italy, the United Kingdom and the United States submitted in 1966:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 416.*]

117. 1966 joint proposal by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 417.*]

118. Amendments by Chile to the joint proposal of Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 418.*]

119. Proposal contained in the draft declaration submitted by the United Kingdom (A/AC.125/L.44, part V):

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 and to promote international economic stability and progress and the general welfare of nations.

2. To this end:

(*a*) States shall co-operate with other States in the maintenance of international peace and security;

(*b*) States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality of States and non-intervention in matters within the domestic jurisdiction of any State;

(*c*) 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.

3. States should co-operate in the economic, social and cultural fields and also 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.

120. Amendment by Italy (A/AC.125/L.46) to the proposal of the United Kingdom (A/AC.125/L.44):

At the end of the first sentence of paragraph 3 of part V, add the following: "and of human rights and fundamental freedoms for all".

121. Amendment by Canada (A/AC.125/L.52) to the proposal of the United Kingdom (A/AC.125/L.44):

Add after paragraph 2 (*a*) of part V, a new sub-paragraph as follows:

"States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion;"

122. First paragraph proposed by Romania (A/AC.125/L.45 and Corr.1):

1. All States, large or small, have the right and duty to co-operate with one another, irrespective of their different political, economic and social systems, in the various spheres of international relations, on the basis of strict respect for national sovereignty and independence, equality of rights, non-interference in the internal affairs of others, and mutual advantage, in order to maintain international peace and security and to promote international economic stability and progress and the general welfare of nations.

123. Joint proposal contained in the draft declaration submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48):

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 and to promote international economic stability and progress and the general welfare of nations.

2. To this end:

(*a*) States shall co-operate with one another in the maintenance of international peace and security;

(*b*) States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality of States and non-intervention in matters within the domestic jurisdiction of any State, in order to realize international co-operation free from discrimination based on differences in political, economic and social systems;

(*c*) 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.

3. States should co-operate in the economic, social and cultural fields and in the field of science and technology, and in the promotion of international, cultural and educational

[84] An account of the consideration of this principle by the 1966 Special Committee appears in chapter VI of its report (*Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230).

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

B. *Formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work*

124. Most representatives who participated in the debate made reference to the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work.[35] The text of that formulation is as follows:

Paragraph 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 and to promote international economic stability and progress and the general welfare of nations.

Paragraph 2: To this end:

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

Alternative A

(*b*) 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.

Alternative B

(*b*) 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.

(*c*) 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.

Paragraph 3: 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.

C. *Debate*

1. *General comments*

125. The Special Committee discussed the principle forming the subject of the present chapter at its 55th to 58th meetings, between 20 and 23 July 1967.

126. In the opinion of most representatives, the debate that had taken place during the 1966 session of the Special Committee and the degree of progress achieved towards the agreed formulation of this principle made it unnecessary to engage again in a detailed discussion of the substantive issues at the present session.

127. The necessity and importance of international co-operation were generally recognized. In the view of several representatives, international co-operation was essential to progress and made possible the conditions of stability that formed the basis of peaceful and friendly relations among States; for other representatives, it was a prerequisite of peaceful co-existence of States with different social and political systems. It was, furthermore, a prerequisite for the maintenance of international peace and security. Its applicability, in all forms, extended or should be extended, without any discrimination, to most or all areas of international relations, not only to political or economic but also to social, cultural, educational, scientific and technological matters, to matters concerning human rights and to the eradication of colonialism and racial discrimination.

128. The principle of co-operation was one of the most important principles of the Charter of the United Nations and, for several representatives, its very foundation. Only through co-operation could the purposes of the Charter be effectively realized. In the view of some representatives, since international co-operation was one of the purposes laid down in Article 1, paragraph 3, of the Charter, the Organization itself and its specialized agencies were the best means for achieving its effective realization. For other representatives, this principle was not only the foundation but the main goal of contemporary international law, as well as an integral element of the concept of peaceful coexistence, which was not merely the absence of war.

129. Given that general recognition of the principle, representatives considered that it was the Special Committee's task to formulate it in legal terms in order to increase international co-operation, thus helping change the present state of affairs in the international community and minimize the dangers of war. Delay in its formulation could only adversely affect international co-operation.

130. That legal formulation was, however, in the opinion of some representatives, not without difficulties due to the fact that the principle could be said to be more a process of becoming than in a state of being. For some representatives, the formulation should not be a rigid one; it was difficult to foresee the type of co-operation that future circumstances might make necessary; the Special Committee should therefore avoid unnecessary detail and try to express the legal duty to co-operate in very general terms, as did the Charter when it came to the formulation of legal duties. One representative felt, however, that since there were fields of human activity in which the recognition of a legal duty of States to co-operate was particularly justified, the text to be formulated should offer a delimitation between the spheres in which co-operation might be made a matter of law and those where co-operation should be optional.

131. In the opinion of one representative, the Special Committee's lack of appropriate methods for an adequate study of the legal issues involved in this principle had resulted at the 1966 session in its concentrating on reaching agreement on certain aspects of the principle but overlooking some other equally important questions. In his view, the Special Committee would do well to note the methods adopted by the International Law Commission in its work on the codification of international law.

2. *Comments on the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work*

132. Although representatives of States sponsors of proposals and amendments submitted originally to the Special Committee at its 1966 session indicated that they regarded them as still before the Special Committee, several representatives recognized, with gratification, the existence of agreement on a great number of elements, as reflected in the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of that session's work, which has been quoted above. It was therefore thought by several representatives that, in order not to lose all the progress thus far achieved and to be able to complete its task, the Special Committee should begin its work where it had left it at the previous session, concentrating mainly on solving the question that had made total agreement impossible, that is to say, the degree of relevance that the concept of non-discrimination (see paras. 145-150 below) should be given in the context of the principle of co-operation.

133. The differences in the various formulations on the concept of non-discrimination on which agreement had not been reached appeared, to several representatives, to be largely a matter of semantics. Other representatives, while agreeing that undue importance should not be given to differences on purely linguistic grounds, nevertheless considered that the distinction between economic and legal principles should be kept in mind when drafting a new formulation that could command general support. In the opinion of one representative, it would not make any difference which wording was chosen provided the Special Committee agreed on the meaning, since the function of authentic interpretation was not to determine the true meaning but to render binding one of the various possible meanings of a legal norm.

134. Some representatives who expressed general acceptance of the text on which agreement was almost reached in 1966 made reference nevertheless to certain aspects that, in their view, should have been included in that formulation, such as the peaceful settlement of disputes, which required the full co-operation of all States, or a wider reference to the extensive provisions of the Charter in respect of the principle of co-operation.

135. A detailed account of all additional elements to which specific reference was made is given below under the corresponding sub-headings.

3. *Legal nature of the principle*

136. Reference to one aspect of this question was made in the proposed paragraph submitted by Romania (see para. 122 above).

137. In the view of several representatives, the legal basis for the duty of States to co-operate with one another was to be found in the provisions of the Charter, particularly in Article 56. The Charter itself, as shown in Articles 1, 11 and 13, and Chapter IX, was based on the concept of co-operation. The principle had also been referred to in various other international instruments such as the constitutions of international organizations, resolutions and recommendations adopted by the United Nations and the specialized agencies, and several regional conferences.

138. For some representatives, the conclusion that emerged from these decisions was that co-operation was not a legal duty recognized in customary international law, but rather a moral duty within a realistic pattern of international behaviour. In this connexion, mention was made of the fact that international co-operation was not listed among the legal principles contained in Article 2 of the Charter, which often reflected the purposes set out in Article 1, an omission that gave the duty to co-operate a declaratory nature. However, since the duty to co-operate had found expression in a number of treaties—co-operation being by definition the sphere of mutual action and reciprocity, bilateral and multilateral—it was necessary to formulate it in a manner that would reflect both the Charter and the views of States.

139. In the opinion of one representative, the duty to co-operate, as an express treaty undertaking in various fields, resulted from the absence of an over-all government in the international community which could legally compel its members to co-operate as was the case in the sphere of national law. Through their governmental system, subjects of national law might be said to be obliged to co-operate for the maintenance of social peace and for effecting change and economic progress, even though co-operation among them was normally a matter of voluntary agreement. The necessity for a rule growing out of the present situation of the interdependence of States should not be equated with the existence of a rule the formulation of which might be regarded therefore as an expression of progressive development.

140. Other representatives felt that the duty to co-operate had become an objective necessity in international relations and had developed into a principle of contemporary international law, as stated by the General Assembly, the United Nations Conference on Trade and Development and the Special Committee itself and as recognized in those international instruments to which general reference had been made. Its objective basis was a result of the growing interdependence of States, the internationalization and advances made and to be made in the economic, cultural, scientific and technological fields, and the dangers of nuclear war.

141. Some representatives considered that co-operation between States, like all principles of international law, was not only or mainly a duty but rather was a right which had a correlated obligation. The concept of non-discrimination, for instance, resulted from the fact that co-operation involved mainly a right. The formulation to be adopted should therefore speak of "the right and duty of States to co-operate with one another". One representative, however, felt that the use of such an expression could have the effect of creating for certain countries obligations which they might not be in a position to fulfil, given their economic or material resources.

4. *Relationship to other principles*

142. Most of 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 another of the principles before the Special Committee, in particular the principles of sovereign equality of States and of non-intervention in matters within the domestic jurisdiction of any State. These provisions were contained in: paragraph 2 (*b*) of the proposal submitted in 1966 by Czechoslovakia; paragraph 4 of the 1966 proposal submitted jointly by Australia, Canada, Italy, the United Kingdom and the United States; paragraph 3 of the proposal submitted jointly by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia in 1966; paragraph 2 (*b*) of the amendment thereto submitted by Chile; paragraph 2 (*b*) of the proposal submitted by the United Kingdom (see para. 119 above); the proposed paragraph by Romania (see para.

[35] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 570.

122 above); and in paragraph 2 (*b*) of the proposal jointly submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 123 above). Reference was also made to that relationship in paragraph 2 (*b*), alternatives A and B, of the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work (see para. 124 above).

143. In the view of some representatives, there was a direct relationship between the principle concerning the duty of States to co-operate with one another and other principles of international law. Co-operation served as a catalyst without which the principles of international law, and in particular the other principles referred to the Special Committee, would have no effect. Co-operation must be based on respect for the principles of international law, the sovereign equality of States, self-determination of peoples and non-interference in the internal affairs of other countries. That had been stated, with respect to economic relations among States, in General Principle One adopted at the first Conference on Trade and Development,[86] and it applied equally to all other forms of co-operation. It was also said that the violation of the principles of international law through the aggressive activities of certain States—one representative cited hostilities in Viet-Nam and the Middle East as examples—undermined the principle of co-operation. Mention was also made of other principles in connexion with the principle of co-operation, in particular universality and non-discrimination, as well as equality and mutual advantages in international trade.

144. In the opinion of one representative, since the right and duty to co-operate applied only to lawful aims, and could only exist within the framework of and on the basis of strict respect for the fundamental principles of contemporary international law, those principles should be enumerated in the formulation to be adopted. The list should be headed by the principle of national sovereignty and independence, which constituted the central institution of contemporary international law, since only independent countries and peoples could co-operate. A direct reference to this principle was in order, since it was not necessarily implied by a reference to the principle of equal rights and self-determination of peoples or the principle of sovereign equality of States.

5. *The questions of universality and non-discrimination*

145. Reference to one or both of these questions was made in: paragraphs 1 and 2 (*c*) of the proposal submitted in 1966 by Czechoslovakia; paragraph 2 of the 1966 joint proposal submitted by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia; the proposed paragraph submitted by Romania (see para. 122 above); and paragraph 2 (*b*) of the joint proposal submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 123 above). Reference was also made to the question of non-discrimination in paragraph 2 (*b*), alternatives A and B, of the formulation contained in the statement made by the Chairman of

146. A number of representatives expressed the view that co-operation must be universal and must include the 1966 Special Committee at the conclusion of its work (see para. 124 above).
all States large or small, irrespective of their political, social or economic systems. That was clear from the Charter, in their view, both from its specific provisions and from its spirit. In an area of increasing relations between States, effective solutions for the political, economic, social and cultural problems of international life could only be found through the co-operation of all States. One representative stressed the desirability of making it clear in the final formulation that it was all States which were called upon to co-operate. The will and capacity of small and medium-sized States to promote international co-operation were not necessarily limited by their economic or military potential; every State, irrespective of size, could and should contribute to the development of international relations.

147. Several representatives considered that if international co-operation was to be fully effective there must be no discrimination against any State or group of States on the basis of differences in political, social or economic systems. Others added that it was of particular importance to the developing countries to stress that there should be no discrimination based on different levels of development. Co-operation and discrimination on account of any of those differences were mutually exclusive. To treat a State differently from others in order to cause it harm would constitute, in the view of one representative, a violation of the principle of co-operation and of international law. By condemning the practice of discrimination, the Special Committee would make an important contribution to the development of international law.

148. In the view of several other representatives, however, there were serious difficulties in including a provision on non-discrimination in the formulation of the principle, though some of those representatives expressed their willingness to participate in the search for a generally acceptable form of words. Although it was obvious that in certain areas such as human rights and fundamental freedoms there was an obligation on all States to ensure that discrimination came to an end, it was nevertheless difficult to state the principle of non-discrimination as a rule of a static character on certain other matters. A number of international instruments confirmed the existence of groups of States separated on the basis of economic, social and political differences, differences which in themselves were not an element of international conflict. But there existed geographical, economic and political realities which explained the different treatment extended to various States by a particular State in its relations. It would be difficult, therefore, to accept a rule which implied the illegality of the mere act of drawing distinctions between one State and another, the more so if the States between which the distinction was drawn had different political, economic or social systems. As indicated by some representatives, there were many economic measures or policies affecting international trade which could be described as discriminatory under a rigid formulation of the concept of non-discrimination. That type of formulation would absolutely condemn the trade policy of many countries, which was based on a series of international agreements embodying an exchange of concessions—a concrete reflection of the principles of equality and mutual advantage—since to grant a concession to one State was to deny to all others trade in the same commodity on equivalent terms.

[86] See *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), p. 10.

149. In the opinion of some representatives, efforts to exclude certain States from multilateral, regional or bilateral co-operation did harm to all States; it had never been beneficial to exclude certain States from international conferences, disarmament efforts and the solution of other problems in which they had a legitimate interest. In the view of those representatives, universality and the rule that there should be no discrimination gave all States the right to participate on the basis of equality in the activities of international organizations, particularly those which were universal in scope like the United Nations. Any attempt at discrimination in this area could only be prejudicial to the United Nations and its authority.

150. Other representatives felt that it would not be possible to deal meaningfully with the question of non-discrimination in respect of accession to certain international agreements. In the opinion of one representative, it would be futile to think that universality meant the automatic right of States to membership of international organizations of interest to them regardless of admission procedures. The problem of universality would have to be solved in a different context. Perhaps the idea of procedures for collective recognition could be given serious attention now that the international community had succeeded in developing procedures for collective non-recognition.

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

151. Reference to co-operation in order to maintain international peace and security appeared in paragraph 1 of the 1966 proposal by Czechoslovakia; in paragraphs 1 and 3 (*c*) and (*d*) of the 1966 joint proposal by Australia, Canada, Italy, the United Kingdom and the United States; in paragraph 1 of the 1966 joint proposal by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia; in paragraph 1 of the amendments by Chile thereto; in paragraph 1 of the proposal by the United Kindom (see para. 119 above); in the proposed paragraph by Romania (see para. 122 above); and in paragraph 1 of the joint proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 123 above). Reference thereto was also made in paragraph 1 of the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work (see para. 124 above).

152. General reference was made by several representatives to the importance of co-operation among States for the maintenance of international peace and security. In the view of some representatives, co-operation in that sphere was undoubtedly the first aspect of human activity in which it would be justified for States to have a legal duty to co-operate. Such co-operation should not only encompass the settling of conflicts and the facilitation of peaceful change but also joint efforts to bring about disarmament. For some other representatives, the general and comprehensive nature of the principle of co-operation included the political as well as other spheres of international life. In the area of political relations, there existed a recognized obligation for States to co-operate with one another, irrespective of the differences in their political systems or social structures.

7. *Economic, social and other related matters*

153. Co-operation in economic, social and other related matters was referred to in most of the proposals and amendments before the Special Committee, in particular in paragraphs 2 (*a*) and (*b*) of the proposal submitted by Czechoslovakia in 1966; in paragraphs 2 (*a*) and (*b*) and 3 (*a*) and (*b*) of the proposal submitted by Australia, Canada, Italy, the United Kingdom and the United States in 1966; in paragraphs 1, 3 and 4 of the proposal by Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, the United Arab Republic and Yugoslavia submitted in 1966; in paragraphs 1, 2 and 3 of the 1966 amendment by Chile; in paragraphs 1, 2 (*b*) and 3 of the United Kingdom proposal (see para. 119 above); in the paragraph proposed by Romania (see para. 122 above); and in paragraphs 1, 2 (*b*) and 3 of the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 123 above). Reference thereto was also made in paragraphs 1, 2 (*b*) (alternatives A and B) and 3 of the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work (see para. 124 above).

154. In the view of several representatives, the aim of international co-operation in economic and social matters was the creation of conditions of stability, well-being and growth, especially in the developing countries, which were essential to the maintenance of peace and security and to political collaboration among States. The existence of weak economies was fatal to world stability, hence the urgency of the need to narrow the widening gap between developed and developing nations. There was a common responsibility to promote the economic and social development of all countries and particularly of the developing countries. The United Nations Charter had laid unprecedented obligations on States in this respect, but experience had demonstrated that the developed countries were cautious or unwilling to commit themselves fully. In the opinion of one representative, it was logical that the rich countries should contribute most to the economic and social revival of those countries which they had exploited and which had been the source of their wealth.

155. The world-wide expansion of science and technology had created the need for a global approach to those subjects. The United Nations and the specialized agencies were being generally accepted as effective channels for dealing with matters such as health, communications and civil aviation. There was also an intensification of co-operation at the regional level, as exemplified by the efforts of the Organization of African Unity and those of the States bordering Lake Chad.

156. With respect to aid, the opinion was expressed by some representatives that although the developed countries recognized a duty to give assistance, they were unwilling to commit themselves to it unreservedly. In the view of these representatives, the stronger bargaining position of the developed countries made them aware of the possibilities of influencing the internal or external policies of the recipients. Developing countries were anxious to obtain or expand aid, but only that which was free from political restrictions. Any such restrictions were inimical to co-operation, and would be an interference in the internal affairs of the recipient nations. Bilateral and multilateral treaties, a larger number of most-favoured-nation treaties and

loans through the World Bank were mentioned by one representative as means of achieving the goals of international co-operation in the economic and social fields.

157. Another representative considered that some of the areas in which the duty of all States to co-operate was especially justified were also the preservation of the world's property and the maintenance of health and the combating of disease. Not just interdependence but the common property of mankind were involved when it came to problems such as radioactive fall-out, the pollution of the waters or the poisoning of the land. It was also legitimate to demand co-operation in the control of epidemics or of traffic in dangerous drugs.

8. *Human rights and fundamental freedoms*

158. Reference to this aspect of the principle was made in: paragraph 2 (*c*) of the 1966 proposal by Australia, Canada, Italy, the United Kingdom and the United States and in the amendments by Italy (see para. 120 above) and by Canada (see para. 121 above).

159. In the view of some representatives, it was clear that all States had an international legal obligation to see that all discrimination in the matter of human rights and fundamental freedoms based on race, sex, language or religion came to an end. One representative felt that the absence in the final formulation of the principle of any express reference to co-operation in the promotion of universal respect for and observance of human rights and fundamental freedoms would detract from the effectiveness of the Charter of the United Nations, particularly as the requirement for such co-operation was laid down in Article 55 of the Charter itself. It would be a source of great confusion in the law of the United Nations if the Committee were to formulate a principle which reflected inaccurately the content of the Charter. Furthermore, there could be no doubt that international peace and security were seriously threatened by violations of human rights and fundamental freedoms, especially, in the view of some representatives, by those violations involved in colonialism, *apartheid* and racial discrimination.

9. *Joint and separate action in co-operation with the United Nations*

160. No substantive discussion on this aspect of the principle took place in the Special Committee. Reference to it appeared in paragraphs 2 and 3 (*a*) of the 1966 joint proposal by Australia, Canada, Italy, the United Kingdom and the United States; in paragraphs 1 and 3 of the 1966 amendment by Chile; in paragraph 2 (*c*) of the proposal by the United Kingdom (see para. 119 above); and in paragraph 2 (*c*) of the joint proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see 123 above). Refererence was also made to it in paragraph 2 (*c*) of the formulation contained in the statement made by the Chairman of the 1966 Special Committee at the conclusion of its work (see para. 124 above).

D. *Report of the Drafting Committee*

161. At its 58th meeting, on 23 July 1967, the Special Committee referred the principle to the Drafting Committee. The Drafting Committee, having referred the principle to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

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

The Drafting Committee considered the report of the Working Group (A/AC.121/DC.20) and accepted the text set out therein, as expressing the consensus of the Drafting Committee.

That text reads as follows:

1. States have the duty to co-operate with one another, irrespective of the differences in their 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, the general welfare of nations and international co-operation free from discrimination based on such differences.

2. To this end:

(*a*) States shall co-operate with other States in the maintenance of international peace and security;

(*b*) States shall co-operate in the promotion of universal respect for and observance of human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(*c*) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(*d*) 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.

3. 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.

E. *Comments in the Special Committee on the report of the Drafting Committee*

162. Statements regarding the report of the Drafting Committee on this principle were made, in the order indicated, by the representatives of Romania, the United States, Czechoslovakia, the United Kingdom, the Union of Soviet Socialist Republics, Japan, Kenya and France at the 79th meeting of the Special Committee. At the 80th meeting, the representative of Italy associated himself with the comments and suggestions made by the representatives of France, Japan, the United Kingdom and the United States.

163. The representative of Romania stated that his delegation noted that in its formulation of the duty of States to co-operate with one another, the Drafting Committee had not adopted the Romanian proposal (see para. 122 above). That proposal had been intended, he said, to introduce three elements into the 1966 text: first, a statement that all States, large and small, had the same right and the same duty to co-operate with one another; second, the idea that there was not only a duty but also, and primarily, a right; third, the idea that the right to claim co-operation and the duty to give it only existed in so far as co-operation was based on the principles of international legality, national sovereignty and independence, equal rights and mutual advantage, and non-intervention in the affairs of others. No convincing legal or political arguments had, in his opinion, been advanced against any of those ideas, but his delegation did not wish to prevent a consensus being reached in the Committee; hence it would merely maintain its proposal in the hope of having it incorporated in the declaration at a later stage. It hoped that, in the same spirit of co-operation, the other members of the Committee would reconsider the proposal with a view to incorporating the ideas it contained.

164. The representative of the United States said that his delegation welcomed the inclusion in the text of a strong human rights provision which expressed the relevant provisions of the United Nations Charter without detracting from them. Paragraph 2 (*b*) embodied the obligation in Article 55 c of the Charter, and he commended the representatives of Italy and Canada, who had worked so hard to convince other members of the importance of including such a provision.

165. The representative of Czechoslovakia welcomed the agreement reached on the principle in the Drafting Committee. His delegation, however, still believed that non-discrimination was an essential part of the duty of co-operation; it would accept the compromise text, recognizing that it was far from satisfactory, in the hope that some of the proposals made in the Drafting Committee might eventually be incorporated.

166. The representative of the United Kingdom said that in the Drafting Committee, his delegation had not opposed the consensus text, but as the text had arrived late his Government would need more time to study it. He appreciated the efforts that had led to the compromise. It was his understanding that the reference to human rights and fundamental freedoms (para. 2 (*b*)) was in no way a departure from the terms of Article 55 of the Charter: the principle would be applied without distinction as to race, sex, language or religion.

167. The representative of the Union of Soviet Socialist Republics supported the text on which agreement had been reached. He pointed out that paragraph 2 (*b*) was a compromise and reserved the right to revert to the question it dealt with when the final draft of the declaration came up for discussion. It was regrettable, he said, that the views of the Soviet Union had been adopted only in part, and he sincerely hoped that the provisions of that paragraph would not turn out to be merely fine words, but would bring about equality for all without discrimination—in particular, racial discrimination.

168. The representative of Japan regretted that paragraph 2 (*b*) deviated from the language of the Charter.

169. The representative of Kenya said that he understood the wording of paragraph 2 (*b*) to cover co-operation in order to eliminate colonial domination.

170. The representative of France considered that the addition of the provision on human rights and fundamental freedoms was a substantial improvement, which showed the importance of the principle that a consensus should be reached. That principle, he said, which had prevailed thus far in the Special Committee, was what gave its work special significance.

SECTION 3. THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES[87]

A. *Written proposals and amendments*

171. Seven written proposals and amendments concerning the principle considered in this section were before the Special Committee at its 1967 session, namely: (*a*) the proposal contained in part VI of the draft declaration submitted in 1966 by Czechoslovakia; (*b*) the joint proposal submitted in 1966 by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; (*c*) the proposal submitted in 1966 by the United States; (*d*) the amendment submitted in 1966 by Lebanon to the foregoing United States proposal; (*e*) the proposal contained in part VI of the draft declaration submitted by the United Kingdom (A/AC.125/L.44); (*f*) the proposal contained in the draft declaration submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48); (*g*) the amendment proposed by Ghana (A/AC.125/L.50) to the foregoing ten-Power proposal. The texts of the above-mentioned proposals and amendments are set out below in the order of their submission to the Special Committee.

172. Proposal by Czechoslovakia submitted in 1966:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 457.*]

173. The joint proposal submitted in 1966 by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 458.*]

174. 1966 proposal by the United States:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 459.*]

175. Amendment submitted by Lebanon to the above proposal by the United States:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 460.*]

176. Proposal by the United Kingdom (A/AC.125/L.44, part VI):

1. Every State has the duty to respect the principle of equal rights and self-determination of peoples and to implement it with regard to the peoples within its jurisdiction, inasmuch as the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation. The principle is applicable in the case of a colony or other Non-Self-Governing Territory, a zone of military occupation, or a Trust Territory, or, subject to paragraph 4 below, a territory which is geographically distinct and ethnically or culturally diverse from the remainder of the territory of the State administering it.

2. In accordance with the above principle:

(*a*) Every State shall promote, individually and together with other States, universal respect for and observance of human rights and fundamental freedoms;

(*b*) Every State shall accord to peoples within its jurisdiction, in the spirit of the Universal Declaration of Human Rights, a right freely to determine their political status and to pursue their social, economic and cultural development without discrimination as to race, creed or colour;

(*c*) Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State;

(*d*) Every State exercising authority over a colony or other Non-Self-Governing Territory, a zone of military

[87] An account of the consideration of this principle by the 1966 Special Committee appears in chapter VII of its report (*Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230).

occupation or a Trust Territory shall, in implementation of the principle, maintain a readiness to accord, to the peoples concerned, self-government through their free choice, and to make in good faith such efforts as may be required to assist them in the progressive development of institutions of free self-government, according to the particular circumstances of each territory and its peoples and their varying stages of advancement; and, in the case of Trust Territories, shall conform to the requirements of Chapter XII of the Charter of the United Nations.

3. States exercising authority over colonies or other Non-Self-Governing Territories, zones of military occupation or Trust Territories shall be deemed to have implemented this principle fully with regard to the peoples of those territories upon the restoration of self-government or, in the case of territories which have not previously enjoyed self-government, upon its achievement, through the free choice of the peoples concerned. The achievement of self-government may take the form of emergence as a sovereign and independent State, free association with an independent State, or integration with an independent State.

4. States enjoying full sovereignty and independence, and possessed of a representative government, effectively functioning as such with respect to all distinct peoples within their territory, shall be considered to be conducting themselves in conformity with this principle as regards those peoples.

177. Joint proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia (A/AC.125/L.48):

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, or 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 for bringing about an immediate end to colonialism and for transferring all powers to the peoples of territories which have not yet achieved independence.

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

178. Amendment submitted by Ghana (A/AC.125/L.50) to the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia (A/AC.125/L.48):

After the second paragraph on this principle, add a new paragraph as follows:

3. No State nor any organ shall exercise jurisdiction over any other State or peoples except with the free and express consent of the State or peoples concerned and only to the extent to which that consent is given.

B. *Debate*

1. *General comments*

179. The principle of equal rights and self-determination of peoples was considered by the Special Committee at its 68th, 69th and 70th meetings on 3, 4 and 7 August 1967.

180. Several representatives referred in the course of their statements to the historical, philosophical and political origins of the principle. It had been, it was recalled, the corner-stone of the Declaration of Independence of the United States of America in 1776, of the French Revolution in 1789, and of the Revolution of October 1917 in the USSR. One representative, in speaking of the struggle against colonialism since the Second World War, said that various national liberation movements represented a demand for equal rights and self-determination.

181. Attention was drawn also to the embodiment of the principle in the Charter, explicitly in Article 1, paragraph 2, and Article 55 and implicitly in Chapters XI, XII and XIII. One representative pointed out that, among the purposes of the United Nations set forth in Article 1 of the Charter, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples was second only to the maintenance of international peace and security. In Article 55, as well as in Article 1, it was also observed, the principle was regarded as the foundation upon which the peaceful and friendly relations among nations to be achieved by the United Nations should be based. Reaffirmations of the principle were to be found in numerous resolutions of the General Assembly; in other international instruments such as the International Covenants on Human Rights, adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966; and in declarations of international conferences of States such as the Bandung, Belgrade and Cairo Conferences of the non-aligned States.

182. The principle, it was noted by many representatives, was the basis upon which many of the peoples of Asia, Africa and other regions of the world had joined the community of nations as sovereign and independent States, and it continued to be of great importance to those still under colonial rule. Nearly all representatives who participated in the debate emphasized that the principle was no longer to be considered a mere moral or political postulate, it was rather a settled principle of modern international law. Full recognition of the principle was a prerequisite for the maintenance of international peace and security, the development of friendly relations and co-operation among States, and the promotion of economic, social and cultural progress throughout the world.

183. A number of representatives stated that the process of decolonization which had taken place since the adoption of the Charter had given rise to new legal and political ideas. It would therefore be unrealistic, some representatives asserted, for the Special Committtee to base its consideration of the formulation of the principle solely upon the language in which the principle had been given expression in the Charter. The Special Committee should also take into account, in their view, the interpretation which had been given to the Charter provisions by the practice of the United Nations and particularly by the General Assembly, which had demonstrated that it was possible to apply the Charter constructively and in a manner calculated to meet the requirements of international life, in particular in the matter of decolonization. A numer of representatives in this connexion referred to the pertinent resolutions of the General Assembly, and in particular to resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, which was adopted by a large majority.

184. There were differences of view in the Special Committee as to the degree to which General Assembly resolutions 1514 (XV) and 2160 (XXI) should be regarded as providing the Special Committee with authoritative guidance in its formulation of the legal content of the principle. One view expressed by a number of representatives was that the Declaration contained in General Assembly resolution 1514 (XV) was the most authoritative pronouncement on the principle since the adoption of the Charter, and represented a mandatory source with respect to the formulation of the principle by the Special Committee. The Special Committee, it was observed, had a duty to have regard to resolution 2160 (XXI) and to other important decisions of the General Assembly, which expressed the will of the totality or the overwhelming majority of the membership of the United Nations with respect to the principle.

185. The view was also expressed by certain representatives, on the other hand, that while the resolutions of the General Assembly were admittedly important documents, they should not be regarded as having a legally binding effect on the Special Committee in its formulation of the legal content of the principle. The Charter did not authorize the General Assembly, except under express provisions which were not here involved, to adopt resolutions that were legally binding on Members of the United Nations. Moreover, as the two resolutions were not unanimously adopted and accepted as law by the General Assembly, it could not be said that they should be considered as reflecting a general practice accepted as law. In the case of resolution 2160 (XXI), even some of the delegations which supported it had put on record the fact that they did not accept it as law.

186. In the course of the discussions, the view was expressed by some that the Special Committee, in formulating the principle, which was aimed, it was said, at the rapid elimination of colonialism, should take into account the various forms of colonial domination that still existed. Though more than fifty countries had attained independence since the adoption of the Charter, many Non-Self-Governing Territories and Trust Territories still existed. Certain States, it was said, were opposing independence movements first and foremost by armed force, as in Viet-Nam and Aden. In the Middle East, vigorous efforts were being made to prevent the Arabs from living in freedom and independence. Some Powers were also drawing subject peoples into aggressive blocs, establishing military bases, imposing puppet régimes, and concluding unequal treaties on so-called assistance. Certain administrative arrangements between colonial Powers and their former colonies had also been created in conflict with the principle. Certain States, it was said, sought to oppose historical movements against colonialism by unlawful means, and thereby inevitably provoked sharp reactions, sometimes in the form of armed uprisings. National liberation movements were an outstanding feature of present times. A people striving for independence was, it was argued, a subject of international law and was entitled to international protection. A violation of the rights of such a people in the struggle was said to be an international crime and contrary to the purposes of the United Nations.

187. On the other hand, the view was expressed that although much had been said in the Special Committee about wars of liberation and examples had been cited as to what some considered to be legally rightful wars of that nature, all such wars mentioned appeared to be taking place in countries whose régimes were not politically approved of by those who gave such examples. Broad generalizations about movements of national liberation should be avoided, it was said, as they tended to become merely propagandistic assertions. So far as the question of Viet-Nam was concerned, instead of making fruitless condemnations, Governments in a position to do so should take effective steps towards ending the war and helping the peoples of Viet-Nam to settle their own affairs. The assumption could not properly be made, another representative observed, that all peoples of Non-Self-Governing Territories or Trust Territories were being held in subjection. The Government responsible for more of such territories than any other had, its representative observed, consistently and sincerely tried to fulfil its Charter obligations, and to lead peoples to self-government and the free choice of their destiny. It did not underestimate the difficulties in territories for which it was still responsible, but there too it would continue to respect its obligations under the Charter.

188. In the course of the debate some representatives stated that there was continued colonial and neo-colonial domination and oppression of the peoples of Angola, Mozambique, Rhodesia, South Africa, South West Africa and Zimbabwe, and they drew attention to the immediate importance of the principle under consideration with respect to such peoples. Other representatives stressed that concentration on particular situations should not lead the members of the Committee to lose sight of the universal character of the principle. One representative pointed out that the initial assertion of the principle in modern times had been by President Wilson and in reference primarily to the peoples of Central and Eastern Europe.

2. *The nature of the rights involved in the concept of self-determination*

189. The relevant provisions of the proposals before the Special Committee were contained in: paragraph 1 of the proposal contained in part VI of the draft declaration submitted in 1966 by Czechoslovakia; paragraph 1 of the 1966 joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 1 of the proposal submitted in 1966 by the United States; paragraph 1 of the proposal contained in part VI of the draft declaration submitted by the United Kingdom (see para. 176 above); and paragraph 1 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

190. The proposals before the Special Committee differed in the manner in which they gave expression to the concept of self-determination. The proposals submitted by Czechoslovakia and by the non-aligned countries stated the concept as including the right of all peoples to self-determination. The proposals submitted by the United Kingdom and by the United States provided that every State had the duty to respect the principle of equal rights and self-determination of peoples. The United Kingdom proposal also contained the provision that every State had the duty to implement the principle in regard to the peoples within its

jurisdiction, inasmuch as the subjection of peoples to alien subjugation, domination and exploitation constituted a denial of fundamental human rights, was contrary to the Charter and was an impediment to the promotion of world peace and co-operation, and the duty to accord to those peoples the right freely to determine their political status and to pursue their social, economic and cultural development without discrimination as to race, creed or colour. These differences were the subject of some discussion in the Special Committee.

191. Those representatives who spoke in favour of the formulation in terms of the right of peoples to self-determination contended that the existence of such a right was recognized as a rule of contemporary international law and had been affirmed in a number of resolutions of the General Assembly. Moreover, the principle of equal rights and self-determination of peoples was one of the fundamental principles of general international law and was treated as such in the Charter. The Charter dealt with the subject of the observance of human rights separately, and in a different manner. To establish a relationship between human rights and the observance of the right of self-determination was possible, but a reference in any formulation of the principle to the observance of human rights should, in the view of those representatives, be ancillary. An appropriate provision on the matter, perhaps, would be one that would state the observance of the right of self-determination was the foundation of human rights and fundamental freedoms, since individuals could only benefit from those rights within the framework of broad national communities formed through self-determination.

192. On the other hand, some of those who preferred the formulation of the concept of self-determination as a principle to be respected and complied with by all States, as an obligation upon those States to accord a right to peoples under their jurisdiction, explained that they opposed the formulation of the concept as a right of peoples primarily because of the almost insuperable difficulty of defining the meaning of a "people" possessing the right. In any formulation of rights and duties, the basic question was who was the repositary of the right or duty, a question on which, in their view, the Charter threw little light (see section 4 below). The observation was made by one representative that "equal rights and self-determination of peoples" was described in Articles 1 and 55 of the Charter as the "basis" of friendly relations among nations. In both provisions the principle was stated merely as one of the purposes, aims or objectives of the United Nations. It was difficult, in his view, to escape the conclusion that the Charter itself stopped short both of recognizing legal rights and of imposing legal duties in that connexion. However, self-determination had a long history in the United Nations, and all Governments represented in the Special Committee had accepted the mandate of the General Assembly to formulate the principles of international law which were involved in the concept of self-determination, or could be properly related thereto. The work of the Special Committee was in this connexion a case of the progressive development of international law. Those representatives were in favour of the treatment of self-determination as a basic human right which all States had a duty to accord to peoples under their jurisdiction, in the spirit of the Universal Declaration of Human Rights:[88]

[88] General Assembly resolution 217 A (III) of 10 December 1948.

3. *The scope of the principle*

193. The relevant provisions of the proposals before the Special Committee were contained in: paragraph 1 of the proposal contained in part VI of the draft declaration submitted in 1966 by Czechoslovakia; paragraph 1 of the 1966 joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 2 of the 1966 proposal submitted by the United States; the amendment submitted by Lebanon to the 1966 United States proposal; paragraph 1 of the proposal contained in part VI of the draft declaration submitted by the United Kingdom (see para. 176 above); and in paragraph 1 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

(a) *The beneficiaries of the principle, and the meaning of the term "peoples"*

194. A number of representatives commented on the meaning that should correctly be given to the term "peoples" in the principle. The Charter, it was observed, provided no assistance on the point, as it contained no elaboration or explanation of the concept of a "people" and there was no accepted text or definition to determine what a "people" was. Certain representatives were of the opinion that the principle was a universal one and applied to all peoples and places. Other representatives, however, drew attention to the difficulties that would be involved with respect to the right of self-determination, should the expression be used without definition. It would, they pointed out, encourage secessionist movements within the territories of an independent State. As observed by one representative, every ethnic, cultural or geographical group within a sovereign State would consider it had the immediate and unqualified right to the establishment of its own State. This representative was of the view, therefore, that the right of self-determination should be regarded as referring to the right of a majority within a generally accepted political unit. There appeared to be agreement, however, in the Special Committee that it would be unduly narrow to consider that States were the only beneficiaries of the principle.

(b) *The applicability of the principle to colonial and other peoples*

195. The view was expressed by certain representatives that in the light of the guidelines available in the Charter, the history of the application of the principle by the United Nations and the pertinent resolutions of the General Assembly, the principle was applicable only to peoples under alien domination or colonial rule. The Special Committee should, they said, avoid formulating a text which might be construed as widening the scope of the principle so that it might be applied to peoples who already formed part of a sovereign and independent State. In the view of these representatives, it would appear to be inconsistent with the real purpose of the principle to accept a proposal to the effect that States should be considered as complying with the principle only if they had a representative government, effectively functioning as such with respect to all the distinct peoples within their territory. There were differences in political persuasions and constitutional systems, and no one State should attempt to impose its own political views on the constitutional law and practice of other States. Moreover, if the scope of the principle was so widened, the principle could be used as a pretext to subvert the established national unity and the territorial integrity of sovereign States. It was for that reason that the General Assembly had in its resolution 1514 (XV) stressed that the principle could not be invoked to justify the partial or total disruption of the national unity or territorial integrity of a sovereign State.

196. Other representatives, however, observed that the Charter could not be read as restricting the principle to colonial peoples. The expression "peoples" in Article 1, paragraph 2, of the Charter meant all peoples. In the words of one representative, Article 55 of the Charter alone would make it quite clear that the "peoples" to which the principle applied must include those of metropolitan States, and, in fact, all peoples. While the application of self-determination in the context of decolonization had been one of the key factors in the development of the international community since the Second World War, it should not be considered that the principle should be limited to that context alone. The purpose of maintaining a wider application of the principle was not to encourage secessionist or irredentist movements, nor was it intended to mean that only one system of government would be in accordance with the principle; any formulation of the principle should also declare that it was the duty of every State to refrain from acts which might disrupt the national unity or territorial integrity of another State. However, it was important to require that fully sovereign and independent States should also conduct themselves in conformity with the principle as regards all peoples subject to their jurisdiction.

197. Other representatives pointed out that while the principle applied in a special sense to colonial peoples, it was also applicable to States, in the sense of according to States the right to external independence and internal autonomy. Still other representatives, however, while recognizing that the applicability of the principle was not limited to colonial peoples, considered it important nevertheless that the application of the principle to colonial situations should be given particular emphasis by the Special Committee. The principle was of immediate relevance, they said, to those peoples who were still under colonial domination and were struggling for their independence.

(c) *Recognition of the principle in its widest sense*

198. Several representatives believed that the formulation by the Special Committee should reflect the principle in its broadest sense and recognize the inalienable rights of all peoples to determine their own political, economic, and social systems and their international status, freely and under conditions of equality. Understanding of the principle in this sense was to be found in many international legal instruments, and was in fact an essential pre-condition to progress in the international community. One representative observed that the principle, considered in its broadest sense, should be regarded by the Special Committee as a general and permanent principle of international law which constituted an integral part of the continuing and developing body of international law, linked in particular to such other fundamental principles as non-intervention in matters within the domestic jurisdiction of any State, and that of sovereign equality of States.

4. *Implementation of the principle*

(a) *Questions discussed concerning the implementation of the principle with respect to peoples under colonialism*

(i) *Colonialism as a violation of the principle*

199. The relevant provisions in the proposals before the Special Committee were contained in: paragraph 1 of the proposal contained in part VI of the 1966 draft declaration submitted by Czechoslovakia; paragraph 2 (*a*) of the 1966 joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; and paragraph 2 (*a*) of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

200. A number of representatives stated that the subjection of peoples to alien domination or other forms of colonialism, including the practice by States of racial discrimination, which was said by some representatives to be the main corollary of colonialism, constituted a clear violation of the principle of equal rights and self-determination of peoples. Colonialism, those representatives considered, was contrary to the Charter of the United Nations and was unlawful in international law, as was recognized in a number of resolutions of the General Assembly, in particular resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and resolution 1904 (XVIII), containing the United Nations Declaration on the Elimination of All Forms of Racial Discrimination. Chapters XI and XII of the Charter provided for transitional arrangements, and those responsible for the administration of Non-Self-Governing Territories and Trust Territories were bound to enable the peoples of those Territories to avail themselves of their right to self-determination.

201. The observation was made, however, by other representatives that the position of Administering Authorities under the Charter could not be regarded as being a violation of the principle or contrary to the Charter or international law. Moreover, while Chapters XI, XII and XIII of the Charter had always been considered as making essentially transitional, and not permanent, arrangements, the Charter said nothing as to the time within which the objectives of those Chapters were to be attained in relation to a particular territory. This was a matter which in their view was wisely left to be worked out by agreement between the United Nations and the administering State. The responsibilities imposed on Administering Authorities by the Charter could not be abdicated until the peoples of the territories concerned had achieved self-government and had freely chosen their future status. Recommendations contained in ordinary resolutions or solemn declarations of the General Assembly were valuable in promoting or expediting decisions of self-determination, it was pointed out, but they could not either terminate or modify the provisions of the Charter.

202. The opinion was expressed by one representative that the main problem before the Special Committee was the question of how the Special Committee should reconcile, on the one hand, the legitimate aspirations of the peoples of Africa and Asia to put an end to the remaining cases of colonial domination with, on the other hand, the need to safeguard the other important principles in the Charter. Accordingly, it was

necessary that the Special Committee should, in its deliberations, make a distinction between those territories which were being administered in accordance with the Charter and those territories which were subject to colonial oppression in violation of the standards accepted by the international community. Another representative observed that those few situations in which there was improper colonial domination were easily identifiable. In the case of situations where the presence of colonial domination was not readily determinable, the United Nations might, he suggested, be empowered to arrive at a decision, perhaps upon the advice of the International Court of Justice.

(ii) *Prohibition of armed action or repressive measures against colonial peoples*

203. The relevant provisions on this question were contained in paragraph 4 of the proposal contained in part VI of the draft declaration submitted by Czechoslovakia in 1966.

204. It was the view of some representatives that the formulation of the principle should include a provision that would prohibit States from taking any armed action or repressive measures against peoples under colonial rule. Certain States, it was said, sought to oppose movements against colonialism by the forcible suppression of rights and liberties, and any kind of foreign oppression was incompatible with the right of peoples to decide their own destiny. Other representatives asserted, however, that any Government charged with responsibility for Non-Self-Governing Territories had as part of that responsibility to preserve law and order; a respect for law and order was, moreover, indispensable to the development on Non-Self-Governing Territories towards peaceful self-determination. Also, some of these representatives said that it should not be assumed that all States administering Non-Self-Governing Territories were subjugating their peoples. It was further argued that a prohibition such as the one proposed could not be found anywhere in the Charter.

(iii) *Right of self-defence against colonial domination*

205. The relevant provisions in the proposals before the Special Committee were contained in: paragraph 3 of the proposal contained in part VI of the 1966 draft declaration submitted by Czechoslovakia; paragraph 2 (*b*) of the joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; and in paragraph 2 (*b*) of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

206. Where peoples were subject to colonial domination and their right of self-determination was denied, they were—it was said by some representatives—entitled to exercise a right of self-defence against such domination, and were entitled to receive assistance from other States. One representative added that the use of force in the exercise of the right of self-defence should be resorted to only where all peaceful means of obtaining recognition of the right to self-determination had been exhausted, and only if efforts towards self-determination were being suppressed by armed force.

207. Speaking in support of such a right of self-defence, certain representatives stressed that independence or national liberation movements in the exercise of a people's right of self-determination were not a violation of the Charter. Further, the enunciation of the principle of equal rights and self-determination of peoples in the Charter showed that the right of peoples to self-determination was a matter of international concern and an international legal right. If peoples were unable to exercise that right, they were entitled to assistance from other States. Accordingly, it could not be said that assistance provided by other States to an independence or national liberation movement constituted an unlawful interference in the internal affairs of the metropolitan Power. The provisions of Article 2, paragraph 7, of the Charter were not applicable in such a case. The right of peoples to exercise their right of self-determination and to receive assistance from other States was recognized by the General Assembly in its resolutions 2105 (XX), 2107 (XX) and 2189 (XXI), had been acknowledged by the majority of the Member States of the United Nations and had been reaffirmed in other important international instruments such as the Charter of the Organization of African Unity and the declarations of the Conferences of the non-aligned countries.

208. A number of other representatives stated, however, that the assertion of a right of self-defence in the context of the principle of equal rights and self-determination of peoples was quite unacceptable. While peoples in dependent territories who were under alien subjugation, domination and exploitation—which was certainly not the case in all such territories—were clearly being denied fundamental human rights and freedoms in violation of the Charter, recognition of a right of individual and collective self-defence by the use of force against such domination would clearly encourage violence, and could serve as a basis for the intervention of a State in the affairs of another through the encouragement of violent acts against the Government concerned. The right of self-defence belonged, under the Charter, only to sovereign States; the assertion of such a right in respect of peoples was in conflict with the other principles being considered by the Special Committee, such as the principle prohibiting the threat or use of force, the principle of non-intervention in matters within the domestic jurisdiction of any State, and the principle of the peaceful settlement of disputes. There was also no basis in the Charter for such a right of self-defence. The Charter, it was said, only authorized resort to force in the case of self-defence under Article 51 or of collective action decided upon in accordance with Chapters VII and VIII. Any unduly broad interpretation of the concept of self-defence, it was observed by one representative, would gravely disturb international peace instead of helping to attain the aims of justice which the concept was intended to serve.

(iv) *Assistance to the United Nations*

209. The relevant provisions in the proposals before the Special Committee were contained in paragraph 2 (*d*) of the 1966 joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia and paragraph 2 (*d*) of the proposal submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

210. Some representatives were of the opinion that the Special Committee should include in its formulation of the principle under consideration a provision to the effect that States should assist the United Nations in implementing its responsibilities for bringing colonialism to an immediate end. Certain other representatives, however, did not agree with such a proposition, which would, it was said, ignore or cast doubt upon Chapters XI and XII of the Charter, and those Chapters were quite consistent with the principle of equal rights and self-determination of peoples. Moreover, Article 73 of the Charter imposed obligations upon the administering Powers as such, and it was thus the primary responsibility of the administering Powers to discharge those obligations in co-operation with the United Nations.

(v) *What constitutes full implementation of the principle*

211. The relevant provisions in the proposals before the Special Committee were contained in paragraph 2 A (*3*), of the proposal submitted by the United States in 1966, and in paragraphs 2 (*d*) and 3 of the proposal contained in part VI of the draft declaration submitted by the United Kingdom (see para. 176 above).

212. A subject of some discussion in the Special Committee was the question as to what should be regarded as constituting full implementation of the principle. Some representatives were of the view that the principle could only be regarded as fully implemented when the people concerned had attained the status of a sovereign and independent State. Other representatives observed that the principle required that the people concerned should be in a position to make a truly free choice as to their future political status. An essential condition for true freedom of choice, however, was in that representative's view the prior attainment by the people of the status of a sovereign and independent State.

213. Other representatives did not agree that full independence should alone be considered as constituting complete implementation of the principle of self-determination of peoples. They were of the opinion that the principle could be fully satisfied by the achievement of self-government through the free choice of the people concerned, and that the achievement of self-government might take, as recognized by General Assembly resolution 1541 (XV), one of the following forms: emergence as a sovereign and independent State; free association with an independent State; or integration with an independent State. They pointed out that Non-Self-Governing Territories varied greatly in resources, size and population, and that while the peoples of some territories might desire full independence, the peoples of other territories might not wish to assume the full responsibilities of independent statehood.

(vi) *Status of dependent territories*

214. The relevant provisions in the proposals before the Special Committee were contained in paragraph 2 of the proposal contained in part VI of the 1966 draft declaration submitted by Czechoslovakia, paragraph 2 (*e*), of the 1966 joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia and paragraph 2 (*e*) of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

215. The statement was made by certain representatives that territories under colonial domination do not constitute integral parts of the territory of the States exercising colonial rule. A provision to that effect, they stated, should be included by the Special Committee in its formulation of the principle under consideration. Such a provision, they observed, would be consistent with the letter and spirit of the Charter and in accordance with the practice of the United Nations and the progressive development of international law. The view that a colony formed an integral part of the metropolitan State was based, it was said, on a view of international law which was no longer tenable. It was observed by one representative that territories under colonial rule had, under the tutelage of the United Nations, acquired a political and legal status which was distinct from the status of the State exercising colonial rule and which might be described as a quasi-independent status.

216. Certain other representatives, however, expressed disagreement with such a view. To regard a colonial territory as not part of the territory of the administering State was, they stressed, wholly contrary to the established doctrine of international law. It was also inconsistent, it was observed, with the terms of General Assembly resolution 1541 (XV), which envisaged integration with an independent State as one of the acceptable means of Non-Self-Governing Territories attaining a full measure of self-government. It was possible, it was pointed out, that the intention of those who proposed that the formulation of the principle should contain such a provision was to prohibit the incorporation of a colonial territory into the metropolitan territory itself only in cases where such an incorporation was in fact a means by which the administering State sought to avoid its obligations under the Charter. However, that was not, it was observed, the basis upon which the particular proposal was supported.

(b) *Questions discussed concerning the implementation of the principle with respect to other than colonial peoples*

(i) *Questions concerning the implementation of the principle by a State with respect to peoples within its jurisdiction*

217. The relevant provisions in the proposals before the Special Committee were contained in paragraph 2 B of the 1966 proposal submitted by the United States and paragraph 2 (*a*) and (*b*) and paragraph 4 of the proposal contained in part VI of the draft declaration submitted by the United Kingdom (see para. 176 above).

218. A number of representatives drew attention in their statements to the close relationship between the principle of equal rights and self-determination of peoples and respect for human rights and fundamental freedoms, which, they recalled, was made explicit in Article 55 of the Charter. An essential element of the principle, it was stated by certain representatives, should be the duty of States to accord to peoples within their jurisdiction the right freely to determine their political status and to pursue their social, economic and cultural development without discrimination as to race, creed or colour. It was not intended that the

inclusion of such an element should encourage or condone secessionist or irredentist movements; the formulation of the principle should also provide that every State should refrain from acts which might disrupt the national unity or territorial integrity of another State.

219. One representative pointed out in this connexion that the political, economic, social and educational development of the peoples of Non-Self-Governing Territories and Trust Territories was stressed in Article 73 a and Article 76 b of the Charter.

220. Another representative observed that the inclusion of the proposed element in the formulation of the principle would appear to apply primarily to ethnic minorities within the jurisdiction of a State, but it would also apply to an ethnic majority which was oppressed by a minority and sought the exercise of self-determination.

221. Still another representative emphasized that as the principle was founded on basic human rights and fundamental freedoms and on justice under the law, it was essential in any formulation of it to state clearly by whom those rights should be enjoyed and against whom and under what conditions. Unless that were done, there would be some danger that peoples could be misled into attempting to invoke such rights to justify the dislocation of a State within which various ethnic communities had been successfully living together for a long time.

222. There was, it was observed by one representative, an important relationship between the principle under consideration and the principle of representative government, as the question might arise as to whether the principle was satisfied if a State denied to certain peoples within its territory representative government, in violation of the spirit of article 21 of the Universal Declaration of Human Rights. However, it was also said that it did not follow that one system of government alone should be regarded as satisfying the principle.

223. Other representatives voiced doubts, however, as to the advisability of including in the Special Committee's formulation a provision that would require States to implement the principle with respect to all peoples within their jurisdiction. Notwithstanding the inclusion in the formulation of a statement of the duty of States to refrain from acts which might disrupt the national unity of another State, it was the opinion of these representatives that the inclusion of such an element might lead to disruptive effects within a sovereign State, having regard to the unfortunate incidence of inequality of rights and opportunities which might in fact exist between communities within a State, notwithstanding what was laid down in the constitution and the law of that State.

(ii) *Questions concerning the implementation of the principle in relations between States*

(1) *Non-violation of national unity and territorial integrity*

224. The relevant provisions in the proposals before the Special Committee were contained in: paragraph 2 (*c*) of the 1966 joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia, paragraph 2 (*c*) of the proposal contained in part VI of the draft declaration submitted by the United Kingdom (see para. 176 above) and paragraph 2 (*c*) of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 177 above).

225. A number of representatives made a reference in the course of their statements to the importance of the inclusion in any formulation of the principle of a provision to the effect that a State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of other States.

226. One representative, while expressing agreement with the objective sought to be achieved by the inclusion of such a requirement, wondered whether it might not be more appropriately included in the formulation of the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

(2) *Other questions discussed*

227. The amendment submitted by Ghana (see para. 178 above) to the proposal contained in the draft declaration submitted by the non-aligned countries, was relevant to certain of the questions referred to.

228. In the course of their statements, a number of representatives referred to the implementation of the principle in the context of inter-State relations. The principle, it was said, involved the corresponding obligation that States should not frustrate, or act in a manner that was inconsistent with, the exercise of the right of self-determination by the people of another State.

229. The view was expressed that the principle embodied the right of every people organized as an independent State to internal autonomy (i.e., the right to make its own decisions as to what its own political, economic and social system should be), and to external independence (i.e., the right to make its own decision as to what its international policy should be). Certain representatives observed in this connexion that political independence was not possible without economic independence, and that this required that a State should be in control over the use and the disposal of its national wealth and resources. This, it was pointed out, had been affirmed by the General Assembly in resolution 1803 (XVII) on permanent sovereignty over natural resources, and in a number of major international instruments, such as Final Act of the 1964 United Nations Conference on Trade and Development, and in article 1 of the International Covenant on Economic, Social and Cultural Rights (see General Assembly resolution 2200 A (XXI), annex).

230. The statement was made by certain other representatives that in proclaiming the equal rights of peoples the principle also affirmed the sovereign equality of States. One representative observed in this connexion that equal rights as between States implied that States should not be subject to rules except to the extent that they had consented to such rules. Another representative considered that the concept of equal rights implied that it was the duty of the economically advanced countries to take appropriate measures to minimize the inequalities that did in fact exist between States, by means of economic, technical, scientific and cultural co-operation.

C. *Report of the Drafting Committee*

231. At its 70th meeting, on 7 August 1967, the Special Committee referred the principle to the Drafting Committee. The Drafting Committee, having referred the principle to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

The principle of equal rights and self-determination of peoples

The Drafting Committee considered the report of the Working Group on the principle of equal rights and self-determination of peoples. The Drafting Committee concluded that the areas of agreement recorded in that report were hardly sufficient to justify transmitting the report to the Special Committee for its information.

D. *Comments in the Special Committee on the report of the Drafting Committee*

232. Statements regarding the report of the Drafting Committee on this principle were made, in the order indicated, by the representatives of Czechoslovakia, the United Kingdom and Japan.

233. The representative of Czechoslovakia regretted that no agreement had been reached on a text for the principle, and hoped that efforts would be intensified, as the principle was a fundamental part of the draft declaration.

234. The representative of the United Kingdom regretted that the Drafting Committee had concluded that the areas of agreement recorded in the Working Group's report did not justify transmitting it to the Special Committee. As a member of that Working Group, he said, he had observed a wide divergence of views on certain major issues, but there had been a useful exchange of views and a narrowing down of differences on certain specific points.

235. The representative of Japan expressed particular regret that it had not been possible to reach agreement on the principle of equal rights and self-determination of peoples. Although Japan had never been a colony in the ordinary sense of the word, it was well able to share the feelings of peoples under foreign subjugation, since it had been occupied for nearly seven years after the Second World War. The Japanese delegation hoped that an agreed text on the principle would be arrived at eventually.

SECTION 4. THE PRINCIPLE THAT STATES SHALL FULFIL IN GOOD FAITH THE OBLIGATIONS ASSUMED BY THEM IN ACCORDANCE WITH THE CHARTER

A. *Written proposals*

236. Six written proposals concerning the principle considered in this section were before the Special Committee at its 1967 session, namely: (*a*) the proposal contained in part VII of the draft declaration submitted in 1966 by Czechoslovakia; (*b*) the joint proposal submitted in 1966 by Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; (*c*) the proposal of the United Kingdom and the United States submitted in 1966; (*d*) the proposal contained in part VII of the draft declaration by the United Kingdom (A/AC.125/L.44); (*e*) the proposal submitted by Ghana (A/AC.125/L.47); and (*f*) the proposal contained in the draft declaration submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48). The texts of the above-mentioned proposals are set out below in the order of their submission to the Special Committee.

237. 1966 proposal by Czechoslovakia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 523.*]

238. Joint proposal submitted in 1966 by Burma, Ghana, India, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 524.*]

239. Proposal by the United States and the United Kingdom submitted in 1966:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 525*]

240. Proposal by the United Kingdom (A/AC.125/L.44, part VII):

1. Every State has a duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

2. Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

3. Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

4. Obligations under international agreements and other obligations under international law may not be lawfully avoided by reason of either national law or national policy.

5. Where obligations arising under international agreements are in conflict with the obligations of members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

241. Proposal by Ghana (A/AC.125/L.47):

A. All States have a duty to observe in good faith international agreements on disarmament concluded between the United Nations and Member States.

B. Any State which fails to perform the obligations binding on it in accordance with the Charter should be deemed to have incurred international liability in accordance with the relevant provisions of the Charter.

242. Joint proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48):

1. Every State shall fulfil in good faith its obligations arising from international treaties freely concluded by it and on the basis of equality and shall observe the generally recognized principles and rules of international law.

2. Any obligations under international agreements which are in conflict with the obligations of the Members of the United Nations under the Charter shall be invalid.

3. Each State has the duty to conduct its international relations in accordance with the Charter of the United Nations and the principles enunciated in the present Declaration.

B. *Debate*

1. *General comments*

243. The Special Committee discussed the principle considered in the present section at its 59th to 61st meetings, between 21 and 25 July 1967.

244. There was general agreement in the Special Committee that the principle was of great importance. One representative observed that the principle, which included the rule of *pacta sunt servanda*, constituted the basic rule upon which the whole structure of contemporary international law was built. The principle was embodied in the Charter, and was fundamental to the observance of all the other principles under study by the Special Committee; without the principle of fulfilment of obligations in good faith all other principles would be seriously weakened. A number of represen-

tatives stressed the particular importance of the principle for the maintenance of friendly relations and co-operation among States. The growing complexity and diversity of international relations, it was said, made the fulfilment of obligations in good faith vitally necessary for the establishment of mutual trust, which was particularly necessary between States having different political, economic and social systems.

245. The principle, it was said, was a general principle of law which was embodied in all legal systems whatever their origin or historical background. It responded to a deeply felt necessity of all human societies, and it applied as much to the nascent international community as to the more highly organized national or local community. If good faith was vital to 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 less developed on the international level.

246. International obligations were correlated with rights. If a State desired that its rights be observed, it must also respect its obligations. The principle involved a legal as well as a moral duty.

247. One representative recalled that it had been a contribution from the Government of Colombia at San Francisco that had led to the drafting of Article 2, paragraph 2, of the Charter. The notion of good faith had proved to be one of the most important accepted at San Francisco, and there appeared to be universal recognition of its importance in international affairs. The principle had frequently been confirmed in resolutions of United Nations organs and in their decisions on particular cases, in decisions of international tribunals, and in a number of international treaties and declarations of conferences. Since the principle had been incorporated in treaties, it had become an obligation of conventional as well as customary law.

248. A number of representatives drew attention to the fact that agreement on the formulation of the principle under consideration had been very close at the previous session of the Special Committee. They expressed the hope that on the basis of the result achieved at that session, the formulation of the principle at this session should prove possible.

249. One representative observed that throughout history States had declared their adherence to the rule of *pacta sunt servanda* but at every stage had given it a different content. The Special Committee had to devise a formulation of the principle in accordance with the Charter and with the rules of modern customary international law and treaty law. In view of the time available to the Special Committee and the difficult problems involved, the Special Committee should not attempt a detailed enunciation of the principle but only a general formulation reflecting the essence of the rule *pacta sunt servanda*.

250. In the opinion of one representative, the principle was purely a legal one and accordingly should be formulated by the Special Committee in strictly legal terms. In formulating the principle, no attempt should be made to cover other problems or the possible application of the principle to political and social matters.

251. The observation was made by another representative that the principle that States shall fulfil the obligations assumed by them in accordance with the Charter might be described as almost tautological. The essence of an obligation was that it should be fulfilled and States, like other subjects of law, were obliged to do what the law prescribed. Nevertheless, the addition of the words "in good faith" seemed to remove some of the tautological character of the principle, though it was difficult to give the words "good faith" explicit definition.

2. The scope of the principle

252. The scope of the principle under consideration was the subject of some discussion in the Special Committee. The view was expressed by certain representatives that, as the principle was worded, it seemed to apply only to obligations under the Charter.

253. One representative was of the opinion that the task of the Special Committee was that of defining the scope of the obligations set out in the Charter. Another representative considered that the principle under discussion was composed of three distinct rules of international law: the rule *pacta sunt servanda*, which was found in the third paragraph of the Preamble to the Charter; the rule of "good faith", which was found in Article 2, paragraph 2, of the Charter; and the rule that obligations to which the principle applied must be in conformity with the Charter, which was found in Article 103. Any formulation of the principle by the Special Committee should therefore incorporate the relevant Charter provisions and adapt them to contemporary international law. The pertinent elements in the Charter should, he felt, be brought together in a broad statement of the duty of all States, and not only Members of the United Nations, to fulfil their obligations in good faith. He was of the opinion, however, that the principle of good faith was not limited to Charter obligations alone; the principle also applied to obligations under other treaties, and to obligations arising under the rules of international law generally.

254. Other representatives who took this view pointed out that there were obligations arising from treaties and other sources of international law to which the principle of good faith was of fundamental importance. So far as treaties were concerned the International Law Commission, in its draft articles on the law of treaties,[39] had recognized the principle of good faith in so far as it related to the observance of treaties, and the principle also applied to the fulfilment of obligations under other rules of international law. The observance of the principle in its wider aspect was a fundamental prerequisite for the development of friendly relations among States. One representative said that Article 103 of the Charter not only established the supremacy of Charter obligations but also extended to obligations under treaties other than the Charter.

255. A number of representatives emphasized that the concept of good faith was of importance not only to the international legal order but also to international relations of a non-obligatory character. Certain representatives referred in this connexion to the commentary of the International Law Commission on article 23 of its draft articles on the law of treaties, where it was observed by the Commission that the motif of good faith applies throughout international relations. The principle of good faith would thus be applicable not only in respect of the observance of rights and obligations, but also in respect of non-obligatory relations, and it was clear that the mutual confidence which the age of international interdependence would need would require an observance of good faith in all relations between States.

256. The statement was made by one representative that the formulation of the principle should be in the form of a broad statement of the duty of all States, not only of States Members of the United Nations, to fulfil their obligations in good faith. This representative raised the question as to what the position would be if treaties which were inconsistent with the Charter were concluded between States which were not Members of the United Nations. He suggested that the formulation of the principle should include provisions dealing with the effect of such treaties.

257. One representative proposed that as a correlative to the performance of obligations in good faith, the formulation of the principle under consideration should include a provision on the imposition of sanctions for the non-performance of the obligations assumed by States under the Charter. Such a provision, in his opinion, was a logical complement to any formulation of the principle. The same representative also observed that the Charter imposed no express obligation of disarmament, although Article 11, paragraph 1, and Article 26 of the Charter dealt with the question of the maintenance of peace and disarmament respectively. This representative took the view, therefore, that it was important that the Special Committee should also formulate a general rule, of an explicit nature, concerning disarmament and its strict observance in good faith.

3. The concept of good faith

258. It was thought by one representative that good faith meant, above all, a constructive attitude towards international obligations which was manifested by sincerity, conscientiousness, correctness and honesty. Another representative thought that the concept was difficult to define. It seemed easier to give examples of good faith than to define the concept. However, if it were to be described, he thought it might be described as a spirit of honesty, sincerity, straight-forwardness and good conscience. Good faith, accordingly, was more than an absence of trickery and more than the fulfilment of a mere literal duty.

259. A number of representatives stated that good faith was necessary at the time of the assumption of obligations, as well as during their performance and in their interpretation. Good faith, it was said, was an essential moral and legal factor at all stages of the treaty-making process: the formulation, adoption, implementation, interpretation, modification and possible termination of a treaty in accordance with its final provisions. One representative drew attention in this connection to the inclusion by the International Law Commission in its draft articles on the law of treaties of provisions on the obligation of a State not to frustrate the object of a treaty prior to its entry into force (article 15), the obligation to observe a treaty in good faith (article 23), the obligation to interpret a treaty in good faith (article 27), the prohibition of fraudulent conduct by a State negotiating a treaty (article 46) and other similar provisions. The concept of good faith, it was observed, also served to define the limits beyond which the exercise of rights should not go. The failure to observe those limits constituted an abuse of rights. Another representative remarked that it would be contrary to good faith if rights were exercised in such a manner as to harm another State, or if efforts were made to avoid obligations by the abuse of a rule of law.

260. The view was also expressed that the concept of good faith meant that the rights of States should be compatible with the various other obligations deriving from treaties or from general international law. In that sense, it was felt by one representative, good faith was clearly more than a rule of interpretation of treaty obligations, and the value of the concept seemed far greater in the realm of customary law than in that of written law.

4. Compliance with obligations arising out of the Charter of the United Nations

261. The relevant provisions of the proposals before the Special Committee were contained in: paragraph 2 of the proposal contained in part VII of the draft declaration submitted by Czechoslovakia in 1966; paragraph 3 of the 1966 joint proposal of Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 2 B of the proposal submitted in 1966 by the United States and the United Kingdom; paragraph 1 of the proposal contained in part VII of the draft declaration submitted by the United Kingdom (see para. 240 above); and paragraph 3 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 242 above).

262. The above provisions were not the subject of much discussion in the Special Committee. With respect to the provision in the United Kingdom draft, one representative pointed out that the principle that States should fulfil in good faith the obligations assumed by them in accordance with the Charter derived from Article 2, paragraph 2, of the Charter. The reasons for including that paragraph in the Charter had been explained at the San Francisco Conference by the Rapporteur of Committee 1 in his report to Commission I.[40] As the Rapporteur had stated, paragraph 2 of Article 2 was kept to emphasize that rights and privileges in the Charter were matched with duties and obligations. That emphasis was deemed necessary in view of past experience, where States, especially in the period between the the two World Wars, had come to place more emphasis on their rights than on their duties, and the practice had developed of subscribing to certain international obligations and then forgetting them in a moment of international crisis or under the urge of a State's own interests. In the view of that Rapporteur, there was a still more important reason for such a text as paragraph 2 of Article 2. The paragraph did not merely mean that one Member which fulfilled its duties and obligations might exercise certain privileges and rights; it meant also that if all Members of the Organization fulfilled their obligations, all Members would receive the benefit. Thus, the non-fulfilment of the duties and obligations by one State deprived not only that State but all the others of some of the benefits.

263. Another representative drew attention to what, in his opinion, were the relevant obligations of the Charter, and gave an extensive list of Charter provisions which in his view particularly involved a need for fulfilment in good faith.

[39] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9*, part II, chapter II.

[40] *Documents of the United Nations Conference on International Organization*, 1/1/34 (vol. VI, p. 398).

5. *Compliance with obligations arising out of treaties and other sources of international law*

264. The relevant provisions of the proposals before the Special Committee were contained in paragraph 1 of the proposal in part VII of the 1966 draft declaration submitted by Czechoslovakia; paragraph 1 of the 1966 joint proposal of Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 2 A of the proposal submitted by the United States and the United Kingdom in 1966; paragraphs 2, 3 and 4 of the proposal contained in part VII of the draft declaration submitted by the United Kingdom (see para. 240 above); and paragraph 1 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 242 above).

265. The duty to comply in good faith with obligations arising out of treaties and other sources of international law was a matter to which a number of representatives made reference while commenting in general on the scope of the principle under consideration.

266. Some representatives expressed the desire that the formulation of the principle should include a statement to the effect that States could not avoid their obligations under treaties or other sources of international law by reason of either national law or national policy. Such a statement, in their view, was inherent in the general rule that States should fulfil their international obligations in good faith. It was essential for the preservation of orderly relations among States, and indeed for friendly relations and co-operation, that it should not be possible to avoid international obligations on such essentially unilateral grounds as national law or policy. It should, therefore, not be open to a State which was in default on its international obligations to plead that its conduct was justified because its Parliament had legislated contrary to those obligations. One representative specifically denied that a new Government established by a social revolutionary movement was entitled to repudiate international obligations assumed by the Government it had displaced.

267. On the other hand, it was urged that the formulation of the principle should take account of social changes which inevitably influenced the evolution of international law. While it was undoubtedly true as a general proposition that national law or policy gave no excuse for non-fulfilment of international obligations, there were certain exceptions to that rule, notably where an established régime had been overthrown as a consequence of a social revolution or national liberation movement. Such a revolutionary change could, in the view of some representatives, entitle a new Government to repudiate unacceptable treaty obligations. Thus, after the 1917 October Revolution, the Government of the Soviet Union had denounced a great many treaties concluded in Tsarist times. Similarly, newly independent States in Africa and Asia had not recognized that they were bound by treaties linked with the old régime of colonial domination.

268. One representative, while agreeing that national law could offer no excuse for non-compliance with international obligations, opposed a reference to national policy in the formulation. Such a reference would, in his view, be unclear, and would refer to something outside the rule of law; moreover, the national policy of States should be in harmony with their national law and international obligations.

6. *Limitations upon the duty to comply with treaty obligations*

(a) *The question of unequal treaties*

269. The relevant provisions of the proposals before the Special Committee were contained in paragraph 1 of the proposal contained in part VII of the draft declaration submitted by Czechoslovakia in 1966; paragraph 1 of the 1966 joint proposal of Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 3 of the proposal contained in part VII of the draft declaration submitted by the United Kingdom (see para. 240 above); and paragraph 1 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 242 above).

270. A number of representatives stated that the duty to comply with treaty obligations did not apply to unequal treaties, and that it was important that the Special Committee should, in its formulation of the principle under consideration, include a qualification to this effect; only treaties which were freely concluded on a basis of equality were binding. Such a qualification, it was said, was of interest to countries which under colonial régimes had been obliged to enter into one-sided treaties, and would assist developing countries formerly under colonialism in rejecting inequitable agreements that had been imposed on them. To define the limitations of the extent of the applicability of the principle in terms of a free and equal basis for the conclusion of treaties did not weaken the principle; it only made the extent of its applicability more precise. A statement by the Special Committee on the question of unequal treaties might be of assistance to the forthcoming United Nations Conference on the Law of Treaties, as it would represent the views and practice of States. The principle, one representative said, would not be respected so long as the question of unequal treaties was left unresolved. Another representative stated that the problem of unequal treaties was acute because of efforts by imperialist circles to maintain such treaties and to preserve acquired rights. Another representative stated that in the modern world, and in the light of the progressive development of international law, there was no place for unequal treaties procured by pressure for the benefit of the stronger parties to the detriment of the rights of the weaker; this had been taken into account in the draft articles prepared by the International Law Commission on the law of treaties.

271. One representative expressed the view that the attainment of independence by many countries required a reappraisal of State succession to treaty rights and obligations. The theory of universal succession, upon independence, to treaty rights and obligations which had been extended to colonial territories under colonial clauses, was unacceptable. The theory that independence brought an end to all treaty obligations previously assumed by the metropolitan Power was, in his view, equally difficult to accept. The newly independent States must, however, reserve to themselves the right to abrogate or renegotiate unequal treaties, such as those, for example, where a former colonial territory had, prior to independence, been subjected by the metropolitan Power to leases or servitudes in favour of other States. This representative was of the opinion, however, that the Special Committee should not enter at this stage into the details of these questions but should rather endeavour to work out a broadly acceptable formulation of the principle under consideration.

272. Other representatives thought it would be undesirable for the Special Committee to consider the matter of inserting any particular qualification concerning unequal treaties in its formulation of the principle. It was only valid obligations that were to be honoured in good faith, it was observed, and the question of what was a valid obligation would be fully considered at the forthcoming United Nations Conference on the Law of Treaties, on the basis of the draft articles prepared by the International Law Commission, which dealt in detail with the grounds on which a treaty was void or voidable. The Commission, in the context of its work on succession of States in respect of treaties, would also examine in the near future the question whether or not a newly independent State was justified in not recognizing that it was bound by a treaty it had inherited because that treaty was considered by it to be manifestly unjust or inequitable. It was important, therefore, that the Special Committee should not do anything to prejudice either the future work of the Commission on the subject of the succession of States, or the discussion on the law of treaties at the forthcoming Conference, both of which were more suitable places for considering the difficulties of the question than was the Special Committee.

273. The comment was made by one representative that there might be instances in which a treaty was "unequal" in the sense that it was beneficial only with respect to one party, for example, a treaty in which one State allowed a landlocked country permanent access to the sea without requesting anything in compensation; but that treaty need not be regarded as void and placed outside the scope of the duty of fulfilment of obligations in good faith, unless it was void or voidable under the International Law Commission's draft articles on some ground such as coercion, fraud or error. If a treaty which once offered mutual advantage later came to be of benefit only to one side, the doctrine of fundamental change of circumstances—*rebus sic stantibus*—might apply. That representative thought that it would be unwise for the Special Committee to include in its formulation of the principle a particular provision on the question of unequal treaties; a general limitation of the principle to international agreements valid under the generally recognized principles and rules of international law would be sufficient to meet the problem involved.

(b) *Void or voidable treaties*

274. The relevant provisions of the proposals before the Special Committee were contained in: paragraph 1 of the proposal contained in part VII of the 1966 draft declaration submitted by Czechoslovakia; paragraph 1 of the 1966 joint proposal of Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 3 of the proposal contained in part VII of the draft declaration submitted by the United Kingdom (see para. 240 above); and paragraph 1 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 242 above).

275. The view was expressed by certain representatives that the text to be formulated by the Special Committee on the principle under consideration should set out the conditions for the legal validity of treaties. This, it was said, was essential because obligations entered into in the absence of such conditions could always be challenged, and an unequivocal statement of the conditions was essential to the observance of the principle. One representative stressed that the scope of the rule of *pacta sunt servanda* was not unlimited. It did not apply, *inter alia*, to treaties which were not concluded in accordance with international law, or which, subsequent to their conclusion, conflicted with new peremptory norms of international law, or otherwise became invalid. As the International Law Commission had stated in article 50 of its draft articles on the law of treaties, treaties were void if they conflicted with a peremptory norm of international law (*jus cogens*), such as the prohibition of the threat or use of force. There were many examples of treaties imposed on States. One cited by a representative was the Munich Agreement, which had been imposed on Czechoslovakia under the threat of an aggressive war and with the use of force, which formed a part of a criminal conspiracy by Nazi Germany against the peace, and which was concluded in violation of international law. He stated that that Agreement was invalid *ab initio*, with all the consequences of such invalidity. The principle, it was stated by another representative, was clearly applicable only to lawful treaties freely consented to by equal parties. If these conditions were not met, a treaty merely became a cover for subjugation and coercion. The rule of private law which invalidated contracts concluded by force could be applied to international law.

276. Another representative called attention not only to article 50 of the International Law Commission's draft articles, which declared a treaty void *ab initio* if it was in conflict with a rule of *jus cogens* existing at the time of the treaty's conclusion, but also to article 61, which supplemented article 50 and which provided that a new peremptory norm of international law (*jus cogens superveniens*) would invalidate an existing treaty which was in conflict with that norm. There was, as yet, no general agreement on the list of principles which formed part of *jus cogens gentium*, yet, in his view, there could be no doubt that the list included the principles of national sovereignty and independence, equality of rights and mutual advantage, non-interference in internal affairs, non-aggression, and the right of self-determination of peoples. A treaty which violated any of those principles was contrary to international law and must therefore be set aside. It had been argued, he said, that such a concept would provide a Government which was acting in bad faith with a pretext for avoiding its obligations under a particular treaty, by alleging that the treaty was contrary to the fundamental principles of international law. The answer to that objection was simply *abusus non tollit usum*. The Special Committee should deal with questions of substance concerning the validity of treaties, such as the rule invalidating a treaty whose conclusion was procured by the threat or use of force in violation of the Charter; one representative said that the deliberations and final results of the work of the Special Committee, which was composed of representatives of Governments discussing the practice of States, could not fail to be helpful to the United Nations Conference on the Law of Treaties.

277. The view, however, was expressed by other representatives that since the principle under consideration applied only to valid treaties, it was unnecessary for the Special Committee to deal with the conditions for the validity of treaties in its formulation of the principle. The conditions for the validity of treaties would be fully considered at the forthcoming United Nations Conference on the Law of Treaties on the basis of the draft articles prepared by the International Law Commission. The subject, moreover, was a complex one which involved difficult problems, including problems of a political nature, on which serious disputes could be expected. For example, although article 50 of the International Law Commission's draft on *jus cogens* seemed desirable, there would be difficulties in reaching agreement on what rules should be included under the notion of *jus cogens*. It was therefore important to deal with the whole subject in depth; but it would be better to do so at the forthcoming Conference than in the Special Committee.

278. The observation was made by some representatives that a formulation which limited the application of the principle under consideration to obligations under "international agreements valid under the generally recognized principles and rules of international law" would exclude from the requirement of fulfilment of obligations in good faith all agreements which might be void or voidable on any of the grounds which had been advanced by the International Law Commission and which might be approved by the United Nations Conference on the Law of Treaties, such as lack of competence, error, fraud, corruption, coercion and the violation of peremptory norms. Such a formulation, it was said by one representative, would be more comprehensive and cautious than a formulation which provided for the application of the principle under consideration to "international treaties freely concluded on the basis of equality". The aim of the latter formulation appeared to be that of eliminating, in particular, any duty to fulfil in good faith treaties concluded under duress, and what are termed unequal treaties. Such a formulation would, however, also exclude from the applicability of the principle any treaty not freely concluded, in other words all treaties made under duress; yet a treaty imposed upon an aggressor defeated in an enforcement action by the United Nations would be valid. Furthermore, the formulation seemed to be intended to exclude only two types of treaties, namely, those not freely concluded and those not made on the basis of equality. The conclusion *a contrario* was that all other treaties must be fulfilled in good faith; but this could not be true, for example, with regard to treaties made in manifest violation of internal law regarding competence, treaties based on error and treaties conflicting with peremptory norms. Such treaties were void or voidable under the draft articles of the International Law Commission. In this connexion, another representative pointed out that it would not be correct for the Special Committee in its formulation of the principle to limit the duty of a State to fulfil its treaties only to those treaties which were concluded by that State itself, as there were cases in which a successor State was in fact bound to perform obligations assumed by the State which it succeeded.

(c) *Treaties in conflict with Charter obligations*

279. The relevant provisions of the proposals before the Special Committee were contained in: paragraph 2 of the 1966 joint proposal of Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia; paragraph 2 (C) of the proposal submitted by the United States and the United Kingdom in 1966; paragraph 5 of the proposal contained in part VII of the draft declaration submitted by the United Kingdom (see para. 240 above); and paragraph 2 of the proposal contained in the draft declaration submitted jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (see para. 242 above).

280. There was no disagreement in the Special Committee on the question of the supremacy of Charter obligations. A number of representatives made reference to the question in their statements, and referred to Article 103 of the Charter. The duty to comply in good faith with treaty obligations, it was agreed, could not apply to those treaty obligations which were in conflict with the Charter.

281. Certain representatives expressed the view that one of the essential conditions for a treaty to be valid was conformity with the provisions of the Charter. Hence, a treaty resulting from aggression or the threat or use of force, or from any other means incompatible with the purposes of the United Nations was invalid, as was also a treaty which violated the sovereign rights of a State. One representative observed that, as regards treaties between Members of the United Nations which were inconsistent with the Charter, such treaties, if they preceded the Charter, were abrogated by it; and if they were subsequent to the Charter, they were null and void. The Special Committee, in the opinion of another representative, should consider the various implications which the principle enunciated in Article 103 of the Charter might have with respect to the question of the conflict of obligations.

282. Other representatives were of the opinion, however, that difficult questions of substance were involved with respect to the problem of conflict of treaty obligations with the Charter. In this connexion it was pointed out by one representative that it was, for example, extremely difficult to decide as a matter of policy, if not of law, whether treaties concluded prior to 1945, such as treaties procured by the threat or use of force or in violation of the principles set out in the Charter, were invalid even if concluded in the long distant past. There was no easy answer. The difficulties involved should certainly not be avoided, but a more appropriate place for a full consideration of the various problems involved would be the forthcoming United Nations Conference on the Law of Treaties, rather than the Special Committee.

(d) *The doctrine of* rebus sic stantibus

283. One representative, while observing that the scope of the principle under consideration was subject to certain limitations, stated that it was important that any formulation of the principle should reflect an appropriate combination of the fundamental rule of *pacta sunt servanda* with the doctrine of *rebus sic stantibus*. In that connexion, he drew attention to the remarks of the International Law Commission in its commentary on article 23 of its draft articles on the law of treaties, where the Commission had emphasized the fundamental nature of the obligation to perform treaties in good faith and not merely *stricti juris*.

284. Another representative referred to the doctrine of *rebus sic stantibus* while discussing, in connexion with the subject of unequal treaties, the question of State succession in relation to treaties made applicable to former colonial territories under colonial clauses. This representative was of the opinion that what was required in that connexion was an objective and analytical reappraisal of the question of State succession. The alternative to the rule of law, he remarked, would be chaos; it was all too easy, he observed, to have recourse to the doctrine of *rebus sic stantibus*.

C. *Report of the Drafting Committee*

285. At its 61st meeting, on 25 July 1967, the Special Committee referred the principle to the Drafting Committee. The Drafting Committee, having referred the principle to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

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

The Drafting Committee considered the report by the Working Group (A/AC.125/DC.18) and accepted the text set out therein as expressing the consensus of the Drafting Committee. That text reads as follows:

1. Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

2. Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

3. Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

4. Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

D. *Comments in the Special Committee on the report of the Drafting Committee*

286. Statements regarding the report of the Drafting Committee on this principle were made, in the order indicated, by the representatives of the United States, Yugoslavia, the United Arab Republic, Czechoslovakia, the United Kingdom, the Union of Soviet Socialist Republics, Syria, Algeria, Nigeria, Japan, Kenya, Madagascar, Cameroon and France, at the 79th meeting.

287. The representative of the United States said that his delegation considered that the principle of the supremacy of international legal obligations over national law, in cases of conflict, was incorporated in the statement of the principle on which the Drafting Committee had reached a consensus. The Drafting Committee, in his view, had wisely declined to incorporate a proposal to the effect that only obligations arising from international treaties concluded freely, and on the basis of equality, were binding. That proposal was unacceptable to his delegation because its inherently subjective character could endanger the stability of treaties and consequently of international peace. Moreover, apart from the substance of the proposal, he considered that its adoption might prejudice the work of the forthcoming United Nations Conference on the Law of Treaties. There was no foundation, he said, for the notion advanced by one or two delegations that the Drafting Committee's text embodied that unacceptable proposal.

288. The representative of Yugoslavia said that his delegation would vote in favour of the Drafting Committee's report as a whole. With regard to the principle of fulfilment of obligations in good faith, however, he had maintained in the Drafting Committee that it was a very important part of the draft declaration and should contain a statement to the effect that obligations resulting from international agreements should be assumed freely and on the basis of equality of the parties. In the absence of any specific statement in paragraph 3, his delegation interpreted the reference to "the generally recognized principles and rules of international law" as embodying the principle of free consent and equality of all parties.

289. The representative of the United Arab Republic stated, in regard to paragraph 3 of the text agreed by the Drafting Commitee, that the obligations in question could only derive from agreements concluded freely and on the basis of equality. No agreement could exist in law or in fact without those essential elements. His delegation regretted that the smaller countries had not found greater support in their efforts to have these elements incorporated in the principle.

290. The representative of Czechoslovakia said that his delegation was gratified to note that some of its proposals had been included in the text, but regretted that there had been objections to specifying that international agreements must be concluded freely and on the basis of equality. His delegation would accept the text on the understanding that the reference in paragraph 3 to the "generally recognized principles and rules of international law" embodied the idea that international treaties must be concluded freely and on the basis of equality in order to be valid under those principles and rules.

291. The representative of the United Kingdom stated that his delegation had accepted the consensus text in the Drafting Committee, but regretted that it did not include the substance of paragraph 4 of the United Kingdom proposal (see para. 240 above). On that point he agreed with the United States representative. His delegation had regarded the proposal to add the words "freely concluded on a basis of equality" to paragraph 3 as open to objection on the grounds that it might be taken to apply to certain controversial questions relating to treaty succession. Moreover, that addition would undoubtedly have prejudiced the work of the forthcoming United Nations Conference on the Law of Treaties.

292. The representative of the Union of Soviet Socialist Republics interpreted the compromise text of paragraph 3 as including the ideas embodied in paragraph 1 of the Czechoslovak proposal (see para. 237 above) and in paragraph 1 of the proposal by the non-aligned countries (see para. 242 above), which specified that the obligations in question arose from international treaties freely concluded on the basis of equality. Paragraph 4 of the text corresponded to Article 103 of the Charter; he stressed that the inclusion of such a provision could not be taken as tending to support a repudiation of United Nations texts adopted later than the Charter, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples, since that would jeopardize the progressive development of international law.

293. The representative of Syria said that his delegation could accept the text in the Drafting Committee's report, with certain reservations. In the first place, paragraph 3 should contain the provision in paragraph 1 of the non-aligned countries' draft (see para. 242 above), according to which the obligations in question

must arise from international treaties freely concluded on the basis of equality. Secondly, the text agreed by the Drafting Committee was not final and might be made more explicit in the sense he had suggested, in the light of the results of the forthcoming United Nations Conference on the Law of Treaties.

294. The representative of Algeria declared that his delegation considered that paragraph 3 should be amended to provide that the international agreements in question must be freely concluded on the basis of the equality of States.

295. The representative of Nigeria said that his delegation accepted the report of the Drafting Committee. Nevertheless, it had a reservation concerning paragraph 3 of the Drafting Committee's text; it considered that the paragraph should specify that only agreements entered into on a basis of equality were covered.

296. The representative of Japan said that the report of the Special Committee should make it clear that the reference to the supremacy of international law in paragraph 4 of the text proposed by the United Kingdom (see para. 240 above) had been omitted not because the idea was opposed but because it was understood to be covered by the preceding paragraphs.

297. The representative of Kenya declared that his delegation approved the text as the minimum acceptable. He regretted that opposition had prevented the inclusion of the proposed provision that obligations under international agreements and other obligations under international law could not be lawfully avoided by reason of national law or national policy. It was also regrettable, in his view, that the agreed text did not include a statement that treaties should be freely concluded on a basis of equality, but he considered that point to be covered by the reference in paragraph 3 to the "generally recognized principles and rules of international law". He hoped improvements would result from the forthcoming United Nations Conference on the Law of Treaties.

298. The representative of Madagascar made a reservation to the effect that the text submitted by the Drafting Committee did not make sufficiently clear the basis of the obligations in question, which was the requirement, stated in paragraph 1 of the proposal of the non-aligned countries (see para. 242 above), that treaties be freely concluded on the basis of equality.

299. The representative of Cameroon said that the text should be amended to state that the obligations must be based on treaties freely concluded on a basis of equality, as provided in the text proposed by his own and other delegations (see para. 242 above). His delegation preferred the original wording of the French text of paragraph 3: *"conformes aux principes et règles"* (A/AC.125/L.58) to the amended wording *"valables au regard des principes et règles"* (A/AC.125/L.58/Corr.1). He expressed the hope that the work of the 1967 Special Committee would provide a useful basis for further work in 1968.

300. The representative of France said that the drafting of the agreed formulation, though not the best possible, was satisfactory. The principle applied, as appropriate, to all obligations arising from the various sources of international law without restriction, and applied in full to all States subject to the rule of international law.

Chapter III. Consideration of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX)[41]

A. Text of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty contained in General Assembly resolution 2131 (XX) of 21 December 1965

301. The resolution reads as follows:

[*For the text, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14, *p. 11.*]

B. Written proposals

302. The following proposals in written form had been submitted to the Special Committee:[42] (*a*) joint proposal by Australia, Canada, France, Italy, the United Kingdom and the United States submitted in 1966 ; (*b*) proposal contained in part III of the draft declaration submitted by Czechoslovakia in 1966; (c) joint proposal by Australia and Italy submitted in 1966; (d) proposal contained in part III of the draft declaration submitted by the United Kingdom (A/AC.125/L.44). A note at the end of the draft declaration by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48) explained that the co-sponsors of this draft declaration recognized that with regard to this principle some progress had been made at the previous sessions of the Special Committee and that they recognized the progress thus made without pjrejudice to the consideration of any additional proposals with a view to widening the area of agreement on the principle. In the final stages of the Special Committee's work, a draft resolution on the principle was submitted by Argentina, Cameroon, Chile, Czechoslovakia, Ghana, Guatemala, India, Kenya, Mexico, Nigeria, Poland, Union of Soviet Socialist Republics and Venezuela (A/AC.125/L.54). The texts of the above-mentioned proposals are set out below, in the order in which they were submitted to the Special Committee.

303. 1966 joint proposal by Australia, Canada, France, Italy, the United Kingdom and the United States:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 279.*]

304. Proposal contained in the 1966 draft declaration submitted by Czechoslovakia:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 287.*]

[41] An account of the consideration of this principle by the 1964 Special Committee appears in chapter V of its report (*Official Records of the General Assembly, Twentieth Session, Annexes,* agenda items 90 and 94, document A/5746) and by the 1966 Special Committee in chapter IV of its report (*ibid., Twenty-first Session, Annexes,* agenda item 87, document A/6230).

[42] The revised joint proposal submitted in 1966 by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (A/AC.125/L.12/Rev.1 and Corr.1) was withdrawn by its sponsors at the 1967 session after the completion of the general debate on the item.

305. 1966 joint proposal by Australia and Italy (additional paragraphs for consideration in connexion with the text of General Assembly resolution 2131 (XX) of 21 December 1965. These paragraphs had been under consideration in the Drafting Committee, in the form of working papers. They were submitted as a text alternative to paragraphs 2D and 3 respectively of the joint proposal by Australia, Canada, France, Italy, the United Kingdom and the United States referred to in paragraph 303 above):

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 280.*]

306. Proposal contained in the draft declaration submitted by the United Kingdom (A/AC.125/L.44, part III):

1. No State shall intervene for any reason in the domestic affairs of any other State. Every State has the right freely to choose the form and degree of its association with other States.

2. Accordingly:

(*a*) All acts of intervention by the threat or use of force against the territorial integrity or political independence of a State, direct or indirect, overt or covert, are illegal. Such acts as invasion, armed attack, the organization, financing, supplying, or other encouragement of covert activities designed to achieve the violent overthrow of the Government of another State, terrorism directed or stimulated from outside a State, or the encouragement of civil war are equally illegal and equally menace the peace.

(*b*) Intervention in order to coerce another State, whether involving measures of an economic, political or other character, is a violation of international law and the Charter. The encouragement of such coercive measures by another State is likewise illegal.

3. Nothing in the foregoing paragraphs shall prejudice the responsibility of the United Nations for taking action to maintain international peace and security.

307. Draft resolution submitted jointly by Argentina, Cameroon, Chile, Czechoslovakia, Ghana, Guatemala, India, Kenya, Mexico, Nigeria, Poland, Union of Soviet Socialist Republics and Venezuela (A/AC.125/L.54:

The Special Committee,

Recalling its resolution of 18 March 1966, and especially the fact that, as indicated in section (*c*) of the preamble thereto, General Assembly resolution 2131 (XX) of 21 December 1965, 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,

Bearing in mind that the Drafting Committee took note that there was no report from the Working Group on the principle of non-intervention in matters within the domestic jurisdiction of any State,

Decides to include the operative paragraphs of General Assembly resolution 2131 (XX) in the formulation of the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, to be incorporated in the draft declaration on the principles of international law concerning friendly relations and co-operation among States."

C. Debate

1. *General comments*

308. The Special Committee discussed the principle forming the subject of the present chapter at its 71st to 73rd meetings from 8 to 10 August 1967.

309. The importance of the principle of non-intervention in matters within the domestic jurisdiction of any State among those referred to the Special Committee was generally recognized. In the opinion of some representatives, the principle was vital for certain States which had found in it an essential instrument for their defence as a direct consequence of the painful experience of a large number of cases of intervention in all forms, not only in those States but also in the continents of which they formed part, the Americas, Africa and Asia. One representative made express reference in this connexion to the intervention of fourteen imperialist Powers after the October Socialist Revolution in an attempt to destroy the Soviet State, and to the unsuccessful economic blockade that had been resorted to after such efforts had been frustrated. For one other representative, the fact that his country had rarely been subject to intervention of any kind did not affect its interest in the principle under consideration.

310. In the view of some representatives, the acceptance and faithful observance of the principle was an essential element in the protection of small States, and especially of those which had recently emerged from colonial rule. Several representatives considered that the principle of non-intervention was the necessary foundation for the development of friendly relations and co-operation among States and, in the view of other representatives, it was a prerequisite for the peaceful coexistence of States with different social and political systems. A number of representatives also recognized the close relationship between that principle and the maintenance and strengthening of international peace and security.

311. In the opinion of some representatives, the history of international relations, especially in recent years, yielded many examples of intervention in the affairs of other States; the existing tension in the world was in their view largely due to such intervention. One representative said that imperialist States were seeking to undermine the independence and sovereignty of countries of Asia, Africa and Latin America, and referred to events in Viet-Nam, the Congo, the Dominican Republic and elsewhere. Some representatives considered that, while peace-loving States faithfully adhered to the principle, its observance was not general, and they cited what they called the armed intervention in Viet-Nam. In the view of one representative, one great Power had assumed the functions of an international policeman, and was practising open and systematic intervention in the affairs of other States, in disregard of world public opinion. One example, in his view, was a law adopted by that Power which provided special subsidies for dissident elements within certain socialist States, an act strongly protested against by those States. In reply, one representative said that the Special Committee's objective could be best promoted by avoiding polemical exchanges on present-day conflicts, and that legitimate acts of collective self-defence under Article 51 of the Charter should not be condemned.

312. For several representatives, the principle had been proclaimed in many international agreements over the last 150 years, had been a part of international law since the nineteenth century and was a basic principle of contemporary international law. One representative expressed the opinion, however, that unanimous support was required to transform it into a rule of international law.

313. For some representatives, the principle was one of the foundations of the political and legal system

created by the Charter of the United Nations, which provided an adequate basis for its formulation. Article 2, paragraph 4, of the Charter prohibited the most dangerous form of intervention; Article 2, paragraph 1, embodying the principle of sovereign equality of States, implied the prohibition of intervention, which was the negation of sovereign equality; it was also a consequence of the principle of equal rights and self-determination of peoples, as stated in Article 1, paragraph 2; finally, the prohibition set forth in Article 2, paragraph 7, applied *a fortiori* to a State in its relations with other States, since the Charter could not permit States to do what it prohibited the Organization itself from doing. It was pointed out by several representatives that the principle was also embodied in such international instruments as the Charter of the Organization of American States, the Charter of the Organization of African Unity, the 1961 Vienna Convention on Diplomatic Relations,[43] the 1963 Vienna Convention on Consular Relations,[44] General Assembly resolution 2131 (XX) and the Declarations of Bandung, Belgrade and Cairo.

314. Some representatives declared that this principle was a fundamental element of international law in the Americas. For one representative, although it was not uncommon for rules of law established by States to be purely regional in scope, general principles such as that of non-intervention in matters within the domestic jurisdiction of any State had to be worldwide; there was no reason why activities which were objectively unlawful in one area should be permitted elsewhere. In his view, the adoption of General Assembly resolution 2131 (XX) without any negative vote reflected the conviction of the Members of the United Nations that the principle was essentially of a legal character and of universal validity. Some representatives, however, disagreed with that view, and stated that that resolution represented a statement of political aims on the part of the General Assembly rather than a legal formulation of the principle.

315. In the opinion of several representatives, the principle of non-intervention in matters within the domestic jurisdiction of any State was closely linked with all other rules of contemporary international law, and one representative said it was especially linked with the other principles referred to the Committee, all of which, in his view, had the character of *jus cogens*. In the view of one representative, that principle protected States and entities which were struggling for their independence and was consequently connected with the principle of equal rights and self-determination of peoples; acts of intervention, in the view of another representative, threatened the latter principle. For some representatives, any intervention by one State in the affairs of another State violated the latter's fundamental rights and constituted a denial of its sovereignty and independence.

316. In the view of one representative, the duty to respect the sovereignty of another State was inherent in the concept of a State, and did not derive from international law, which was the creation of sovereign States and which was based on the prior recognition of their full independence and equality; the organization of power in a State and its legal system were wholly within its domestic competence and did not depend upon international law. However, certain matters could be removed from the area of internal competence to the international plane through inter-State agreements. States could also, on a basis of freedom and equality, assume certain international obligations to act, and any States violating such obligations incurred, in his view, international responsibility.

317. For one representative, the principle of non-intervention in matters within the domestic jurisdiction of any State, in conjunction with the principles of equal rights and self-determination of peoples and sovereign equality of States, had the aim of ensuring the freedom of States to follow a path of development in line with their basic interests. It expressed the need for each nation to be the sole master of its own destiny, and its observance would ensure the rights of all peoples to realize their aspirations and make their full contribution to the heritage of human civilization.

318. Several representatives therefore favoured the proclamation of the principle of non-intervention in matters within the domestic jurisdiction of any State and the condemnation of any direct or indirect intervention in the internal or external affairs of a State, for any reason whatever; intervention could never be justified on any political, ideological, economic or other ground.

319. Several representatives stressed the contribution of the Americas to the development of this principle, beginning as early as 1825 in Latin America in opposition to the policy of the Holy Alliance. Later, international instruments such as the 1933 Montevideo Convention on Rights and Duties of States,[45] the Additional Protocol relative to Non-intervention adopted by the Inter-American Conference for the Maintenance of Peace, 1936,[46] and the Declaration of American Principles, 1938[47] had been adopted. It was also recalled that the prohibition of all forms of intervention had been embodied in article 15 of the Charter of the Organization of American States, signed at Bogotá in 1948, in a formulation which had been reiterated at the Third Special Inter-American Conference, held at Buenos Aires in February 1967. The Inter-American Juridical Committee, in decisions of 23 October 1959 and 23 September 1965, had also contributed to the codification of the principle.

320. One representative, in reviewing the historical evolution of the principle referred to the Russian-Swedish Treaty of Neustadt during the reign of the Czar Peter the Great, and stressed the influence that the French Revolution and the October Revolution had played in the development of this principle. The same representative also referred to the recognition of the principle by Jefferson in 1793. In his view, the proclamation of the Monroe Doctrine in 1823 was not a consistent expression of the principle, since it did not purport to regulate relations between all States but only those between America and Europe; it apparently did not extend to relations between States in the American hemisphere, since one of them had assumed the role of protector and policeman in regard to the others. In his opinion, a proclamation originally concerned with non-intervention had been transformed into one justifying intervention in other States. That

[43] See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

[44] See *United Nations Conference on Consular Relations, Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

[45] League of Nations, *Treaty Series*, vol. CLXV (1936), No. 3802.

[46] *Ibid.*, vol. CLXXXVIII (1938), No. 4351.

[47] See *Preparatory Study concerning a draft Declaration on the Rights and Duties of States* (United Nations publication, Sales No.: 1949.V.4), p. 143.

representative cited a number of examples of his own country's adherence to the principle in various treaties with other States.

2. *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)) and the formulation of the principle by the Special Committee*

321. Most of the representatives referred to the above Declaration. In the opinion of some representatives, the discussion of the principle of non-intervention in matters within the domestic jurisdiction of any State had, of necessity, to involve a consideration of General Assembly resolution 2131 (XX), since the main issue still before the Committee was the role of that resolution in its work.

322. Several representatives recalled that the Special Committee in 1966 had adopted a resolution (A/AC.125/3) originally sponsored by Chile and the United Arab Republic, whereby it had decided to "abide by General Assembly resolution 2131 (XX)" and had instructed the Drafting Committee to "direct its work . . . towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX)".[48] The Drafting Committee at the 1966 session had reported that no agreement was reached on the additional proposals.[49]

323. As regards the weight to be given to General Assembly resolution 2131 (XX), several representatives mentioned the fact that that resolution had been adopted by 109 votes to none, with one abstention. One of those representatives, whose delegation had proposed the item under which the resolution was adopted, said that in the course of its discussion various cases he considered relevant had been mentioned, and the practice of interference by certain Powers in the internal affairs of other States had been severely criticized. In the view of several representatives, the wide support given to the resolution, the absence of opposition and the scope and depth of its content showed that it reflected a universal legal conviction and should therefore be regarded as a rule of conduct for States and as an authentic and well-defined formulation of international law. They considered it a remarkable achievement of compromise and negotiation in the General Assembly.

324. In the opinion of one representative, the majority view was that resolutions of the General Assembly could possess legal force, depending, however, on the intention and the number of States voting in favour. Since the Charter of the United Nations was a treaty binding on all Member States, it followed that a General Assembly resolution interpreting Charter principles, such as resolution 2131 (XX) could be binding on Member States as an authentic interpretation, which was a law-making process. Any organ that followed such a legislative process, one representative said, could amend or annul its decisions if it so wished; but he considered that the greatest caution and respect should be exercised in dealing with a resolution of such significance before there was any question before the Assembly of its alteration. Another representative said that while his delegation would be the last to suggest that a resolution of the General Assembly on any subject should be considered final in the sense of laying down the law for all time, he had not heard any reason in the debate why resolution 2131 (XX), which had been adopted two years ago and which, in his view, remained satisfactory in all its essentials to most States, had ceased to provide a reasonable and acceptable framework, or why its provisions had ceased to hold any further validity. Other representatives found that resolution 2131 (XX) could not justifiably be criticized on the ground of imprecision or vagueness. One of them said that all delegations participating in the work of the Special Committee had had ample opportunity to suggest the drafting amendments which they deemed necessary before the adoption by the General Assembly of resolution 2131 (XX). Even in internal law, whose concepts and terminology were usually more precise than those of international law, he said, it was common to find basic principles formulated in less precise terms than those used by resolution 2131 (XX); the same could be said in international law of terms such as "due diligence". Others observed that those who maintained that the General Assembly had failed to give a legal definition of non-intervention were implying that it did not know what it was condemning, a proposition which was not substantiated by the terms of resolution 2131 (XX). That resolution provided the necessary precision and clarification of the principle; it explained the latter's meaning, enumerated instances of intervention which endangered relations among States, and constituted the absolute minimum that could be laid down on the matter.

325. A number of representatives considered that the political aspect of resolution 2131 (XX) did not make it unacceptable as a statement of the law. One said that politics and law were inseparable in any legal order, and particularly so in the case of the decentralized international legal system where States were more powerful than individuals and institutions. One representative argued that the fact that the text of resolution 2131 (XX) had emanated from the First Committee of the General Assembly, which was responsible primarily for political questions, was not relevant, since in the evaluation of the legal significance of a resolution of the General Assembly it was immaterial which of its Committees had recommended it. There were always experts on the alert to see that General Assembly resolutions complied with legal and drafting requirements. Furthermore, the Sixth Committee could not be regarded as a filter through which all legally relevant decisions had necessarily to pass.

326. In the view of another representative, any attempt to draw a rigid distinction between legal principles and political postulates would thwart the development of international law and deprive it of all means of influencing the course of international relations. In his view, that explained why the study of the seven principles of international law had been entrusted to a Committee consisting of representatives of States rather than to the International Law Commission.

327. As regards the practical application of resolution 2131 (XX), one representative recalled that in 1966 his Government, in a United Nations document, had for the first time invoked the Declaration contained in that resolution as a statement of legal principle and not as a political aim, in connexion with a conference held in a nearby Caribbean country. Other repre-

[48] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 341.

[49] *Ibid.*, paras. 353 and 354.

sentatives also referred to the practical significance of the resolution in relation to what they termed repeated acts of intervention and aggression by that country, in respect of which a request had been made for the convening of a consultative meeting of the Foreign Ministers of the Americas. It was further mentioned that, one year after the adoption of resolution 2131 (XX), the General Assembly had adopted resolution 2225 (XXI) of 19 December 1966, which made a second appeal to States to cease all forms of intervention in the domestic or external affairs of other States, and had urged them "to refrain from armed intervention or the promotion or organization of subversion, terrorism or other indirect forms of intervention for the purpose of changing by violence the existing system in another State". In this connexion, one representative made reference to a new conference of "tricontinental solidarity" which had recently met in a Latin American country and whose decisions, in his opinion, amounted to advocacy of subversion in the American continent and were therefore contrary to resolutions 2131 (XX) and 2225 (XXI).

328. On the other hand, some representatives recalled that their Governments had supported General Assembly resolution 2131 (XX) out of agreement with the fundamental propositions set out in its text, but they made it clear again, as they had when the resolution was adopted and several times thereafter, that they regarded the Declaration as a highly significant statement of the attitude and political view of the General Assembly, and not as a declaration of the legal principle involved. Some delegations' attitude towards resolution 2131 (XX) in the General Assembly was to be explained by their awareness of the existence of the Special Committee and of its mandate to formulate the legal principle of non-intervention in matters within the domestic jurisdiction of any State for inclusion in a declaration. One of these representatives, while acknowledging that the General Assembly had been far from unaware of the political implications of the Special Committee's task, stated that nevertheless General Assembly resolution 1815 (XVII) and the other resolutions referred to in the Special Committee's mandate showed that that task was of a juridical character; to understand it in any other manner would be, in his view, to falsify the terms of reference and frustrate *in radice* the purposes which a declaration on the seven principles of international law was intended to serve.

329. One representative indicated that he could not accept the view that an Assembly resolution interpreting Charter principles was binding on Members as a description of the law as it stood now or as it should stand. Although the General Assembly was constantly called on to interpret the Charter, its decision, and the interpretations on which they were based, were not, apart from exceptional cases, legally binding on Member States. For some representatives, no resolution of the General Assembly, however lofty in purpose and solemn in character and form, could be regarded as representing the final and immutable word on any subject. It followed, in their view, that whenever the Assembly offered expert bodies such as the Special Committee the opportunity of reviewing its action in any field, it was the duty of those bodies to examine the material made available to them and, particularly in those cases where their advice had not been previously sought, to make the necessary recommendations to perfect and clarify the text. These representatives believed that the adoption by the Special Committee in 1966 of a resolution deciding to "abide by" General Assembly resolution 2131 (XX) had been unwise, but that that resolution of the Special Committee no longer hampered it, in view of the adoption of a compromise text in operative paragraph 6 of General Assembly resolution 2181 (XXI).

330. In the view of several representatives, who maintained the criticisms they had made at the 1966 session of the Special Committee, the vagueness of some of the language of resolution 2131 (XX), in particular "external affairs" and "civil strife", made it unacceptable as a statement of law properly formulated for inclusion in such a declaration. For one representative, resolution 2131 (XX) was defective from a juridical point of view, in that it did not sufficiently distinguish between the various situations that could arise; in his view, the wording of its operative paragraphs seemed to prohibit conduct which was common in fields like economic relations, or at least did not distinguish between legitimate actions and genuine intervention in those areas. In his opinion, that showed that the text of resolution 2131 (XX) was too sweeping and vague to serve as a legal norm applicable to all situations, in regard either to what it protected or to what it prohibited. Another representative found no defence for the resolution in the analogy with national law, since vague language in national legislation deliberately opened the door to judicial law-making, which was not the case at the international level; the principles that the Special Committee was trying to formulate would be invoked unilaterally, and there would normally be no established international body empowered to decide with binding force whether those principles had been rightly invoked.

331. Another representative said that, though political reality was at the basis of any law-making process, it did not necessarily follow that a decision taken through procedures of political character would of itself become law. A society based on the principle of the rule of law was provided with an intricate system of law-making; although it could appear tedious and frustrating that urgent political needs should be made subject to technical and exacting processes of law-making before becoming law, that process was inevitable in order to guarantee a consistent system of law. The fact that, in his view, international society had a less complicated system of law-making, and one in which politics played the greater part, was not sufficient to make him subscribe to the view that a resolution of the General Assembly could be or ought to be regarded *ipso facto* as a rule of law.

3. *The question of the Special Committee's mandate*

332. It was agreed that the Special Committee's mandate in connexion with the principle of non-intervention in matters within the domestic jurisdiction of any State was contained in General Assembly resolution 2181 (XXI). There were differences of view, however, concerning the interpretation of that mandate.

333. Some representatives considered that the meaning of resolution 2181 (XXI) was perfectly clear; unless the Special Committee was able to agree on new elements for the formulation of the principle, it would have to include all the operative paragraphs of Assembly resolution 2131 (XX) or, in the view of some other representatives, those legal rules which had been incorporated in it, as they stood. That resolution, in the view of some representatives, constituted the best possible formulation on the subject that it was possible to achieve at the present stage, and one representative said that that had been his delegation's view when it had introduced the resolution as a draft in the General Assembly. The Special Committee, it was argued, should not consider any proposals which would limit or diminish the area of agreement expressed in the text of the resolution, but should examine only additions to that text; one representative said that he could support only such additions as would reinforce the guarantees of respect for the principle and attach responsibility to States violating it. If no new elements could be added to the contents of resolution 2131 (XX) without changing its wording, another observed, the Special Committee would have to leave it to the General Assembly to agree on the formulation that the Special Committee had been asked to make, unless it were decided to include new aspects by arriving at a new agreement by majority vote, on the basis of the General Assembly's rules of procedure and of resolution 2181 (XXI). One representative, while supporting a similar view, nevertheless expressed his willingness not to object to exceptions which might be proposed to rules contained in resolution 2131 (XX). Another suggested that the decision on which proposals ought to be discussed should be taken according to the number of sponsors of each.

334. Several of the foregoing representatives referred to the resolution adopted by the Special Committee in 1966 in which it decided to "abide by General Assembly resolution 2131 (XX)"; that decision had been taken note of by the Assembly in resolution 2181 (XXI), and in their view still governed the proceedings of the Special Committee, which was the same body as that which had met in 1966. The Special Committee's resolution was in complete harmony with resolution 2181 (XXI) and the two resolutions together should therefore be the basis of work.

335. On the other hand, other representatives contended that the Special Committee should not simply incorporate resolution 2131 (XX) in its own text, but should include the whole legal content of the resolution that was relevant to the principle; otherwise the risk would be incurred of serious overlapping and conflict with statements relating to the other principles before the Special Committee, including consensus statements. The Special Committee was, in their view, free not only to add to that content but if possible to improve on the language of the resolution or the order in which the different points were dealt with. They believed that the Special Committee's mandate, as stated in resolution 2181 (XXI), was wide enough to enable it to engage in a full discussion of legal substance. The General Assembly, which had adopted resolution 2131 (XX), had also decided to entrust the legal formulation of the principle to the Special Committee. One representative argued that it was erroneous to consider that the only proposals admissible would be proposals aimed at widening the area covered by the prohibition of intervention, i.e., those which added to the restrictions on the activities of States already envisaged in resolution 2131 (XX). Widening the scope of the principle and widening the area of agreement were two different things. He interpreted paragraph 6 of resolution 2181 (XXI) as meaning that the Special Committee must consider all proposals submitted to it since 1964, discuss them on their own merits and compare the net result obtained, namely, the points on which general agreement was attainable or had been attained, with the terms of resolutions 2131 (XX).

336. Some of these representatives considered that the Special Committee had been ill-advised in 1966 to bind itself by adopting a procedural resolution before it had considered the substance of the proposals and amendments submitted to it; that resolution had led mainly to procedural arguments. That resolution, in their view, could not and should not bind the Special Committee with respect to its work at the present session, since a new mandate had been given to it by operative paragraph 6 of General Assembly resolution 2181 (XXI). That mandate, it was said, had been worked out by way of compromise and had been accepted by their Governments on the understanding that the Assembly resolution was intended to give—and did in fact give—more latitude, for discussion of the substance on many legal aspects of the principle that would still have to be examined, than the Special Committee had allowed itself at its 1966 session. The Special Committee's task was to consider those legal aspects, on the basis of the work already done by the General Assembly in resolution 2131 (XX), so as to arrive at a legal formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State. One representative urged that in the study of the principle full use should be made of all sources of knowledge of the law, among which particular attention should be paid to the Charter of the United Nations, a number of General Assembly resolutions including resolution 2131 (XX), the Covenant of the League of Nations, and numerous legal instruments adopted by the American States.

4. *Comments on the proposals submitted to the Special Committee*

337. One representative said that under General Assembly resolution 2181 (XXI), the Special Committee had before it, in theory, the proposals submitted jointly in 1966 by Australia, Canada, France, Italy, the United Kingdom and the United States by Czechoslovakia in 1966, jointly in 1966 by Australia and Italy and by the United Kingdom in 1967 (see paras. 302-306 above). Other representatives considered that the proposals before the Special Committee included not only the proposals referred to above but also all other proposals on the principle set out in the report on the Special Committee's 1966 session.[50]

338. In the view of several representatives, the question was whether there were any proposals before the Special Committee which aimed at widening the area of agreement already expressed in resolution 2131 (XX). In this respect, one representative took the view that there were no such proposals before the Special Committee. In the opinion of another representative, the proposal of 1966 by Australia, Canada, France, Italy, the United Kingdom and the United States had been based on what its authors regarded as the relevant parts of resolution 2131 (XX), with some additional points. Another representative referred to the proposals submitted by India, Lebanon, the United Arab Republic, Syria and Yugoslavia in 1966,[51] the revised version of which[52] he commended to the Special Committee if any additional paragraphs or provisions were

[50] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230.
[51] *Ibid.*, para. 276.
[52] *Ibid.*, para. 278.

to be considered in connexion with the text of resolution 2131 (XX); in his view, that revised proposal sought to strengthen the provisions of the resolution by adding three paragraphs, and might provide a possible avenue for widening the areas of agreement already reached.

339. In relation to the United Kingdom proposal contained in document A/AC.125/L.44 (see para. 306 above), divergent views were expressed. Some representatives were of the opinion that not all the relevant elements in resolution 2131 (XX) were embodied in that proposal, and that it could not be considered to be aimed at, or capable of, widening the area of agreement expressed in resolution 2131 (XX), but would rather have the effect of narrowing that area. They said that the proposal made no reference to the condemnation expressed in operative paragraph 1 of resolution 2131 (XX) of intervention in the external affairs of States, or against the personality of the State or against its political, economic or cultural elements, nor to the provisions in operative paragraph 3 of the resolution which stated that the use of force to deprive peoples of their national identity constituted a violation of their inalienable rights and of the principle of non-intervention in matters within the domestic jurisdiction of any State. One representative regretted that reference to operative paragraph 4 of the resolution had been relegated to the preambular part of the United Kingdom draft declaration, which could not have the same force as the operative part. It was further pointed out that the provision of operative paragraph 5 of the resolution that "every State has an inalienable right to choose its political, social and cultural systems, without any interference in any form by another State" had been replaced in the proposal by a reference to the right of every State "freely to choose the form and degree of its association with other States", a provision which, if intended to cover the same element, was rather weak and ambiguous. Some also objected to the omission of any reference to operative paragraph 6 of the resolution, dealing with the prohibition of foreign pressure in respect of the right of self-determination and independence of peoples and nations, and the replacement of operative paragraph 8 by what was said to be less precise language.

340. In reply, several representatives said that, although the proposal did not apparently reproduce all the elements contained in resolution 2131 (XX), it was a part of a comprehensive draft declaration on all seven principles of international law referred to the Special Committee, in which it was undesirable to include repetitive provisions under several principles. The principle of non-intervention in matters within the domestic jurisdiction of any State was closely related to the other principles, especially the principle prohibiting the threat or use of force, that of sovereign equality of States and that of equal rights and self-determination of peoples, and it was desirable, they thought, to make it clear in an integrated draft declaration that each principle required to be construed in the context of the others. On closer examination, it was said, it could be seen that the provisions of General Assembly resolution 2131 (XX) apparently omitted from the proposal were covered by the statements of the other principles or in the preamble, which in their view had as much force as the remainder of the text. Paragraph 1 of the proposal avoided the confusion reflected in previous debates of the Special Committee concerning the phrase "internal or external affairs of any other State", the omission of the phrase "external affairs" being furthermore due to reasons of substance (see para. 346 below). All interventions, armed or otherwise, directed against a State, its personality and political, economic and cultural elements, were condemned in the proposal, as in the resolution; the United Kingdom proposal, however, improved on operative paragraph 1 of the resolution by defining the rather loose term "personality of the State" as its territorial integrity or political independence, and by expanding the idea of armed intervention and attempted threats by declaring as illegal, and not merely condemned, all acts of intervention, direct or indirect, overt or covert.

341. In paragraph 2 of the proposal, all that was omitted was the reference to the aim of securing advantages of any kind, a statement that in their view was too imprecise for an instrument of international law. The use of force to deprive peoples of their national identity, referred to in operative paragraph 1 of the resolution, was indirectly covered, it was said, by the second sentence of paragraph 1 of the proposal, which spoke of the right of every State freely to choose the form and degree of its association with other States. Operative paragraph 4 of the resolution, some representatives stated, differed materially from other paragraphs in that it was purely of an expository nature, and contained three elements: the necessity that obligations under the principle be observed, the illegal character of intervention, and the possible creation of situations that would menace international peace and security. The first and last of these elements were considerations which in their opinion were relevant to several of the principles, and it was appropriate therefore to deal with them in the preamble, as had been done in the proposal; the illegal character of intervention was clearly stated in paragraph 2 (*a*) of the proposal, although the exact language of operative paragraph 4 of resolution 2131 (XX) had not been followed. With regard to the right of every State to choose its political, economic, social and cultural systems without reference in any form by another State, some representatives considered that it was covered in paragraph 1 and 2 (*b*) and (*e*) of part IV of the proposal. They said that the provisions in the resolution on self-determination were included under part VI in the draft declaration, notably in paragraph 1, and also said that in the proposal the term "State" covered both individual States and groups of States. They also pointed out that operative paragraph 8 of the resolution was repeated in virtually the same form in paragraph 3 of part I of the proposed draft declaration. Finally, they argued that, even if it was assumed that the expression "widening the area of agreement" related only to proposals which sought to add something new or to strengthen resolution 2131 (XX), the proposal in document A/AC.125/L.44 evidently met that test, for example, by making intervention "illegal" instead of merely "condemned".

5. *Content of the principle*

(a) *General prohibition*

342. Several representatives agreed to the inclusion in the formulation of the principle of the opening sentence in operative paragraph 1 of resolution 2131 (XX) that "no State has the right to intervene ... in the ... affairs of any other State". Some representatives declared that intervention in the internal or external affairs of States, irrespective of reasons or motives, was prohibited by international law. One representative considered it necessary to state the various motives which, if established, proved an intention of intervention, however beneficial the results to the State whose sovereignty or independence were thereby violated or threatened. Other representatives considered, however, that the words "for any reason whatever" in operative paragraph 1 covered all motives and that no further elaboration was necessary.

(b) *Intervention in the external affairs of States*

343. Some representatives expressed support for the provision of operative paragraph 1 of General Assembly resolution 2131 (XX) which prohibited intervention in the "external affairs" of other States.

344. Some representatives pointed out that intervention in the external affairs of other States was prohibited by such international instruments as the Charter of the Organization of American States, the Charter of the Organization of African Unity, the Warsaw Treaty, the Bandung Declaration and the draft Declaration on Rights and Duties of States.[58] Those provisions, they said, were justified because it was difficult, in laying down the prohibition of intervention, to draw a distinction between the internal and the external affairs of States; most cases of intervention in their view involved both internal and external aspects.

345. As an illustration of intervention in the external as well as the internal affairs of another State, one representative cited the question of recognition with regard to which his country had had occasion to reject attempts at intervention. His country, he said, followed the Estrada Doctrine, under which it would be a denial of the sovereignty of other nations to adopt an attitude which would amount to passing judgement on the legal status of the political régime in another country. On that basis, his Government confined its action to maintaining diplomatic relations with other countries in so far as it deemed it appropriate, without claiming to adjudicate on the right of a foreign country to accept, maintain or replace its Government or its authorities. Other representatives expressed the view that, although a State was entirely free to establish or break off diplomatic relations with another, if it sought or threatened to exercise that right in order to influence another State in establishing or not establishing relations with a third State or in order to bring about the subordination of the exercise of sovereign rights by the other State or to secure advantages of any kind, that action would amount to intervention.

346. On the other hand, some representatives maintained that it was not clear what was involved in intervention in the "external affairs" of another State. One of these representatives said that, since diplomacy was the art of persuasion and conciliation, it required constant contacts at all levels of Government; the primary function of an ambassador in a foreign capital was to represent the views of his own Government to the Government to which he was accredited, with a view, if possible, to aligning the views of the two Governments on outstanding issues in international relations, and that function of necessity required that he should seek to persuade and to influence those with whom he was in daily communication. In his opinion, that could surely not be considered as intervention in the external affairs of the country to which the ambassador was accredited. Nor did the attempt to persuade other delegations in the Special Committee amount to intervention.

347. Some of the delegations which found difficulty in accepting a formulation prohibiting intervention in "external affairs" did so because they considered that such a formulation was superfluous. The permissibility of an action by one State in respect of another depended, it was said, much less on whether the question came under the heading of the internal or external affairs of the latter than it did on the nature of the action taken and the means employed by the former. Another representative remarked that the types of action enumerated in resolution 2131 (XX) were in any case prohibited, so that it was irrelevant whether they were taken in respect of the internal or the external affairs of another State.

348. In the view of one representative, the Estrada Doctrine was aimed against interference in civil strife. In his opinion, that doctrine somewhat unrealistically regarded any recognition of a Government as outside interference; he nevertheless thought that that classification was probably entirely justified in regard to premature recognitions, an idea which in his view might perhaps be added to the Special Committee's text.

(c) *Armed intervention; the organization, assistance, fomenting, financing, incitement or toleration of subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State; other forms of interference*

349. Several representatives indicated their support for the provisions of resolution 2131 (XX) condemning or prohibiting armed intervention or the organization, etc. of subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State. In the view of some representatives, armed intervention constituted the most serious form of violation of the principle, since it endangered international peace and security.

350. The dangers of indirect intervention and subversion were also stressed by some representatives. One said that, since armed intervention was overt, it was likely to fail, whereas covert subversive or terrorist activities organized from outside a State were more dangerous and should therefore be prohibited in the most absolute terms. Another said that indirect intervention was especially dangerous to developing countries, which needed to direct all their energies towards development but whose efforts were often frustrated by external intervention; from time to time they were subjected to military revolutions, fomented from outside and carried out by a small number of troops, directed against a Government whose policy or economic aims did not suit certain foreign States. There were also cases, he thought, in which power had been seized by a foreign State through subversive intermediaries in the form of popular resistance movements, or through terrorists, *maquisards* or guerrilla forces. Other representatives, however, stressed that national liberation movements could not be considered to be subversive activities.

351. Some representatives also expressed support for the condemnation in paragraph 1 of the resolution of all forms of interference, other than armed intervention, or attempted threats against the personality of the State or against its political, economic and cultural elements.

[58] *Ibid., Fourth Session, Supplement No. 10*, part II.

(d) *Coercive measures*

352. Some representatives indicated that coercive measures against a 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, as referred to in operative paragraph 2 of resolution 2131 (XX), constituted another form of intervention. One representative, as examples of such measures, referred to economic pressures calculated to influence the policies of another country or designed to ensure control of essential sectors of the national economy. The economic dependence of former colonial countries on the metropolitan Powers, he said, enabled those Powers to exert political pressure on them. In the view of some representatives, technical assistance and aid could be offered as a cloak of intervening in the domestic affairs of other States, and such a use of them should be prohibited as a form of intervention. It was pointed out that the word "coerce" was used in the resolution, so that examples given in which one State might properly try to influence another would not, it was said, be prohibited.

353. Other representatives, however, had difficulty in accepting the wording of the first sentence of paragraph 2 of resolution 2131 (XX). It was difficult, they said, to distinguish between impermissible coercion and the legitimate persuasion and bargaining with which Governments sought to influence each other. A strict legal interpretation of the sentence, one representative remarked, and its application to certain specific conditions could make the normal and customary diplomatic intercourse between States impossible. By way of example, he thought that if a State informed another State that its capital investments in a development programme in the latter State would depend upon its acceptance of a bilateral or multilateral investment agreement, such a statement could well be considered as falling within the type of activities prohibited under paragraph 2 of resolution 2131 (XX) as at present worded, a result which, in his view, assuredly had not been intended. Another representative said that a State which gave aid to another could legitimately seek to influence the recipient State to ensure that the aid was used for the agreed purpose.

354. In the opinion of one representative, the substitution of the word "influence" for the word "coerce" in paragraph 2 of the resolution could be one of the ways of widening the area of agreement already expressed in that text. Some representatives, however, objected to that suggestion, as it would in effect abolish the diplomatic function as defined by the Vienna Convention on Diplomatic Relations.

(e) *Interference in civil strife*

355. Several representatives expressed support for the prohibition in paragraph 2 of resolution 2131 (XX) of interference in civil strife in another State. One representative thought the intention of that provision, which he found reflected in a clearer manner in the United Kingdom proposal, was that if control of a country was divided between warring factions and if no outside interference had taken place, then any form of interference or any encouragement given to any party was prohibited by international law. Nevertheless, he did not consider that that rule prejudiced the right of a legally constituted and internationally recognized Government to seek and receive from a friendly State assistance in preserving or restoring internal law and order. Another representative considered that the test of whether a Government could legitimately be assisted by another State in the maintenance of order was whether that Government enjoyed the confidence of the majority of its people. The hope was expressed that an unduly broad definition would not be given to "civil strife", as doing so might prevent a State from obtaining outside assistance for the maintenance of its territorial integrity and political independence.

(f) *Use of force to deprive peoples of their national identity and the question of self-determination*

356. Some representatives spoke in support of the statement in operative paragraph 3 of resolution 2131 (XX), that the use of force to deprive peoples of their national identity constitutes a violation of the principle of non-intervention in matters within the domestic jurisdiction of any State. Some referred to the connexion between that paragraph and operative paragraph 6, which dealt with self-determination, and which was also supported by some representatives, who considered it essential that the formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State should make an exception for aid to colonial peoples struggling for their emancipation.

357. Other representatives, however, found that the contents of paragraphs 3 and 6 were not easily comprehensible in the legal context of non-intervention. Certain representatives considered that paragraph 3 should be treated in the context of the principle of equal rights and self-determination of peoples or in the context of the principle prohibiting the threat or use of force. It was also said that paragraph 6 should be dealt with in connexion with the principle of equal rights and self-determination of peoples.

(g) *Strict observance of obligations under the principle*

358. Some representatives spoke in support of the content of operative paragraph 4 of resolution 2131 (XX) in a codification or in the progressive development of the principle of non-intervention in matters within the domestic jurisdiction of any State.

359. One representative, however, thought it difficult to agree to the special stress laid on strict observance of the principle, as such observance was equally important for all principles.

(h) *Right of a State to choose its political, economic, social and cultural systems*

360. Some representatives considered that the content of operative paragraph 5 of resolution 2131 (XX), covered also in the Special Committee's formulation of the principle of sovereign equality of States, constituted a positive aspect of the principle of non-intervention in matters within the domestic jurisdiction of any State, since every State had the right to choose and develop its political, economic, social and cultural systems without any kind of interference, provided, in the view of one representative, that such systems respected the fundamental rights and freedoms of the individual. One representative thought that the idea of "interference", though included in the broader idea of "intervention", probably covered acts that were far less serious than armed intervention or subversion, and would include, for example, acts of interference by a diplomat in the internal affairs of the host country, and acts of lesser gravity than those directed towards the violent overthrow of the host Government, such as foreign financing of political parties. Another representative referred in this connexion to foreign assistance to build up the political image of some personality in a State, without necessarily aiming at civil strife. These representatives considered that it would be useful to cover the subject-matter of operative paragraph 5 of the resolution in the formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State and one of them thought it should be given a more prominent position.

(i) *Supremacy of Charter provisions relating to the maintenance of peace and security*

361. As to the provisions of operative paragraph 8 of resolution 2131 (XX), some representatives expressed support for that text, one representative making express reference to the right of self-defence granted by Article 51 of the Charter of the United Nations to States which were victims of an armed attack.

(j) *Freedom of inter-State association*

362. One representative considered that the provisions contained in paragraph 1 of the United Kingdom proposal (see para. 306 above) whereby "every State has the right freely to choose the form and degree of its association with other States" were intended to safeguard against the flagrant form of intervention constituted by the use of threats or other measures amounting to economic coercion in order to persuade one State not to enter into an association with other States. Another representative recalled, in this connexion, that alliances were not compulsory. Still another representative, however, was of the opinion that such a clause should not be included in the formulation.

(k) *Other forms of intervention*

363. Some representatives referred to what they considered other forms of illegal intervention, mentioning action by a State to protect its nationals and its interests in violation of international law, and also intervention under the cloak of the exercise of treaty rights. As regards treaty rights, however, one representative recalled that in accordance with article 19 of the Charter of the Organization of American States, any measures that might be taken in accordance with existing treaties, in order to maintain peace and security, did not constitute violations of the principle of non-intervention.

364. In the opinion of some representatives, the formulation should include a definition of intervention with, in the view of one representative, a list of situations which must be presumed to be brought about by intervention, as well as provisions relating to non-intervention by the United Nations, propaganda against the régime of other States and espionage of all kinds.

D. Report of the Drafting Committee

365. At its 73rd meeting, on 10 August 1967, the Special Committee referred the principle to the Drafting Committee. The Drafting Committee, having referred the principle to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

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

The Drafting Committee took note that there was no report from the Working Group on the principle of non-intervention in matters within the domestic jurisdiction of any State.

E. Comments in the Special Committee on the report of the Drafting Committee

366. A number of representatives expressed regret and disappointment that no formulation of the principle had obtained a consensus in the Drafting Committee. Most representatives, however, discussed the principle of non-intervention in matters within the domestic jurisdiction of any State primarily in connexion with the draft resolution submitted jointly by Argentina, Cameroon, Chile, Czechoslovakia, Ghana, Guatemala, India, Kenya, Mexico, Nigeria, Poland, the Union of Soviet Socialist Republics and Venezuela (see para. 307 above), rather than in connexion with the report of the Drafting Committee. As the discussion of the draft resolution formed part of the final stage of the work of the Special Committee, it is summarized in Chapter VI of this report (see paras. 457-465 below).

Chapter IV. Consideration of the two principles referred to in paragraph 7 of General Assembly resolution 2181 (XXI), with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee

367. The Special Committee discussed the principle of the peaceful settlement of disputes together with the principle of sovereign equality of States at its 74th and 75th meetings, held on 11 and 12 August 1967. It was generally agreed that the Special Committee's task in connexion with these two principles was, according to paragraph 7 of General Assembly resolution 2181 (XXI), to retain the consensus texts adopted in 1966 and to examine additional elements contained in the proposals and amendments submitted to the Special Committee which might broaden the area of agreement embodied in those texts. Some representatives emphasized that the agreement already reached on the two principles was so important that the general framework in which they were expressed should be preserved.

368. Most of the representatives who took part in the discussion declared themselves ready to explore again the possibility of completing the 1966 consensus texts on both principles in order to widen the area of agreement already achieved. It was added, however, that the attempt to find new areas of agreement should not be made at the expense of the texts already adopted by the Special Committee. Certain representatives said that they would hesitate to reintroduce controversial issues which might only deepen the existing divergence of views. Lastly, it was observed that the formulation of the principles should be self-contained so that the reader would not have to refer back to the Charter.

Section 1. 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[64]

A. *Text setting out points of consensus adopted by the Special Committee in 1966*

369. At its 49th meeting, on 21 April 1966, the Special Committee adopted unanimously[65] a text setting

[64] An account of the consideration of this principle by the 1964 Special Committee appears in chapter IV of its report (*Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746) and by the 1966 Special Committee in chapter III of its report (*ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6230).

[65] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 272.

out points of consensus on the principle of the peaceful settlement of disputes which had been recommended by its Drafting Committee. The text adopted read as follows:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 248, section I.*]

B. *Written proposals and amendments*

370. In regard to the above principle, four written proposals or amendments were before the Special Committee at its present session with a view to widening the areas of agreement expressed in the formulation adopted in 1966 by the Special Committee, namely: (*a*) the joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands submitted in 1966; (*b*) operative paragraph 4 of the draft resolution submitted by Chile in 1966; (*c*) the joint proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia submitted in 1966; (*d*) the proposal contained in part II of the draft declaration submitted by the United Kingdom (A/AC.125/L.44). The proposal on this principle, submitted in 1966 by Czechoslovakia[56] was not maintained at the 1967 session of the Special Committee, but the sponsor of that proposal stated orally that paragraph 1 of the consensus text should be made more imperative by stipulating that only peaceful means were admissible. A note at the end of the draft declaration by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48) explained that the co-sponsors of this declaration recognize the progress made with regard to the principle of the peaceful settlement of disputes without prejudice to the consideration of any additional proposal with a view to widening the areas of agreement on that principle. The written proposals or amendments before the Special Committee in 1967 are given below in the order in which they were submitted.

371. 1966 joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 159.*]

372. Operative paragraph 4 of the draft resolution by Chile submitted in 1966:

[*For the text of the draft resolution, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 160.*]

373. Joint proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia submitted in 1966:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 161.*]

374. The proposal by the United Kingdom (A/AC.125/L.44, part II) reproduced the 1966 agreed formulation with the following changes: (*a*) the words "with respect to existing or future disputes" were inserted after the word "parties" in paragraph 5 of the 1966 formulation; (*b*) paragraph 6 of the 1966 formulation was subsumed in the general provision in part VIII of the draft declaration contained in the proposal; (*c*) new paragraphs 6, 7, 8 and 9 were added to the 1966 formulation. The proposal read as follows:

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, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the 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 with respect to existing or future disputes shall not be regarded as incompatible with sovereign equality.

6. Such procedures may include reference to the International Court of Justice or other tribunals by virtue of agreements already in existence or which may be concluded in the future.

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

(*a*) Unless they are capable of settlement by some other means, legal disputes should, as a general rule, be referred by the parties to the International Court of Justice, 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 with as few reservations as possible;

(*b*) States should, as far as possible, include in the bilateral and multilateral agreements to which they become parties, provisions concerning the specific peaceful means by which they desire to settle their differences; in particular, 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 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*) States should give renewed consideration to the desirability of adhering to existing multilateral conventions, whether general or regional, providing means or facilities for the peaceful settlement of disputes, such as the Permanent Court of Arbitration, the American Treaty on Pacific Settlement of 30 April 1948, the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, and the Protocol of the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity, signed at Cairo on 21 July 1964.

8. Members of the United Nations and United Nations organs shall continue their efforts in the field of the codification and progressive development of international law, with a view to strengthening the legal basis of the judicial settlement of disputes.

9. The competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter of the United Nations 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 are preserved.

[56] *Ibid.*, para. 158.

C. *Debate*

1. *General comments*

375. Few general comments were made on the principle of the peaceful settlement of disputes at the 1967 session of the Special Committee. This principle, embodied in Article 2, paragraph 3, of the Charter, was considered a corollary of the prohibition of the threat or use of force in international relations. Its 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 was also generally recognized. Some representatives added that peaceful international relations would depend on the way in which this principle was applied in international life. One representative said that the principle required the refusal to resort to war as a means of settlement, the negotiated settlement of disputes, mutual understanding and trust, respect for the interests of others, non-interference in the internal competence of States, the right of any State to take part in the settlement of problems affecting its interests, respect for the territorial integrity of States and the development of economic and cultural co-operation on a basis of mutual advantage.

376. It was also emphasized by certain representatives that the formulation of the principle must be compatible with the provisions of Chapter VI of the Charter. In this connexion, one representative said that freedom to choose between the different means of peaceful settlement, enumerated as examples in Article 33 of the Charter, was required not only by virtue of the sovereignty and equal rights of the States which were parties to a dispute, but particularly because, as had been amply demonstrated, it was impossible to force States and peoples to accept procedures to which they had not agreed and to implement the results obtained by using such procedures. Other representatives considered that the choice of method was governed by the imperative obligation to keep the peace and to reach a settlement on the basis of judicial equality regardless of political or economic inequalities between the parties.

377. One representative observed that Article 33 of the Charter referred to disputes likely to endanger the maintenance of international peace and security; as its wording indicated, those who drafted the Charter might well have considered that disputes of a minor nature, if left alone, might settle themselves, unlike the disputes referred to in Article 33.

378. Lastly, another representative referred to the particular interest that attached to preserving peaceful relations between the newly independent African States and drew the Special Committee's attention to the recent adoption within the Organization of African Unity, in pursuance of article XIX of its Charter, of a Protocol on Mediation, Conciliation and Arbitration,[57] and also to the conclusion, under the auspices of the International Bank for Reconstruction and Development, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.[58]

2. *Comments on the consensus text adopted by the Special Committee in 1966*

379. Some representatives considered the 1966 consensus text as generally satisfactory and an important achievement. Others said that the agreed text should certainly be maintained because it represented a substantial measure of progress, but that it was necessary to make a further effort to render the text complete. Consequently, they supported the addition to the 1966 consensus text of certain proposals on the principle which had been submitted to the Special Committee. In the opinion of those representatives, the consensus text was far from exhausting the whole content of the principle as established in the relevant provisions of the Charter and by the general practice of States. Some of those representatives stated that the 1966 consensus text was clearly inadequate from the point of view of the codification and progressive development of international law. Lastly, one representative reminded the Special Committee that the text adopted in 1966 was the result of a number of compromises, and that additional proposals should only be evaluated by using the fundamental characteristics of the 1966 consensus text as the point of departure.

380. One representative considered that paragraph 1 of the 1966 consensus text should be made more imperative by stipulating that only peaceful means were admissible. It would contribute, in his view, to eliminating from international life the idea that there was a choice between peaceful settlement or resort to war. Certain representatives supported the idea of stressing in a formulation of the principle that international disputes should be settled "solely" by peaceful means. Others considered it unwise in such a context to introduce any changes into a provision of the 1966 consensus text which reproduced the language of the Charter.

381. One representative expressly approved the insertion of the words "early and just settlement" in paragraph 2 of the 1966 consensus text. Another commended the second sentence of paragraph 2 of that text. A third representative criticized the words "agreed upon by them", in paragraph 3 of the 1966 consensus text, because such a reference, unless it was specified that the agreement might well exist prior to the dispute, might encourage a restrictive interpretation. For the same reason, he did not consider satisfactory the reference to "free choice of means" contained in paragraph 5 of the 1966 consensus text.

3. *Comments on the additional proposals designed to supplement the 1966 consensus text*

382. The comments made on the additional proposals, designed to supplement the 1966 consensus text, are summarized below under the relevant sub-headings. In the debate, in order to facilitate the Committee's work, many representatives refrained from repeating a detailed explanation or justification of their respective positions on the issues involved in such additional proposals.

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

[58] Dated 18 March 1965. See International Bank for Reconstruction and Development, *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (Washington, 1965).

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

383. Paragraph 1 of the proposal submitted in 1966 by Dahomey, Italy, Japan, Madagascar and the Netherlands stated that the principle set forth in Article 2, paragraph 3, of the 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". One representative expressly supported the insertion in the formulation of the principle of a statement of that nature.

(b) *Judicial settlement*

384. The debate on judicial settlement centred on the question whether in the 1966 consensus text specific mention should be made of the role of the International Court of Justice and whether it was advisable to recommend that States should accept the jurisdiction of the Court in accordance with Article 36, paragraph 2, of its Statute. Provisions concerning both these questions were contained in paragraph 3 (*b*) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands and in paragraphs 6 and 7 (*a*) of the proposal contained in the United Kingdom draft declaration (see para. 374 above).

385. The representative of the United Kingdom, explaining his proposal, said that the reference to the International Court of Justice and to judicial settlement in paragraphs 6 and 7 of the proposal was made in a form which reflected the factual circumstances in modern international law and practice, and which did no injury to the position of any member of the Special Committee. He appreciated, although he did not share, the point of view of those who approached with caution and reservations the question of judicial settlement as a whole and of the acceptance of the Court's compulsory jurisdiction in particular, but considered that those reservations ought not to stand in the way of an appropriate reference to the Court's role in the peaceful settlement of disputes. In this connexion, he added that the provision concerning the codification and progressive development of international law contained in paragraph 8 of the proposal was intended to reflect the views of those members of the Special Committee whose reservations about the processes of judicial settlement stemmed in part from the acknowledged gaps in codified international law or its limited state of development. The representative of Madagascar said that the intention of the sponsors of the proposal submitted by Dahomey, Italy, Japan Madagascar and the Netherlands was not to make resort to the International Court of Justice compulsory but simply to draw attention to the fact that that method of settlement should not be overlooked.

386. Some representatives insisted on the desirability of including in the formulation of the principle of the peaceful settlement of disputes an appropriate reference to the International Court of Justice and found it difficult to contemplate the omission of such a reference in that formulation. The Court was one of the principal organs of the United Nations, Member States were *ipso facto* parties to its Statute and the Court's role in the settlement of legal disputes was recognized in many provisions of the Charter itself. In fact, it was said that the International Court of Justice was at the base of the international legal order established by the Charter. Attention was also 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". In this connexion, certain representatives emphasized, the rule of law was an essential foundation of the organized international community, and it was by the rule of law that succeeding generations could be saved from the scourge of war. The important role played by international courts in the law-making process, especially because no legislative organ yet existed in the international community, was likewise emphasized by certain other representatives.

387. The representatives mentioned in the foregoing paragraph considered that the 1966 consensus text was incomplete on the point and supported the relevant additions or alterations of that text contained in the proposal submitted by the United Kingdom. Some of those representatives observed that the source of the provision embodied in paragraph 7 (*a*) of the United Kingdom proposal was Article 36, paragraph 3, of the Charter, which stated, as a matter to be taken into consideration by the Security Council in recommending appropriate procedures for the settlement of disputes, that legal disputes should be as a general rule referred by the parties to the International Court of Justice. Therefore, they considered it incomprehensible that there could be any hesitation in applying the same recommendation also to the parties to the disputes. Another representative supported the United Kingdom's proposed additions to the 1966 consensus text because, in his view, such proposed additions took into consideration the preference for judicial settlement of legal disputes before the International Court of Justice and widened the acceptance of the compulsory jurisdiction of the Court.

388. One representative made the following drafting suggestions in connexion with paragraphs 6 and 7 (*a*) of the United Kingdom's proposed addition: (*a*) paragraph 6 was rather weak and seemed to diminish the value of paragraph 7; (*b*) it might be better to confine reference to judicial settlement and to the International Court of Justice to paragraphs 2 and 7; (*c*) the phrase "unless they are capable of settlement by other means", in paragraph 7 (*a*), should be replaced by the phrase "unless they are settled by other means".

389. 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, in particular of its compulsory jurisdiction. Certain representatives, in opposing such additions, referred to the reasons given by them in 1964 and 1966. Others expressly said that such changes would be contrary to Article 33, paragraph 1, of the Charter, which stated that States were free to choose from among the means enumerated therein for the peaceful settlement of disputes. It was also argued by certain representatives that respect for the principle of sovereign equality of States required that all the parties to a dispute should express their will to choose the particular means which might lead to the settlement of the dispute. One representative considered that compulsory jurisdiction was a secondary means of setting disputes and that it was on the decline because it was incompatible with the requirements of the contemporary international legal order and the very facts of international life. Another representative expressed the view that the recent decision in the South West Africa case in favour of a colonial Power did not do credit to the International Court of Justice.

390. The representatives mentioned in the foregoing paragraph opposed the relevant proposed additions to the 1966 consensus text. They considered that those additions, and in particular the United Kingdom proposal, changed the balance between the different methods of settling disputes peacefully, as established in the formulation already approved by the Special Committee in 1966. Some of those representatives emphasized that such proposals were not in accordance with the provisions of Chapter VI of the Charter, which did not contemplate, in their view, any special role for the International Court of Justice and judicial settlement in relation to the other means for the peaceful settlement of disputes.

391. One representative expressed the view that the basis of the Special Committee's consideration of the additional proposals concerning the application of the principle should be the principles contained in the Charter which stressed the optional character of judicial settlement by the International Court of Justice and the need for prior acceptance of its jurisdiction by the parties concerned, and, on the other hand, the need to limit reference to the importance of the International Court of Justice and other legal procedures to the minimum in view of the small role the Court and such procedures played in contemporary international life. In his opinion, it might be wise for the Special Committee to leave aside any ideas which did not take realities into account, and for its members to avoid insisting on certain aims which were not at the present juncture acceptable to the majority.

392. Some representatives regretted that the idea of encouraging the acceptance by States of the compulsory jurisdiction of international tribunals had been so much criticized in the Special Committee. They rejected the contention that the acceptance of the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of the Court's Statute conflicted with the principle of sovereign equality of States, and failed to see how there could be any objection to a mere recommendation to States to accept such jurisdiction of the Court. One representative said that the International Court of Justice's decisions were sometimes open to justifiable criticism, but that that was not a sufficient reason for rejecting its jurisdiction. According to him, that would be tantamount to undermining the very principle of the establishment of the Court and to abandoning any idea of improving a situation which was probably open to improvement. Another representative reminded the Special Committee that his country had recently accepted the compulsory jurisdiction of the Court, subject only to the condition of reciprocity, because it believed that the proper course for all peace-loving countries was to demonstrate their faith in an ordered world and not because everything was right with the Court or with the state of international law itself. Some other representatives did not share the view of those that seemed to consider it retrograde to advocate the acceptance of the compulsory jurisdiction of the International Court of Justice on the dubious ground that the number of States bound by such jurisdiction was diminishing.

393. Certain representatives observed that the present composition of the International Court of Justice, and the application by the Court of certain norms of customary international law which the newly independent States did not recognize and in the elaboration of which they had not participated, explained also why many States had misgivings about accepting the compulsory jurisdiction of the Court. According to those representatives, a proper geographical distribution and the representation of the main legal systems and forms of civilization within the Court and an acceleration in the process of progressive development of international law would increase the use made by States of the method of the judicial settlement of disputes. In this connexion, mention was made of the fact that only about one third of the States Members of the United Nations had accepted the compulsory jurisdiction of the Court and in some cases this acceptance had been so restricted by reservations as to make it almost meaningless. This view was not accepted by another representative, who considered that the imperfect or incomplete development of municipal law had never prevented the municipal courts from playing an important role in its application and development, and that the Court's composition was not so unreasonable as to justify discouraging acceptance of its jurisdiction.

(c) *Resort to regional agencies or arrangements*

394. All observations made in connexion with this matter centred around operative paragraph 4 of the draft resolution submitted in 1966 by Chile, which 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.

395. Rejecting the view that States members of a regional agency or arrangement, such as the Organization of American States, were precluded by virtue of the operation of interregional systems from any direct resort to the competent organs of the United Nations to solve their local disputes, the sponsor of the proposal urged the incorporation of his proposal in the formulation of the principle. According to him, although States members of regional agencies should make every effort to settle their regional disputes peacefully by the machinery provided for in regional agencies or arrangements, that could not prevent such States from having direct access to United Nations organs if one State party to the dispute believed that the regional procedures were not capable of settling it. The sponsor added that his proposal was based mainly on the provision contained in paragraph 4 of Article 52 of the United Nations Charter, which specifically stated that the Article in no way impaired the application of Articles 34 and 35 of the Charter, precisely those articles —in particular Article 35—which allowed all States, even States not Members of the United Nations, to bring to the attention of the Security Council and of the General Assembly any dispute to which they were parties. Therefore, the Charter would empower, according to the above-mentioned representative, the competent United Nations organs to take cognizance of regional disputes at any time and at any stage, and to make recommendations on means of settlement in accordance with Articles 36 and 37. Such powers would be exercised, in his view, when a State belonging to a regional agency and party to the dispute believed the regional procedures failed to solve it, or when because of the very nature of the dispute, it considered that it could not be settled within the regional system.

Finally, he considered that the right of States members of regional agencies to resort directly to the competent organs of the United Nations was even more unquestionable in cases falling under Chapter VII of the United Nations Charter. In support of his views, the sponsor of the proposal said that although some inter-American treaties, such as the Charter of the Organization of American States, the Treaty of Rio de Janeiro[59] and the Pact of Bogotá[60] referred to the obligation to resort first to the regional agency, that fact was irrelevant because Article 103 of the United Nations Charter stated that United Nations Charter obligations should prevail in cases of conflict with obligations assumed under any other international agreement.

396. Certain representatives considered justified or viewed with sympathy the Chilean proposal. One of those representatives said that the requirements of Article 52, paragraph 2, of the Charter to make every effort to achieve pacific settlement of local disputes through regional arrangements was difficult to define and was not consistently followed in practice. In this connexion, he referred to the United Nations proceedings in the case of Guatemala (1954), the Cuban crisis (1960), the case of Haiti (1963) and that of Panama (1964). Referring to the situation within the Organization of American States, he added that, by virtue of Article 103 of the United Nations Charter, in the event of a conflict between the obligations laid down in article 20 of the Charter of the Organization of American States, article 2 of the Treaty of Rio de Janeiro and part II of the Pact of Bogotá, and obligations assumed by the States as Members of the United Nations, the obligations under the Charter should prevail. Among those representatives, another was of the opinion that the word "direct" in the Chilean proposal should be deleted, since it might give rise to misunderstanding and controversy in relation to the operation of basic instruments of regional agencies.

397. Certain other representatives shared the view that before taking a final position on the Chilean proposal they would wish to examine closely the relation of that proposal with the obligation, imposed by paragraph 2 of Article 52 of the Charter on the States members of a regional arrangement or agency, to make every effort to settle a dispute regionally before referring it to the Security Council, though that paragraph said nothing about the General Assembly, and it was not altogether clear whether Article 52, paragraph 4, was intended to modify this rule. If it did not, they said, a member of a regional arrangement or agency could not ignore the arrangement or agency and go direct to the United Nations, or at any rate to the Security Council, in the first instance. Perhaps, they added, in those circumstances it might be preferable to avoid the inclusion of a provision such as that in the Chilean proposal, which paraphrased only part of the Charter provision to which it referred. One of those representatives, after reminding the Special Committee that Article 52, paragraph 2, of the Charter obliged Member States of the United Nations to make every effort to achieve the peaceful settlement of local disputes through regional arrangements or agencies before referring such disputes to the Security Council, said that, in his view, there was no conflict between the provision of the Charter dealing with the peaceful settlement of disputes through regional arrangements and the provisions describing the powers and functions of the Security Council.

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

398. Paragraph 3(*d*) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands, and paragraph 9 of the United Kingdom proposal (see para. 374 above), 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.

399. Some representatives supported the insertion in the formulation of the principle of a provision emphasizing the desirability of fuller exercise by the competent organs of the United Nations of the powers already vested in them by the Charter in respect to the peaceful settlement of disputes. It was said that that would contribute to ensuring peace as well as to guaranteeing a settlement based upon justice and equity. One representative emphasized that the over-all competence of the United Nations bodies in the field of the peaceful settlement of international disputes was the basic element of the Charter and an essential feature of the United Nations system. Another representative said that situations or disputes endangering the maintenance of peace were a matter of concern not only to the States parties but likewise to the United Nations as a whole. Lastly, another representative was of the opinion that the United Nations had often been successful in peacekeeping operations but had frequently failed to get to the root of the underlying disputes in dealing with them.

(e) *Good offices*

400. Paragraph 2 (*b*) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands listed "good offices" among the peaceful means of settlement of disputes. Certain representatives spoke in favour of the inclusion of "good offices" among the other means of settlement in the formulation of the principle.

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

401. Paragraph 3 (*b*) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands, paragraph 3 of the 1966 proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia, paragraph 7 (*b*) of the proposal contained in part II of the draft declaration by the United Kingdom reproduced in paragraph 374 above dealt with the question of the inclusion in international conventions of clauses relating to the settlement of disputes.

402. Some representatives supported the relevant proposals submitted by the United Kingdom or by Dahomey, Italy, Japan, Madagascar and the Netherlands, stating that general multilateral agreements concluded under the auspices of the United Nations should provide that disputes relating to the interpretation or application of an agreement, and which the parties had not been able to settle by negotiation or any other peaceful means, might be referred on the application of any party to the International Court of Justice or to an arbitral tribunal. In this connexion, it was considered by one of those representatives that there was every reason to deny to the parties to such multilateral conventions the power to decide for themselves how such conventions should be interpreted or applied. The same representatives said that the formulation of the principle of the peaceful settlement of disputes was not directed to avoiding resort to illegal means but rather to ensuring the peaceful settlement of existing or future disputes. In connexion with the drafting of paragraph 7 (*b*) of the United Kingdom proposal, a representative suggested that a better word might be found to replace "desire".

403. Certain representatives did not share these views and opposed the insertion in the 1966 consensus text of a provision of this kind. Others favoured the insertion of a provision along the lines of that contained in the 1966 proposal of Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia.

(g) *Desirability of adhering to existing multilateral conventions providing means or facilities for peaceful settlement*

404. Paragraph 7(*c*) of the United Kingdom proposal contained in part II of its draft declaration (see para. 374 above) provided that States should give renewed consideration to the desirability referred to in the sub-heading above. Certain representatives supported the proposal. One of them made the following drafting suggestions in order to improve the text of the proposal: (*a*) a better word might be found for "renewed"; (*b*) the list of multilateral instruments referred to might be revised; (*c*) a more logical formulation should be devised in order to avoid mixing the list of organs with the list of international instruments establishing them. Another representative said that the United Kingdom proposal was acceptable apart from the part of the sentence beginning with the words "such as the Permanent Court of Arbitration".

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

405. Paragraph 3(*c*) of the 1966 proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands and paragraph 8 of the United Kingdom proposal urged States Members of the United Nations and the United Nations organs to continue their efforts in the codification and progressive development of international law. Some representatives supported the inclusion in the formulation of the principle of a provision to that effect. In this connexion, it was said that the codification of international law contributed in large measure to the certainty of existing law and thereby strengthening the basis for the judicial settlement of disputes.

(i) *Insertion of the words "with respect to existing or future disputes" after the word "parties" in paragraph 5 of the 1966 consensus text*

406. Paragraph 5 of the proposal contained in part II of the draft declaration submitted by the United Kingdom inserted the words "with respect to existing or future disputes" after the word "parties" in the 1966 consensus text. The sponsor of the proposal explained that the phrase had been added to take account of the agreed statement made to the Special Committee by the Chairman of the Drafting Committee in 1966 explaining that "the phrase 'recourse to, or acceptance of, a settlement procedure freely agreed to by 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".[61] Certain representatives expressly considered the United Kingdom proposal an improvement and fully endorsed it. Others opposed the insertion in the 1966 consensus text of such words.

407. Generally speaking, one representative said that an important defect in the 1966 consensus text was the inadequate emphasis placed on the necessity of developing the advance acceptance of obligations concerning the peaceful settlement of disputes. The practice of accepting arbitration or other settlement procedures prior to the emergence of a dispute should be expressly mentioned in the formulation of the principle as being compatible with the sovereignty of States under international law.

(j) *Transfer of paragraph 6 of the 1966 consensus text to the general provisions of a future draft declaration*

408. The draft declaration submitted by the United Kingdom subsumed paragraph 6 of the 1966 consensus text in paragraph 2 of part VIII of that draft declaration, which was a general provision applying to all the principles. The sponsor of the proposal explained that in an integrated draft declaration it was considered unnecessary to maintain the individual saving clauses in relation to each principle if agreement could be reached on a general operative saving clause which would be foreshadowed in the preamble. Only certain individual clauses not wholly covered by the general formula should be retained in an integrated declaration. There was no intention of departing in substance from the saving clause as agreed to, to which he attached particular importance. One representative criticized such a transfer because it implied a modification of the 1966 consensus text on the principle.

Section 2. The principle of sovereign equality of States[62]

A. *Text setting out points of consensus adopted by the Special Committee in 1966*

409. At its 50th meeting, on 22 April 1966, the Special Committee unanimously adopted[63] a text setting out points of consensus which had been recommended by its Drafting Committee. The text adopted read as follows:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 403, section I.*]

[59] Inter-American Treaty of Reciprocal Assistance (United Nations, *Treaty Series*, vol. 21 (1948), I, No. 324).

[60] American Treaty on Pacific Settlement (United Nations, *Treaty Series*, vol. 30 (1949), I, No. 449).

[61] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 249.

[62] An account of the consideration of this principle by the 1964 Special Committee appears in chapter VI of its report (*Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746) and by the 1966 Special Committee in chapter V of its report (*ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6230).

[63] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para 413.

B. *Written amendments*

410. Six written amendments on the principle were before the Special Committee at its 1967 session with a view to widening the areas of agreement expressed in the formulation adopted in 1966 by the Special Committee, namely: (*a*) paragraphs 2 and 3 of the amendment by Czechoslovakia submitted in 1966 and later incorporated in part IV of the Czechoslovakian draft declaration; (*b*) the amendment by the United States submitted in 1966; (*c*) the 1966 amendment by the United Arab Republic; (*d*) the 1966 amendment by Kenya; (*e*) the 1966 amendment by Ghana; (*f*) paragraph 2 (*g*) in part IV of the draft declaration submitted by the United Kingdom (A/AC.125/L.44). A note at the end of the draft declaration by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48) explained that the co-sponsors of this declaration recognized the progress made with regard to the principle of sovereign equality of States without prejudice to the consideration of any additional proposals with a view to widening the areas of agreement on that principle. The written amendments before the Special Committee in 1967 are given below in the order in which they were submitted.

411. Paragraph 2 and 3 of the 1966 amendment by Czechoslovakia, later incorporated in part IV of its draft declaration:

[*For the text of these paragraphs, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 358.*]

412. 1966 amendment by the United States adding the following new numbered paragraph:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 360.*]

413. 1966 amendment by the United Arab Republic:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 362.*]

414. Amendment by Kenya submitted in 1966, adding a new sub-paragraph to paragraph 2 as follows:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 363.*]

415. Amendment by Ghana submitted in 1966 containing a number of modifications to formulate the principle as follows:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 364.*]

416. Addition to paragraph 2, as a new sub-paragraph (*g*), proposed by the United Kingdom in part IV of its draft declaration (A/AC.125/L.44):

> (*g*) Every State has the inalienable right freely to dispose of its national wealth and natural resources; in the exercise of this right, due regard shall be paid to the rules of international law and to the terms of agreements validly entered into.

C. *Debate*

1. *General comments*

417. Few general observations were made on the principle of sovereign equality of States at the 1967 session of the Special Committee. The importance of the principle, first stated in Article 2 of the Charter, was again emphasized as an essential element of an international community of free and independent States. If the principle of sovereign equality of States was observed in international life, respect for all other principles of international law would follow. One representative stressed that the principle must be safeguarded in any international legal order.

418. Some representatives pointed out that the principle applied whatever the inequalities in territorial size, population, economic strength and degree of development of States. It should be understood to mean juridical equality, that is, equality in law and before the law of all States. Therefore, it was added, States should enjoy equal rights and have equal duties, as well as equal capacity to exercise those rights and to perform those duties. No State, however powerful, should claim special treatment or exceptions to this principle.

419. It was also said by some representatives that the principle of sovereign equality of States was closely linked with the struggle for independence and affirmation of national sovereignty. In their view, it was more than ever necessary to affirm the principle in present times, when so many new States had attained independence and wished to take part in international relations on the basis of complete equality. International law must protect these new States against any arbitrary action and must secure real equality for them. In this connexion, one representative said that some Powers imposed unequal economic and trade agreements on new or developing States, and tried to maintain them to the disadvantage of the latter.

420. The sovereign equality of States implied, according to one representative, the right to territorial integrity and political independence, the right to free disposal of national wealth and natural resources, the right to self-determination, and the right to equal legal status and economic opportunity. Another representative was of the opinion that any formulation of the principle should enunciate the right of all States to affirm their national identity and freely to choose their political, economic and social systems.

2. *Comments on the consensus text adopted by the Special Committee in 1966*

421. The consensus text adopted by the Special Committee in 1966 was generally supported, but several representatives shared the view that that text was not entirely satisfactory and needed to be completed. For these representatives, the 1966 consensus text set out the barest essentials, and they felt that a new effort should be made by the Special Committee at its 1967 session to widen its scope and improve its formulation. In this respect, several representatives declared that they were prepared to study once more the amendments before the Special Committee with the aim of reaching a broader consensus on the principle. Some of these representatives expressly rejected any amendment that, in their view, would restrict or reduce the scope of the 1966 consensus text.

422. One representative said that while the proposals and amendments still before the Committee disclosed the existence of different views on the content of the principle, they also brought out the general desire to find a better way of formulating the principle. Another representative considered that the completion of the formulation of the principle should be made in the light of events which had taken place since the adoption of the Charter, bearing in mind those elements which had become accepted in the practice of States and of the United Nations.

423. The formulation of paragraph 2 of the 1966 consensus text might give the erroneous impression, in the opinion of one representative, that the Special Committee's method was, contrary to the purpose of General Assembly resolution 1815 (XVII) and subsequent resolutions on the principle of international law concerning friendly relations and co-operation among States, simply to interpret fundamental general principles rather than to codify or develop them.

3. *Comments on the amendments designed to supplement the 1966 consensus text*

424. The comments made on the amendments designed to supplement the 1966 consensus text are summarized below under relevant sub-headings. In the debate, in order to facilitate the Special Committee's work, most representatives confined themselves to an expression of their views on particular amendments and avoided repetition of statements justifying or explaining their respective positions.

(a) *The right of States to dispose freely of their national wealth and natural resources*

425. Paragraph 2 of the amendment submitted by Czechoslovakia in 1966, the 1966 amendment by Kenya, paragraph 1 of the 1966 amendment by the United Arab Republic and paragraph 2 (*j*) of the 1966 amendment by Ghana as well as paragraph 2 (*g*) in part IV of the draft declaration submitted by the United Kingdom (see para. 416 above), were intended to add to the 1966 consensus text a new provision relating to the right of States to dispose freely of their national wealth and natural resources. The amendment submitted by Kenya added that "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". With the exception of the word "applicable", a similar sentence was contained in the United Kingdom text.

426. The representatives who referred, during the debate, to this question agreed that the 1966 consensus text should be expanded by including a reference to the right of States to dispose freely of their national wealth and natural resources. Some of them considered that this would make a valuable contribution to widening the legal concept of the sovereignty of States. Others insisted on the necessity of such an expansion in view of international events. Lastly, some other representatives agreed to the inclusion of such a provision because of the considerable importance which many members of the Special Committee, particularly those from developing countries, attached to it. Reference was made by certain representatives to the recognition of the right in the Final Act of the United Nations Conference on Trade and Development, General Principle Three,[64] in General Assembly resolutions 1803 (XVII) of 14 December 1962 and 2158 (XXI) of 25 November 1966 on permanent sovereignty over natural resources, and in the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966.

427. Opinions were divided as to the best formulation of such a right. While some favoured the texts proposed by the United Kingdom or by Kenya, others supported the texts submitted by Czechoslovakia, Ghana and the United Arab Republic. In introducing his text, the representative of the United Kingdom indicated that it incorporated a formulation which, though not wholly satisfactory to his delegation, seemed to be the one which had most prospect of securing general agreement, taking into account the measure of progress achieved in the 1966 negotiations. The representative of Kenya explained that he did not insist on the wording of his own amendment and would accept any satisfactory formula relating to the sovereignty over national wealth and natural resources that was acceptable to other members of the Special Committee.

428. Some representatives observed that the right of States to dispose freely of their national wealth and natural resources was an essential attribute of sovereignty and a guarantee of economic independence, considering it entirely compatible with international law and with respect for international obligations. Other representatives said that any State must have complete liberty to exercise the right of disposing of its wealth and natural resources in the interests of its own national development and population, and therefore any agreement it might have concluded which allowed a more powerful country an undue advantage from its wealth and natural resources was null and void in contemporary international law.

429. Lastly, one representative said that the exercise of sovereign powers by developing countries in the disposal of natural resources could raise difficulties in relation to their need for continued foreign support, and he stressed that the exercise of that sovereignty involved other Charter principles such as that of the fulfilment of obligations in good faith and that of the peaceful settlement of disputes.

(b) *The right of States to take part in the solution of international questions affecting their legitimate interests*

430. Provisions referring to a right of the above nature were contained in paragraph 3 of the 1966 amendments submitted by Czechoslovakia and in paragraphs 2 (*c*), (*d*) and (*e*) of the 1966 amendment by Ghana.

431. Some representatives spoke in support of the amendments and advocated the insertion of a provision on the right of each State to take part in the solution of international questions affecting its legitimate interests. That right would include in particular the right to join international organizations and to become party to multilateral treaties governing matters involving the legitimate interests of the States concerned. For those representatives, the exclusion of some States from participating in the life of the international community of nations would mean a denial of the universal principle that States were juridically equal and enjoyed the rights inherent in full sovereignty.

432. Speaking against the inclusion of such amendments, other representatives stated that they seemed to be expressed in such broad terms as to contradict existing rules of international law and the United Nations Charter. One of these representatives considered that, as far as the United Nations was con-

[64] See *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), p. 10.

cerned, the right to join the Organization depended on the requirements for membership established in Article 4 of the Charter.

433. One representative emphasized that the right of States to participate in international life did not mean that admission to international organizations should be automatic. In the case of the United Nations, due regard should be paid to the provisions of Article 4 of the Charter. That right would mean, however, that no arbitrary additional requirements, going beyond those set out in Article 4 of the Charter, could be invented in an attempt to prevent certain States from joining the Organization. He added that non-recognition by some States should not constitute a ground for preventing the States which were not recognized from participating in international life, and said that the right of all States to participate in international life was generally recognized, as, for instance, in the Moscow Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water[65] and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assemby resolution 2222 (XXI), annex).

(c) *The relationship between State sovereignty and international law*

434. Paragraph 3 of the 1966 amendment by Ghana referred to the relationship between State sovereignty and international law. One representative attributed considerable importance to the concept of the subordination of national sovereignty to the requirements of international law and supported the inclusion in the formulation of a provision indicating that all States in the conduct of their relations had the duty to act in conformity with international law.

(d) *The right of States to remove any foreign military bases from their territories*

435. Paragraph 2 of the 1966 amendment submitted by the United Arab Republic stated that each State had the right to remove any foreign military bases from its territory. Two representatives said that this right was fully consistent with the principle of sovereign equality, and should be included in its formulation. In their view, foreign military bases endangered the independence of States, adversely affected the development of international relations and constituted a threat to international peace and security. One of these representatives emphasized that foreign military bases were often maintained against the will of the States concerned or were established as a result of unequal treaties. One representative, however, stated that he was unable to accept the amendment and rebutted the argument adduced in support of it. His Government's experience, when formulating proposals for the redeployment of defence facilities overseas with a view to effecting economies of expenditure and manpower while remaining in a position to discharge its obligations, tended to suggest that such bases were not so universally unwelcome as was alleged.

(e) *Prohibition of actions having harmful effects on other States*

436. A prohibition of the actions referred to above was proposed in paragraph 3 of the amendment submitted in 1966 by the United Arab Republic and in paragraph 2 (*h*) of the amendment submitted by Ghana in 1966. Two representatives expressly supported the inclusion of such a prohibition in the formulation of the principle. One representative opposed the amendments.

(f) *Prohibition of arbitrary discrimination among States Members of the United Nations*

437. An amendment concerning a prohibition of the above nature was submitted in 1966 by the United States. Speaking in support of the amendment, two representatives stressed it as an important aspect of the principle of sovereign equality of States. In their opinion, that principle should prohibit discrimination among States Members of the United Nations as regards the rights and duties of membership. On the other hand, another representative considered that the amendment was restrictive in character and unsuited for inclusion in a general formulation of a principle intended to be universal.

Section 3. Report of the Drafting Committee on the two principles referred to in paragraph 7 of General Assembly resolution 2181 (XXI)

438. At its 75th meeting, on 14 August 1967, the Special Committee referred the two principles to the Drafting Committee. The Drafting Committee, having referred the principles to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

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

and

The principle of sovereign equality of States

The Drafting Committee takes note of the report of the Working Group and transmits it to the Special Committee for its information:

Report of the Working Group (A/AC.125/DC.21)

The Working Group considered the additional proposals referred to it by the Drafting Committee with respect to the principle that States shall settle their international disputes by peaceful means in such manner that international peace and security and justice are not endangered and also with respect to the principle of sovereign equality of States.

All additional proposals were considered on the same basis.

It was understood that questions of drafting were of great importance.

I. *The principle of the peaceful settlement of disputes*

A. *Consensus text*

The Working Group was agreed on the desirability of maintaining the areas of agreement already achieved in the formulation agreed by the 1966 Special Committee.

It considered a proposal to add the word "solely" to paragraph 1 of the consensus text, or alternatively, a new sentence to be added to paragraph 1 which would read as follows:

"Consequently, the threat or use of force shall never be used as a means of settling international disputes."

It also considered another proposal to include in paragraph 5 of the consensus text language based upon the agreed statement by the Chairman of the Drafting Committee at the 1966 session of the Special Committee, namely "with respect to existing or future disputes". No agreement was reached on these proposals.

B. *Additional proposals*

1. There was not disagreement in substance on the proposition that settlement procedures may include in accordance with the Charter reference to judicial or arbitral processes by virtue of existing or future agreements, but no agreement was reached on the inclusion of a provision to this effect in the statement of the principle.

2. There was agreement in substance on the proposition that States should, as far as possible, include in the bilateral and multilateral agreements to which they became parties, provisions concerning the specific peaceful means by which they desire to settle their differences, but no conclusion was reached on the inclusion of this proposition since it was suggested *inter alia* that it was a topic which might be better considered in the context of the codification and progressive development of the law of treaties.

3. No agreement was reached on the inclusion of a specific reference to the settlement of international disputes through the International Court of Justice, on a recommendation to States to give renewed consideration to the desirability of adhering to existing multilateral conventions providing means for the peaceful settlement of disputes, or on a recommendation that the competent organs of the United Nations should avail themselves more fully of their powers in the field of the peaceful settlement of disputes.

4. There was agreement in principle on the proposition that continued efforts should be made in the field of the codification and progressive development of international law with a view to strengthening the legal basis of the settlement of disputes, but there was no agreement on the precise language of this text.

5. The Working Group also considered a proposal concerning the right of States members of a regional agency to have direct recourse to the United Nations. A revised version of this proposal was submitted to the Working Group, as follows:

(1) 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 to the United Nations in pursuit of a pacific settlement of the dispute.

(2) Notwithstanding what is set forth in the preceding paragraph, States which are members of regional agencies or parties to regional agreements shall make all possible efforts to bring about the peaceful settlement of disputes which are of a local character by means of such agencies or agreements before submitting them to the United Nations.

(3) Nevertheless, no provision of the Charter of the United Nations may be interpreted so as to prevent any Member State which is a victim of aggression from having direct resort to the competent organs of the United Nations for the protection of its rights.

There was a general exchange of views on the scope and content of this revised proposal. In view of the lack of time available, it was not possible to reach any conclusions on the desirability of including this concept. There was no agreement on the text of the revised proposal.

II. *The principle of sovereign equality of States*

The Working Group was agreed on the desirability of maintaining the consensus text agreed by the 1966 Special Committee.

A. *Permanent sovereignty over national wealth and natural resources*

Agreement in principle was reached on the desirability of including a provision covering the concept of the right of every State freely to dispose of its national wealth and natural resources, but no agreement was reached on the text of such a provision.

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

1. There was agreement in principle that the statement of the principle of sovereign equality of States could include a reference to the right of every State to take part in the solution of international questions affecting its legitimate interests, but there was no agreement on the formulation of this concept.

2. There was no agreement on a proposal concerning the right of every State to join international organizations.

3. There was no agreement on a proposal concerning the right of every State to become party to multilateral treaties involving its legitimate interests.

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

There was no agreement on the desirability of including, in the present context, a reference to the concept of the prohibition of arbitrary discrimination among Member States of the United Nations as regards the rights and duties of membership.

D. *Foreign military bases*

There was no agreement on the proposal concerning the right of each State to remove foreign military bases from its territory.

E. *Experiments having harmful effects*

Although there was no agreement on the specific proposal that no State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States, there was agreement that this concept might become an acceptable element to be added to the consensus text if certain modifications were made to the text of the proposal.

Section 4. Comments in the Special Committee on the report of the Drafting Committee

A. *Comments in regard to 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.*

439. Statements regarding the report of the Drafting Committee on the principle of the peaceful settlement of disputes were made, in the order indicated, by the representatives of Czechoslovakia, the United Kingdom, Syria, the Netherlands, Australia, Nigeria and Japan at the 79th meeting. At the 80th meeting, the representative of Italy associated himself with the comments made by the representatives of Australia, Japan and the United Kingdom.

440. The representative of Czechoslovakia said that the principle of the peaceful settlement of disputes was satisfactorily formulated in so far as it reaffirmed the previous consensus text, but it would have been better if paragraph 1 could have been strengthened by a statement that international disputes should be settled solely by peaceful means.

441. The representative of the United Kingdom regretted that it had not been possible to reach agreement on additional proposals concerning the principle. His Government, he said, was still committed to the proposals in paragraphs 6 to 9 of his delegation's draft (see para. 374 above).

442. The representative of Syria hoped that further efforts would be made to improve the wording and scope of the formulation.

[65] United Nations, *Treaty Series*, vol. 480 (1963), No. 6964.

443. The representative of the Netherlands reaffirmed his delegation's comment at the 1966 session of the Special Committee. The compromise text was, in his view, not adequate, but perhaps later on it would be possible to broaden the area of agreement.

444. The representative of Australia expressed the hope that eventually the consensus text would contain some reference to the International Court of Justice.

445. The representative of Nigeria considered that the word "solely", or some similar expression, should be included in paragraph 1 of the 1966 consensus text on the principle of the peaceful setlement of disputes. That amendment was justified, he said, since the Special Committee was called on to widen the area of agreement.

446. The representative of Japan regretted that it had proved impossible to widen the area of agreement on the principle of the peaceful settlement of disputes. His delegation urged that the final report of the Special Committee should contain a statement making it clear that the reason why the phrase "with respect to existing or future disputes" in paragraph 5 of the United Kingdom draft (see para. 374 above) had not been added to the 1966 consensus text, was not opposition to its substance but merely the fact that it was regarded as unnecessary because the existing text already covered future disputes.

B. *Comments in regard to the principle of sovereign equality of States*

447. Statements regarding the report of the Drafting Committee on the principle of sovereign equality of States were made, in the order indicated, by the representatives of Czechoslovakia, Syria, Australia and Kenya at the 79th meeting. At the 80th meeting, the representative of Italy associated himself with the comments made by the representative of Australia.

448. The representative of Czechoslovakia said that his delegation considered that the text was incomplete and should include, for example, provisions on the right of any State freely to dispose of its national wealth and natural resources and its right to participate in the settlement of international disputes.

449. The representative of Syria hoped further efforts would be made to improve the wording and scope of the formulation.

450. The representative of Australia said that his delegation would have liked the formulation to include the additional text proposed by the United Kingdom in paragraph 2 (*g*) (see para. 416 above), concerning the right of every State freely to dispose of its national wealth and natural resources.

451. The representative of Kenya particularly regretted that no additional agreement had been reached on the principle, in the formulation of which he would have liked to see included the proposal concerning sovereignty over national wealth and natural resources.

Chapter V. Preambles and general provisions of a draft declaration on the seven principles

452. The aim of formulating a draft declaration on all of the seven principles of international law under study was enunciated by the General Assembly in its resolutions 2103 (XX) and 2181 (XXI). Consequently, some members of the Special Committee, at its sessions in 1966 and 1967, submitted draft preambles for such a declaration, and one member submitted some draft general provisions. These texts were: (*a*) the preamble submitted by Czechoslovakia in 1966; (*b*) the preamble and general provisions submitted by the United Kingdom (A/AC.125/L.44); and (*c*) the preamble submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48). These texts are set out below in the order in which they were submitted to the Special Committee.

453. Preamble submitted by Czechoslovakia in 1966:

[*For the text, see* Official Records of the General Assembly, Twenty-first Session, Annexes, *agenda item 87, document A/6230, para. 25.*]

454. Preamble and general provisions submitted by the United Kingdom (A/AC.125/L.44):

The General Assembly,

Recalling its resolutions 1505 (XV) of 12 December 1960, 1686, (XVI) of 18 December 1961, 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, and 2103 (XX) of 20 December 1965,

Having decided by resolution 1966 (XVIII) and resolution 2103 (XX) to constitute Special Committees to study seven principles of international law concerning friendly relations and co-operation among States,

Having considered the reports of the Special Committee which met at Mexico City in 1964 and in New York in 1966, and having reviewed its own deliberations upon these principles from its fifteenth session to its present session,

Paying tribute to the work of the Special Committees,

Being determined to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained,

Conscious of the need to develop friendly relations among nations and to bring about by peaceful means, and in conformity with the principles of justice and international law, the adjustment or settlement of international disputes or situations which might lead to a breach of peace,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and the improvement of the international situation,

Considering further that the progressive development and codification of these principles, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

Bearing in mind its duty under Article 13, paragraph 1 a, of the Charter to make recommendations for the purpose of promoting international co-operation in the political field and encouraging the progressive development of international law and its codification,

Considering the provisions of the United Nations Charter as a whole and without prejudice to the rights and obligations of Members under the Charter,

Solemnly declares as follows:

VIII. *General*

1. The above principles are interrelated and each principle should be construed in the context of the other principles.

2. Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter.

455. Preamble submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48):

The General Assembly,

Bearing in mind that the determination of the peoples of the United Nations to practice tolerance and live together in peace with one another as good neighbours has been emphasized in the Charter and that the maintenance of peace and security and the development of friendly relations and co-operation among nations are among the fundamental purposes of the United Nations,

Bearing further in mind the urgency and significance of the maintenance and strengthening of international peace based on freedom, equality and justice and the development of peaceful and good neighbourly relations among States irrespective of differences in their political, economic and social systems or the levels of their development,

Noting that the profound political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter of the United Nations give increased importance to the value of the purposes and principles of the United Nations and the necessity of their effective application to present circumstances,

Convinced that the subordination of peoples to foreign dependence, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Considering further that respect for the basic principles of international law concerning friendly relations and co-operation among States is of the greatest importance for the safeguarding of international peace and security and for promoting friendly relations among nations,

Conscious of the significance of the emergence of many new States and of their contribution to the development and application of international law,

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

Recognising the utmost importance of the principles of international law concerning friendly relations and co-operation among States and the obligations arising therefrom, embodied in the Charter of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

Solemnly proclaims the following principles:

456. These proposals were not much discussed by the Special Committee, as no comprehensive declaration was formulated at the 1967 session. To the extent that they were discussed, the remarks of delegations have been summarized above, particularly in paragraphs 339-341 and 408.

Chapter VI. Concluding stage of the Special Committee's session

A. Comments relating to the thirteen-Power joint draft resolution (A/AC.125/L.54) in connexion with the discussion of the reports of the Drafting Committee at the 79th meeting of the Special Committee

457. During the discussion of the reports of the Drafting Committee at the 79th meeting, some delegations made comments on the draft resolution on the principle of non-intervention in matters within the domestic jurisdiction of any State (see para. 307 above), which was submitted jointly by Argentina, Cameroon, Chile, Czechoslovakia, Ghana, Guatemala, India, Kenya, Mexico, Nigeria, Poland, the Union of Soviet Socialist Republics and Venezuela. The draft resolution, after referring to a paragraph in the preamble of the Special Committee's resolution of 18 March 1966[66] and quoting the report of the Drafting Committee at the 1967 session (see para. 365 above), proposed that the Special Committee should decide to include the operative paragraphs of General Assembly resolution 2131 (XX) in the formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State to be incorporated in the draft declaration on the seven principles.

458. The representative of Venezuela said that it was regrettable that it had not been possible to complete the formulation of all seven principles. Nevertheless he hoped that it would eventually be possible to reach agreement on the principle of non-intervention in matters within the domestic jurisdiction of any State, in the light of the draft resolution of which he was a co-sponsor.

459. The representative of India said that the draft resolution, of which his delegation was also one of the sponsors, had been prepared because the Working Group on non-intervention had been unable to submit a report. The Drafting Committee, he declared, had been paralysed by the efforts of some delegations to go back on General Assembly resolution 2131 (XX), even though the Special Committee had been expressly requested, in paragraph 6 of General Assembly resolution 2181 (XXI), to widen the area of agreement already expressed in it.

460. On the other hand, the representatives of the United States, Italy, the United Kingdom, the Netherlands, Australia and France opposed the draft resolution. The representative of the United States said that he would not be able to support the adoption by the Special Committee of the two texts on which the Drafting Committee had reached consensus until a decision had been taken on the very serious issues which in his view were raised by the draft resolution.

461. The representative of Italy said that since 1963 it had been his Government's opinion that it could not accept any text for inclusion in a declaration unless the Special Committee proceeded on a basis of consensus on each of the seven principles and on any general provisions. The draft resolution raised doubts about the intentions of a number of delegations regarding the principle of non-intervention in matters within the domestic jurisdiction of any State; it seemed to suggest that, contrary to its terms of reference, the Special Committee, without discussing the principle in the same way and for the same purpose as the other principles, should insert in the draft declaration a text which had not been properly considered by the Special Committee or the Drafting Committee, either as to substance or to wording. Since the conditions he had mentioned for the Special Committee's procedure seemed unlikely to be fulfilled, his delegation would be unable to comment on the Drafting Committee's reports on any other principles.

462. The representative of the United Kingdom said that the drafting resolution raised grave issues concerning the procedure for working on the basis of general agreement, and that his delegation reserved its position on the reports of the Drafting Committee until those issues had been disposed of.

463. The representative of the Netherlands said that, for the reason given by the representatives of the United Kingdom and Italy, he reserved his delegation's position on the Drafting Committee's proposals until a decision had been taken on the draft resolution.

464. The representative of Australia said that in view of the proposal in the draft resolution to insert in the declaration, by vote instead of by consensus, a

[66] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 341.

text regarded by many members of the Special Committee as legally unsatisfactory and unacceptable, his delegation reserved its position on the consensus texts proposed by the Drafting Committee.

465. The representative of France said that the draft resolution raised questions relating to the basic nature of the draft declaration; consequently, his delegation could take no final position on the reports of the Drafting Committee until a decision on that draft resolution had been taken.

B. Statement by the representative of Kenya in introducing the thirteen-Power joint draft resolution (A/AC.125/L.54) at the 80th meeting of the Special Committee

466. The representative of Kenya, in introducing at the 80th meeting the draft resolution sponsored jointly by Argentina, Cameroon, Chile, Czechoslovakia, Ghana, Guatemala, India, Kenya, Mexico, Nigeria, Poland, the Union of Soviet Socialist Republics and Venezuela (see para. 307 above), made a statement in which he said that the sponsors did not request that immediate action be taken on the draft resolution, it being understood that the draft remained before the Special Committee. The text of his statements, which he requested should be reproduced in the present report, was as follows:

"The submission of this draft resolution has been necessitated by the negative results of repeated efforts to widen the area of agreement expressed in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty contained in General Assembly resolution 2131 (XX). The conclusion to be drawn is that resolution 2131 (XX) is the only formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State which enjoys universal support. It is for this reason that the sponsors of the draft resolution propose that the formulation of this principle as contained in resolution 2131 (XX) be incorporated in the draft declaration on principles of international law concerning friendly relations and co-operation among States. It is our resolve to see that this is done.

"This draft resolution is based on the decision taken by the Special Committee on 18 March 1966. That decision obliges the Special Committee to abide at all stages of its work by General Assembly resolution 2131 (XX). The sponsors of the draft resolution emphatically reject any attempts to derogate from the decision of the Special Committee taken on 18 March, and to obstruct the implementation of the mandate given to the Special Committee by the General Assembly in resolution 2181 (XXI). This is and will remain the firm position of the sponsors.

"On behalf of the sponsors, I wish to state that in view of the Special Committee's decision to adhere to the schedule agreed upon at the beginning of the session, which means that today is the last day of the present session of the Special Committee, the sponsors do not request that immediate action be taken on the draft resolution, it being understood, however, that the draft resolution remains before the Special Committee.

"I have been empowered by the delegations of Algeria, Burma, Madagascar, Syria, the United Arab Republic and Yugoslavia to associate them with the position I have stated with regard to General Assembly resolution 2131 (XX) and its impact upon our work of codification."

C. Comments on the reports of the Drafting Committee at the 80th meeting of the Special Committee

467. After the representative of Kenya had made the foregoing statement, the Chairman asked whether, in view of that statement, those representatives who had expressed serious reservations were prepared to reconsider their positions, so that the Special Committee could unanimously endorse the conclusions of the Drafting Committee. The representatives of the United States, the United Kingdom, France, the Netherlands and Italy said that they were willing to consider the reports of the Drafting Committee on the understanding that they would later have an opportunity of stating their positions on the draft resolution when it was discussed. The representative of France, with whom the representative of the Netherlands agreed, stated that, in a spirit of conciliation, his delegation would not oppose the adoption of the Drafting Committee's report. The representative of Italy withdrew his reservations in the hope that the Special Committee's future work could proceed in such a manner as to allow all the principles to be dealt with on an equal footing, on the basis of full consideration of each principle and the adoption of consensus texts.

468. The representative of Romania, speaking in support of the draft resolution, said that he noted with interest and respect the sponsors' decision not to press their draft resolution to a vote. That had been done in order to promote agreement in the Special Committee. He noted that the draft resolution remained before the Special Committee and would therefore be discussed and put to a vote at the appropriate time.

469. On the other hand, the representatives of Chile, Venezuela, Argentina, Mexico and Guatemala stated that they could not vote in favour of the reports of the Drafting Committee. The representative of Chile expressed dissatisfaction with the progress made by the Special Committee at its 1967 session. No agreement had been reached on such principles as that of non-intervention in matters within the domestic jurisdiction of any State and that prohibiting the threat or use of force, which were of fundamental importance to countries like his own. Although the difficulties had been attributed to lack of time and the vastness of the subject, the real reason lay in the system of unanimity or consensus adopted for the Special Committee's work, as a result of which the opposition of individual members could effectively prevent all progress. There was also insufficient correlation of the social and political aspects involved. He would therefore be unable to approve the Drafting Committee's reports, and would abstain from voting on them unless the Special Committee decided merely to take note of them.

470. The representative of Venezuela said that he appreciated that it was important for the Special Committee to achieve unanimity in its work, but some principles, such as that of non-intervention in matters within the domestic jurisdiction of any State, were of vital importance to countries like his own, and they could not make all the concessions needed for unanimity. The purpose of the draft resolution of which his delegation was a co-sponsor was to permit the Special Committee to continue its work on the formulation of the principles, as requested by the General Assembly in resolution 2181 (XXI). His delegation could not vote in favour of the Drafting Committee's reports, but would abstain rather than vote against them.

471. The representative of Argentina expressed regret at the impasse reached in the Special Committee's work, and associated himself with the statements made by the representatives of Kenya and Chile.

472. The representative of Mexico said he shared the views expressed by the representatives of Kenya, Chile and Venezuela. The Special Committee's procedures left much to be desired, and the poor results it had achieved had prompted him to express reservations, which he maintained, regarding the reports. He proposed that the debate be adjourned until the following day. A discussion ensued, in which the Special Committee was informed that no facilities could be provided for a meeting on the following day (Saturday, 19 August 1967), but the Special Committee could meet again only on Monday, 21 August. Some representatives spoke in favour of extending the session, and some opposed it. The Mexican proposal was then put to the vote, and was rejected by 13 votes to 7, with 8 abstentions.

473. The representative of Guatemala associated himself with the reservations expressed by the representatives of Argentina, Chile, Mexico and Venezuela regarding the reports of the Drafting Committee and said that he would abstain if a vote was taken on them.

D. Decision of the Special Committee regarding the reports of the Drafting Committee

474. After the discussions described above, the Special Committee proceeded to take a decision on the six reports of the Drafting Committee reproduced in paragraphs 107, 161, 231, 285, 365 and 438 above. The representative of Sweden, taking up a suggestion by the representative of Chile, proposed that the Special Committee take note of the Drafting Committee's reports and transmit them to the General Assembly. This proposal was adopted without objection.

E. Adoption of the report of the Special Committee

475. At the 80th meeting, the Rapporteur of the Special Committee, Mr. Milan Šahović (Yugoslavia), introduced the draft report (A/AC.125/L.53 and Add.1-6), stating that it would be completed to take account of the Special Committee's conclusions. The Rapporteur stated that, in the preparation of the draft report, a detailed analysis had been made of the summary records, which contained the views of all delegations, and that he had been concerned to show all the differences of opinion that had arisen in such a way as to be helpful to jurists engaged in drafting a code of international law which would correspond to contemporary needs.

476. The representative of the United States said that his delegation could not remain silent in regard to the inclusion in the draft report of contentious material on such matters as the conflict in Viet-Nam, the national policy of the Federal Republic of Germany, and events in Aden and elsewhere in the Middle East. His delegation made no criticism of the Rapporteur; the polemical material to which he referred, which had nothing to do with the Special Committee's work, had been included at the insistence of one delegation alone. The Special Committee was supposed to be a body of international lawyers, and its task was to codify and develop seven principles of international law. The draft report marked a departure from twenty-two years of United Nations tradition, during which polemical material had been excluded from the reports of the Sixth (Legal) Committee of the General Assembly and of other legal bodies. By breaking that tradition, the Special Committee might have fallen into a situation where, like the Assembly's First (Political) and Special Political Committees, it would no longer be able to have reports containing more than a bare reproduction of proposals and votes, because of inability to agree on a summary of the discussions. The United States delegation would not insist on its right to refuse to agree to the report, but asked that the matter of principle it had raised should be noted.

477. The representative of the United Kingdom, while expressing his congratulations on the draft report, emphasized his delegation's uneasiness about the inclusion in the report of certain remarks concerning current political situations, which in his view were not germane to the mandate of the Special Committee, and he associated himself with the United States representative's remarks.

478. The representative of the Union of Soviet Socialist Republics replied to the representative of the United States that the draft report duly reflected what had taken place during the Special Committee's discussions. The United States representative, he said, regretted that the report contained certain statements that had been made by the USSR representative, but if it had not contained those statements, it would have been inaccurate. What the USSR representative had said about Viet-Nam and the Middle East had been reduced to a minimum, and could not be further reduced. He well understood that the United States delegation did not enjoy reading statements about the war which the United States was waging, but his own delegation had been right to make those statements and the Rapporteur had been right to put them in the report.

479. The representatives of Syria, Poland and Czechoslovakia agreed that what had been said by representatives of Governments in the Special Committee should be recorded in the report. The representative of Czechoslovakia added that it was the Special Committee's task to discuss the various principles entrusted to it in the light of political realities, and that it was therefore indispensable to include in the Special Committee's report the parts of the discussion referred to by the United States representative.

480. Thereafter the draft report was adopted without objection, its completion and final editing being left to the Rapporteur.

F. Statement by the representative of Italy on methods and procedures for future work

481. At the close of the 80th meeting of the Special Committee, the representative of Italy made a statement on methods and procedures for future work. He said that it would be superficial to be fully satisfied

pose for which the Special Committee had been established by the General Assembly. Although the General Assembly had been fully aware of the political implications of the seven principles of international law under study, which indeed constituted the *raison d'être* of a declaration on them, the tasks of the Special Committee were primarily legal, as was shown by the nature of the principles themselves; the Special Committee was in his view intended to be a specialized, technical body of jurists. From that point of view, the methods and organization of the Special Committee's work left much to be desired. Too many principles had been studied at once; the sessions had been too short for thorough exploration of the principles; the periods between sessions had not been put to sufficient use for collective study; there had been insufficient opportunity to examine the arguments of supporters of proposals; in the final stage of each session, there had been too little time to deal adequately with the tasks entrusted to the Drafting Committee and the working groups; and though negotiation of legal formulations was indispensable, it should not be pushed to the point of negating existing rules of international law.

482. The Italian delegation was not able to indicate a solution which would be sure to be feasible and acceptable to all the Governments concerned. Such a solution would require careful reflection and consultation. Some possible courses which could be considered would be:

(*a*) The method of the International Law Commission, whereby the Special Committee would be provided [illegible] the International Law Commission, consisted of Government representatives might, however, give rise to insuperable difficulties with this method;

(*b*) The submission to the Special Committee of working papers on one or more principles (or general provisions), such papers consisting either of drafts and commentaries, or of research;

(*c*) The submission to the Special Committee of reports or working papers prepared by working groups composed of representatives of members of the Special Committee, which would meet between sessions; in the view of the Italian representative, this procedure, if worked out according to a satisfactory formula, might be an improvement over the requesting of written views of Member States in advance, as was done in operative paragraph 4 of General Assembly resolution 1815 (XVII);

(*d*) Longer-range advance planning by the General Assembly, which might decide on two more sessions, at each of which the Special Committee would concentrate on not more than two of the principles on which there was as yet no agreement, without, however, overlooking the four principles on which partial agreement had been reached.

483. There was no comment in the Special Committee on the statement by the representative of Italy.

G. Conclusion of the session of the Special Committee

484. After the Special Committee had observed a minute of silence for prayer or meditation, the Chairman declared that the session was closed.

ANNEX

Membership of the 1967 Special Committee

Country	*Representative*	*Alternates*	*Advisers*
Algeria	Mr. Abdelaziz Karra		
Argentina	Mr. Ernesto de la Guardia	Mr. Marcelo Emilio Delpech	
Australia	Sir Kenneth Bailey	Mr. Bernard J. O'Donovan	Mr. Michael J. McKeown
Burma	U Maung Maung	U Kyaw Min	U Pe Myint Aung
Cameroon	Mr. Paul Bamela Engo	Mr. Jean-Marie Happy-Tchankou	
Canada	Mr. Jean-Louis Delisle	Mr. David Miles Miller	Mr. R. J. McKinnon
Chile	Mr. Edmundo Vargas	Mr. Luis Larraín	
Czechoslovakia	Mr. Vratislav Pěchota Mr. Stanislav Myslil		
Dahomey			
France	Mr. Michel Viraly	Mr. François Renouard	
Ghana	Mr. William Bedford van Lare	Mr. William Waldo Kofi Vanderpuye	
Guatemala	Mr. Eduardo Palomo	Mr. Alberto Dupont-Willemin Mr. Roberto Lavalle Valdes	
India	Mr. K. Krishna Rao	Mr. Natarjan Krishnan	Mr. Kartha P. K. Miss Kemlesh Nath
Italy	Mr. Gaetano Arangio-Ruiz	Mrs. Laura Forlati	Miss Marta Vitali
Japan	Mr. Tamio Amau	Mr. Ribot Hatano Mr. Takehiro Togo	
Kenya	Mr. M. K. Mwendwa	Mr. Raphael Joseph Ombere	
Lebanon	Mr. Souheil Chammas		
Mexico	Mr. Jorge Castañeda	Mr. Sergio González Gálvez	Mrs. Olga Pellicer de Brody
Netherlands	Mr. Willem Riphagen	Mr. Piet-Hein Houben	
Nigeria	Mr. Bashir Alade Shitta-Bey	Mr. S. O. Ilori	
Poland	Mr. Henryk Jaroszek	Mr. Sławomir Dąbrowa Mr. Edward Zdrojowy	
Romania	Mr. Edwin Glaser	Mr. Dinu Mărăsescu	
Sweden	Mr. Hans Blix		
Syria	Mr. Adnan Nachabe		
USSR	Mr. V. M. Shkhikvadze	Mr. Dimitri Kolesnik	Mr. Y. D. Ilyin
United Arab Republic	Mr. Ahmed Osman	Mr. Omar Sirry	Mr. Mohammed Ibrahim Shaker
United Kingdom of Great Britain and Northern Ireland	Mr. Ian M. Sinclair	Mr. John Leslie Sanders	
United States of America	Mr. Herbert Reis		Mr. Robert B. Rosenstock Mr. Robert Starr Mr. James L. Tull
Venezuela	Mr. Armando Molina Landaeta		
Yugoslavia	Mr. Milan Šahović		Mr. Obrad Račić

DOCUMENT A/C.6/383

Letter dated 8 November 1967 from the President of the General Assembly to the Chairman of the Sixth Committee

[*Original text*: *English and French*]
[*13 November 1967*]

I have the honour to transmit to you annexed hereto a letter addressed to you by the Chairman of the Fourth Committee.

I should be grateful if you would bring the question raised in this letter to the notice of the members of the Sixth Committee.

(*Signed*) Corneliu Manescu

ANNEX

6 November 1967

At its 1704th meeting, on 27 October 1967, in the course of its consideration of the question of Southern Rhodesia, the Fourth Committee decided to request its Chairman to transmit to the Chairman of the Sixth Committee, in connexion with that Committee's consideration of the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", the statements made by the representative of South Africa at the 1697th and 1704th meetings, on 19 and 27 October. These statements concerned the presence of South African armed forces in Southern Rhodesia.

This decision was duly reported to the General Assembly in the Fourth Committee's report on the question of Southern Rhodesia (A/6884) and was taken note of by the Assembly at its 1594th plenary meeting on 3 November 1967.

Accordingly, I have the honour to transmit to you herewith the records of the 1697th and 1704th meetings of the Fourth Committee, which contain the statements in question.

(*Signed*) George J. Tomeh

DOCUMENT A/C.6/L.630

Administrative and financial implications of the draft resolutions contained in documents A/C.6/L.627 and A/C.6/L.628 and Add.1-3

Note by the Secretary-General

[*Original text: English*]
[*21 November 1967*]

1. Under the terms of each of the two draft resolutions at present before the Sixth Committee, the General Assembly would request the reconvening of the Special Committee on Principles of International Law Concerning Friendly Rela-