

## DECISION OF THE FIFTH COMMITTEE

3. The Committee decided to inform the General Assembly as follows:

(a) Should the proposal to hold a four-week winter session of the International Law Commission in Monaco in January 1966 be approved, it would be necessary for the Secretary-General to seek additional appropriations under the following sections of the 1966 budget in a total amount of \$27,000: section 1 (Travel and other expenses of representatives and members of commissions, committees and other subsidiary bodies); section

3 (Salaries and wages); section 5 (Travel of staff); section 10 (General expenses).

(b) In accordance with the provisions of paragraph 2 (e) of General Assembly resolution 1202 (XII) of 13 December 1957, the Government of the Principality of Monaco has expressed its willingness to defray those additional costs. Accordingly, the estimates under income section 3—General income—would be increased by the same amount. Bearing in mind the observations and recommendations of the Advisory Committee in paragraph 7 of its report (A/6128), the Secretary-General would make every effort to keep actual expenditures below the level of the initial provisions.

## DOCUMENT A/6090

## Report of the Sixth Committee

[Original text: Spanish]  
[4 November 1965]

## INTRODUCTION

1. At its 1336th plenary meeting held on 24 September 1965, the General Assembly decided to include the item entitled "Reports of the International Law Commission on the work of its sixteenth and seventeenth sessions" in the agenda of its twentieth session, and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this agenda item from its 839th to its 853rd meetings, held from 29 September to 15 October 1965.

3. At the 839th meeting, the Chairman welcomed Mr. Milan Bartoš, Chairman of the International Law Commission at its seventeenth session, on behalf of the Sixth Committee and invited him to present the Commission's report on the work of that session (A/6009). At the 842nd and 851st meetings, held on 6 and 14 October, respectively, Mr. Bartoš replied to the questions asked and comments made by certain representatives during the debate.

4. At the 843rd meeting, the Chairman welcomed Mr. Roberto Ago, Chairman of the International Law Commission at its sixteenth session, on behalf of the Sixth Committee and invited him to present the Commission's report on the work of that session (A/5809). At the 851st meeting, held on 14 October, Mr. Ago replied to the comments made by certain representatives during the debate.

5. The report of the International Law Commission on the work of its sixteenth session consisted of five chapters, dealing respectively with the organization of the session, the law of treaties, special missions, the programme of work and organization of future sessions, and other decisions and conclusions of the Commission.

6. The report of the International Law Commission on the work of its seventeenth session also consisted of five chapters, dealing respectively with the organization of the session, the law of treaties, special missions (with an annex containing draft provisions concerning so-called high-level special missions, prepared by the Special Rapporteur), the programme of work and organization of further sessions, and other decisions and conclusions of the Commission.

## PROPOSALS AND AMENDMENTS

7. Lebanon and Mexico submitted a draft resolution (A/C.6/L.559) under which, after noting with approval

that the International Law Commission "has proposed to hold a four-week series of meetings in January 1966, and has asked to reserve the possibility of a two-week extension of its summer session in 1966, in order to enable it to complete its draft articles on the law of treaties and on special missions before the end of the term of office of its present members", the General Assembly would (1) take note of the reports of the International Law Commission on the work of its sixteenth and seventeenth sessions; (2) express appreciation to the Commission for the work it had accomplished; (3) recommend that the Commission should: (a) continue the work of codification and progressive development of the law of treaties and of special missions, taking into account the views expressed at the twentieth session of the General Assembly and the comments which might be submitted by Governments, with the object of presenting final drafts on those topics in the report on the work of its eighteenth session in 1966; (b) continue, when possible, its work on State responsibility, succession of States and Governments and relations between States and intergovernmental organizations, taking into account the views and considerations referred to in General Assembly resolution 1902 (XVIII) of 18 November 1963; and (4) requests the Secretary-General to forward to the International Law Commission the records of the discussions at the twentieth session on the reports of the Commission.

8. Ghana and Romania submitted an amendment (A/C.6/L.560) to the draft resolution (A/C.6/L.559), proposing that the following paragraphs should be added after the fifth paragraph of the preamble: "Noting with appreciation that the European Office of the United Nations organized, during the seventeenth session of the International Law Commission, a Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law," and "Noting that the Seminar was well organized and functioned to the satisfaction of all,"; and that the following new paragraph should be added after operative paragraph 3: "Expresses the wish that in conjunction with future sessions of the International Law Commission other seminars be organized which should ensure the participation of a reasonable number of nationals from the developing countries;". This amendment was accepted by the sponsors of the draft resolution.

9. Costa Rica submitted an amendment (A/C.6/L.561) to the draft resolution (A/C.6/L.559) proposing that the following new paragraph should be added at the end of the operative part: "5. *Requests* the Member States, non-governmental organizations and foundations which may be able to do so to grant fellowships to participants in the Seminars on International Law who come from developing countries." This amendment was withdrawn by the sponsor at the 852nd meeting.

10. Lastly, Tunisia submitted a further amendment (A/C.6/L.562) to the draft resolution (A/C.6/L.559) which would amend operative paragraph 4 of the draft resolution to read as follows: "4. *Requests* the Secretary-General: (a) to forward to the International Law Commission the records of the discussions at the twentieth session on the reports of the Commission; (b) to transmit to Governments at least one month before the opening of the twenty-first session of the General Assembly the final drafts prepared up to that time by the International Law Commission, and in particular the draft articles on the law of treaties." This amendment was accepted by the sponsors of the draft resolution.

11. The Secretary-General submitted a note (A/C.6/L.557) on the financial implications of the decisions contained in paragraphs 65 and 66 of the report of the International Law Commission on the work of its seventeenth session. At the 852nd meeting, the Secretary of the Committee drew the attention of the Committee to the financial implications of the draft resolution submitted by Lebanon and Mexico (A/C.6/L.559) and of the amendment submitted by Ghana and Romania (A/C.6/L.560) incorporated therein. With regard to the Tunisian amendment (A/C.6/L.562), which had also been accepted by the sponsors of the above-mentioned draft resolution, the Secretary of the Committee made a statement at the same meeting concerning the circulation of the reports of the International Law Commission.

#### DEBATE

12. The representatives who took part in the debate on this subject congratulated the International Law Commission on the work it had done at its sixteenth and seventeenth sessions, with regard to the progress made in the codification of the Law of Treaties and the rules concerning special missions. In the course of the discussions emphasis was placed on the urgent need for the codification and progressive development of international law in accordance with current interests of the international community. The importance of international law, its codification and progressive development was acknowledged by all as a means of strengthening the rule of law in international life, peaceful coexistence and friendly relations among all States and of maintaining peace and security in accordance with the purposes and principles of the United Nations Charter.

13. Some representatives pointed out that a study of the reports of the International Law Commission by the Sixth Committee made it possible to associate the General Assembly with the codification and progressive development of international law and, at the same time, constituted an assurance that the work of the International Law Commission was directed towards the latest developments in the international community and took into account the aspirations of all States Members of

the United Nations. In that connexion it was recalled that it was the States themselves that established international law. The role of the International Law Commission was to facilitate the task of those States by defining rules and drawing up and codifying drafts. Some representatives pointed out that the International Law Commission had in recent years, therefore, given up drafting codes or scientific documents and had instead submitted draft conventions to the States. Other representatives stressed the necessity for Governments to co-operate in the work of the International Law Commission by sending written comments on the drafts prepared by the latter. Knowledge of the opinions of Governments rendered the work of the International Law Commission easier since the absence of comments by a Government was open to different interpretations.

14. Referring to historic experiences in codifying national laws, some representatives warned the International Law Commission against the dangers of a codification based purely and simply on existing law and jurisprudence and advised it to take into account in its work the requirements of the progressive development of international law, so as to avoid adding to the advantages of the certainty surrounding codification, the disadvantages of the accompanying rigidity, since the latter could in a very short time render the codified rules inappropriate for the social environment to which they were directed.

15. Other representatives stressed that international law should be a dynamic force serving the interests of an international community in perpetual evolution. Recalling the profound political, economical and social transformation undergone by the international community in recent years, the achievement of independence by a great many countries that had been subjected to a colonial régime and the progress of science and technology, some representatives declared that international law could not be an instrument to defend the interests of the powerful but should give equal protection to all States, great and small, old and new, developed and developing. Only a truly universal international law, based on justice and equity and respecting the sovereign equality of States would have sufficient authority to be recognized and appealed to by all States.

16. Some representatives, while acknowledging the importance of the codification of international law, pointed out that codified rules should not be too detailed if they were to have any practical value. Codified law should be simple and flexible, otherwise it would impede the establishment of new practices, while doing little or nothing to facilitate the establishment of harmonious international relations. According to those representatives, any intention of settling controversial matters by means of codification would have the opposite effect since codification could not by itself eliminate the causes of the controversies. Other representatives were opposed to attempting to codify only those items or residuary rules on which general agreement had been reached. According to the latter representatives, such an attitude would not meet the present needs of the codification of international law. If the work of the International Law Commission were to be really useful, the Commission should also study controversial matters and submit solutions to the States. One representative called attention to the advisability of attempting to standardize the terminology used in international law.

17. Some representatives stressed the importance of customary international law in the life of the inter-

national community. As one representative had indicated, the need for customary law would not disappear even when international law had been completely codified and nothing was left but to interpret treaties and conventions. Codified international law would necessarily include references to customary law and, at times, those called upon to apply codified law would have to decide if codified or customary rules would apply to a given situation. The application of one or other of the rules would depend ultimately on the opinion concerning customary law held by those applying codified law.

18. Some representatives made certain reservations regarding the supremacy of peremptory norms of international law (*jus cogens*) over other rules of law. The lack of criteria for determining with certainty whether a rule of international law was a part of *jus cogens* would, according to those representatives, make it difficult to apply that principle. In the opinion of those representatives, the only principles that could be considered pre-eminent were those embodied in the United Nations Charter and even in that case they derived their authority from conventional law.

19. Lastly, one representative suggested that the Sixth Committee, in order to ensure that the codification of international law should not become a work without practical value owing to an insufficient number of ratifications or accessions, should examine as soon as possible the manner in which the General Assembly, while respecting the sovereign independence of the States, could take effective steps to obtain the fullest possible participation in the conventions on codification concluded under the auspices of the United Nations, by providing, for example, a procedure similar to that prescribed in article 19 of the Constitution of the International Labour Organisation.

## I. LAW OF TREATIES

20. The representatives who spoke in the debate expressed their satisfaction at the considerable progress achieved in the codification of the law of treaties, which already made it possible to form an idea of the future codification of that important chapter of international law. They congratulated the International Law Commission and the Special Rapporteur concerned on the high quality, usefulness and value of the work that had been completed and on the proposal to complete the codification of the law of treaties in the course of the following year.

21. Many representatives stressed the importance of the progressive development and codification of such a fundamental part of international law as the law of treaties, for strengthening and guaranteeing international legal transactions, peaceful coexistence, co-operation between States with different economic, political and social systems and the peaceful settlement of international disputes, and for strengthening international peace and security which was the supreme purpose of the Charter of the United Nations.

22. Some representatives stressed the fact that the International Law Commission in carrying out a codification of the law of treaties had borne in mind, in a general way, the profound changes which had occurred in contemporary international law and had consequently contributed to the progressive development of the law of treaties in conformity with the interests and aspirations of the international community. Other representatives considered that the International Law Commission

would still have to delete from the draft some excessively traditionalist elements and, taking the idea of justice as a foundation, endeavour to formulate the final draft articles with an eye to the future.

23. A number of representatives who spoke emphasized the need for the progressive development and codification of the law of treaties to be fundamentally based on and inspired by the major principles of contemporary international law. It was pointed out that if the codification of the law of treaties was to have the meaning, impact and usefulness which the urgent needs of contemporary international life demanded and not become a purely academic work without any practical value, the law of treaties would have to come under the authority of contemporary international law and conform to the principles set forth in the Charter of the United Nations. Some representatives stated that the final position of their Governments on the draft articles prepared by the International Law Commission would depend on the extent to which the Commission took those fundamental principles into account.

24. The fundamental principles mentioned by those representatives can be summed up as follows: (a) the universality of the law of treaties; (b) the strict observance of freely contracted contractual obligations; (c) the sovereign equality of States; (d) the right of people to self-determination; (e) good faith in the conclusion and application of treaties; (f) prohibition of the use or the threat of force as a means of solving international disputes; (g) a true freedom to undertake obligations and not purely formal legal consent; and (h) the promotion of peaceful coexistence.

25. A number of representatives stated that the draft articles on the law of treaties could not acknowledge unjust, unfair or unequal treaties, the consequences in many cases of the colonial system. Those representatives considered that instruments which were imposed without the consent of the populations concerned or without taking their interests into account; instruments which were the price of accession to independence, instruments taking advantage of the situation of the developing countries, instruments entered into under direct, indirect or economic coercion; instruments which ignored the sovereign equality of States and instruments which were discriminatory as well as other instruments in which the consent of one of the parties was, in one form or another, vitiated by the conditions under which they had been concluded, were by their very nature illegal, could not be protected by the law of treaties and should be eliminated from international relations. Some representatives added that those instruments which were formally called treaties weakened the confidence of States in international law and were an obstacle to more frequent recourse to the jurisdiction of the International Court of Justice.

26. Some other representatives said that the law of treaties should be based on the free will of the parties and should ensure that the confidence that should prevail in relations between States was not weakened. While stressing the need for observance of the treaties concluded, some of those representatives expressed the fear that the draft articles drawn up by the International Law Commission did not provide sufficient protection against the likelihood of unilateral or arbitrary action by parties which might wish to avoid observing the obligations they had undertaken. While regretting that the draft articles did not provide for an independent and objective body to settle disputes

which might occur in that connexion, the representatives in question considered that in order to amend or terminate conventional obligations undertaken it was necessary to bear in mind the provisions of the treaty or the opinion of all the parties to the treaty. One representative pointed out that the International Law Commission should consider the possibility of including in the draft articles a provision concerning the compulsory jurisdiction of the International Court of Justice.

27. The majority of representatives who spoke approved the decision of the International Law Commission to codify the law of treaties in the form of a single draft convention. It was pointed out that the preparation of a convention would enable new States to participate directly in the formulation of the law of treaties which would thus be based on wider and more secure foundations. It was also added that conventions, as the main source of contemporary international law, were more effective for the codification and progressive development of that law than simple expository codes. In fact, recourse to the form of a convention would be the only appropriate method if it was wished to give the contents of the codification of the law of treaties the value of norms which would be legally binding on all States. With regard to the question of whether the draft articles on the law of treaties should be formulated as a single draft convention or as a series of related conventions, the majority of representatives raising that question opted for a single draft convention since they considered that the law of treaties had an organic unity which should be respected. Some, however, said that if it were only possible to adopt and to bring into force a convention on a part of the draft articles prepared by the International Law Commission, that would already represent a valuable result.

28. One representative stated that for reasons of substance and not of form it was difficult to decide whether the codification of the law of treaties should contain solely a statement of obligations or also the constitution and declaratory rules of law. Three representatives continued to express their preference for the form of a code adopted by the General Assembly in a declaration, resolution or recommendation. They considered that the conclusion of a treaty on the law of treaties would hardly be sufficient. A code would have the advantage of including a certain amount of declaratory and explanatory provisions which would have no place in a convention which, by its very nature, would tend to be limited to the strict enunciation of obligations. One representative emphasized that when the International Law Commission had moved from the idea of a code to the idea of a convention, it had been forced to revise and delete provisions contained in the original draft articles. Another of the above-mentioned representatives declared that a treaty on the law of treaties would establish a dual system: a conventional law of treaties and a customary law of treaties, and would add to the doubts about the interpretation of any treaty, further doubts about the interpretation of the treaty on the law of treaties. While one of those representatives stated that he reserved his position on the matter, another said that he would not oppose the adoption of a multilateral convention if that was the wish of the General Assembly. The same representative pointed out that a third solution might have been adopted by incorporating the code on the law of treaties in a multilateral convention or annexing it to that convention with the same binding force as

the convention. Some other representatives pointed out that perhaps the term "code" had caused a misunderstanding and that the question really was what was to be done with the draft articles on the law of treaties: whether they were to be simply a model or a guide or whether they were to be a body of compulsory norms for all States. If the latter was to be the function of the draft articles on the law of treaties, it would not be of great importance whether the instrument codifying them was called a convention, a code or a declaration.

29. With regard to the formulation of the provisions to be included in the draft articles on the law of treaties, some representatives favoured brevity and simplicity while others stated that the elimination of descriptive elements should not result in excessive generalization. Many representatives considered that the provisions of the draft articles should be drafted with clarity and precision in order to avoid disputes and should link ideal solutions to the needs and realities of international life. It was also pointed out by some representatives that the draft articles should eliminate all reference to practices of a transitory nature. One representative said that the draft articles should deal with the continuing applicability of treaties in the event of one of the parties changing without the consent of the other, while another representative considered that the International Law Commission had been correct in not including provisions on the succession of States or the responsibility of States in the draft articles on the law of treaties.

30. Finally, some representatives considered that customary law would continue to retain its value even after the codification of the law of treaties, since the draft articles themselves mentioned customary law in their provisions which would mean, on more than one occasion, that those who had to apply them would have to rule on the applicability of customary law.

(a) *Part III (articles 55-73) of the draft articles on the law of treaties: application, effects, modification and interpretation of treaties (A/5809, chap. II)*

31. As the draft articles on the application, effects, modification and interpretation of treaties had been submitted to Governments for their observations, most of those who took part in the debate said that they would limit themselves to considerations of a preliminary character concerning part III of the draft articles or would refer to the observations already made by their Governments. Some representatives said that their Governments would send the written comments requested at an early date.

32. Among those who made preliminary observations during the debate, some limited themselves to commenting only on certain provisions, while others analysed the whole draft or the greater part of its provisions. Further, due to the close connexion between all the parts of the draft articles on the law of treaties, some representatives, when commenting on part III, referred, alluded to, or even analysed in detail, provisions contained in other parts of the draft, especially in part II (articles 30-54)<sup>4</sup> concerning the invalidity and termination of treaties. Many representatives expressly reserved their Governments' definitive position until all the opinions expressed by other Governments were known, until the International Law Commission had examined the opinions expressed and until they had

<sup>4</sup> See *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, chap. II.*

studied the general arrangement of the final draft articles when completed.

33. Representatives who made statements considered that the draft articles on the application, effect, modification and interpretation of treaties were generally acceptable, although there were a few differences of opinion concerning terminology, formulation, relevance, usefulness, necessity, meaning and gaps in the concrete provisions figuring in them. Some representatives indicated that the draft articles reflected correctly, in their general lines, the practice of States and that the combination of elements of codification and of progressive development of the law of treaties was well balanced.

34. Some representatives considered that the provisions contained in part III of the draft articles needed to be brought into harmony with the contents of the other parts of the draft articles. Others indicated occasional examples of lack of precision or inconsistency in the use of certain terms or expressions. Thus, for example, the expression "rule of customary law" appeared in article 68, paragraph (c), while article 69, paragraph 1 (b), spoke of "rules of general international law". The English version of the text used the word "modifying" in articles 67 and 68 and "amending" in articles 65 and 66. One representative suggested that in article 69 "term" should be replaced by "word" and another that the use of the word "texts" in article 73 should be avoided. It was also indicated that the English version of article 68, sub-paragraph (c) should be brought into line with the French version of the same sub-section. Finally one representative pointed out that while in part I (articles 0-29 *bis*) of the draft articles there was a definition of "good faith" in article 17 (A/6009, chap. III), in part III, articles 55 and 69 mentioned "good faith" without defining it. As it was a question of a fundamental principle of the law of treaties, in this representative's opinion the same attention should be given to "good faith" in each part of the draft articles.

35. The rule *pacta sunt servanda*, according to which treaties were binding upon the parties to them and must be performed by them in good faith, was considered by those representatives who commented on it to be a firmly established and generally recognized basic and fundamental principle of international law. Underlining the capital importance of the principle for the stability of international juridical relations, some representatives stated that without respect for it neither the provisions of the Charter nor the development of friendly relations between States could be achieved. One representative recalled that according to some authors *pacta sunt servanda* was the fundamental rule which summed up international law. The observations made on the rule *pacta sunt servanda* in the course of the debate concerned more often the suitability of its inclusion in the draft articles on the law of treaties, its formulation if it were included and its purport and scope in the general arrangement of the draft articles.

36. Many representatives declared themselves in favour of including the rule *pacta sunt servanda* in the draft articles on the law of treaties. In their opinion, although the provision containing it in the draft articles did no more than recognize an evident principle of international law, its inclusion was suitable and appropriate as it was the corner-stone of the law of treaties without which all the other rules would be of little

or no value. Some representatives added that it was necessary to restate that treaties in force should be scrupulously and strictly observed in a spirit of goodwill by all parties and that their violation should be firmly condemned if it was desired to consolidate and develop peaceful and friendly co-operation between States. Others, on the other hand, feared that there were risks in putting into writing a flexible rule like *pacta sunt servanda* in a text that was to be converted into international treaty law.

37. The formulation of the rule *pacta sunt servanda* in article 55 of the draft articles was the object of certain comments and criticism. Some representatives declared that perhaps the International Law Commission might complete the rule thus formulated by declaring explicitly the obligation of States to abstain from any act which might compromise or invalidate the objects and purposes of the treaty. For one representative a clause purely and simply recognizing that obligation would be preferable to the present formulation of the article. Other representatives criticized the fact that the rule formulated in the draft articles was limited to treaties "in force", since that might introduce an element of controversy, and they suggested the elimination of those words. This opinion was not shared by the other representatives who thought that the International Law Commission was fully justified in having specified that the rule applied to treaties "in force". One representative declared that the present formula was axiomatic and obvious and that it should be redrafted in the following manner:

"A treaty is binding upon the parties to it, which must fulfil their obligations and exercise their rights under it in good faith."

38. Concerning the significance and scope of the rule *pacta sunt servanda* in the general layout of the draft articles on the law of treaties, two trends of opinion were revealed among those representatives who referred to it in their statements. For some the rule *pacta sunt servanda* as formulated in the draft articles must be interpreted in relation to the other provisions of the draft, particularly those concerning the invalidity and termination of treaties (part II) and in the light of the provisions of the United Nations Charter and the dictates of justice. It was recalled that in Article 103 of the Charter it was stated that in the event of a conflict, obligations incurred under the Charter should prevail and that Article 2, paragraph 2 provided that States Members should fulfil in good faith the obligations assumed by them in accordance with the Charter. For those representatives the rule *pacta sunt servanda* could not protect a treaty which was suffering from a defect which invalidated it, which violated the principles of the Charter or was contrary to an imperative norm of contemporary international law. Thus, for example, treaties imposed by force, obtained by trickery or fraud, which were entered into when one of the parties was not in a position to decide freely, which violated peremptory norms of a general character, which could not be carried out because of a fundamental change of circumstances, and unjust treaties could not be protected by the rule *pacta sunt servanda* unless it was desired to sanctify injustice in international relations. In the opinion of those representatives the inclusion in the draft articles of rules on the nullity or termination of treaties, such as those relating to defects of consent, *jus cogens*, the doctrine of *rebus sic stantibus*, the termination of treaties in due and proper form,

did not mean the destruction of the rule *pacta sunt servanda*, but rather would lead to a real strengthening and clearer interpretation of it.

39. Other representatives held that a treaty which made no provision for its termination or denunciation could not be terminated unilaterally by one of the parties and would remain in force until all the parties decided otherwise. While acknowledging that that could be inferred from the rule *pacta sunt servanda* (article 55) in relation to some of the provisions of part II of the draft (articles 31, 38, 39 and 40), one representative thought it advisable to include a provision to that effect, particularly in view of the number and presentation of the provisions on the invalidity and termination of treaties (part II). Referring to the peace treaties concluded prior to the adoption of the United Nations Charter, he expressed the view that the draft should explicitly reaffirm that the causes of nullity defined in it would not have retroactive effect. He also observed that certain provisions relating to the invalidity and termination of treaties (articles 31-37, 42 and 44) were incomplete and that it was essential to define objectively the circumstances giving rise to the nullity or premature termination of treaties, to fix time-limits for alleging such nullity or premature termination, and to provide that, even in cases of absolute nullity, the alleged cause must be defined by an arbitral tribunal or court of law. Another representative asserted that the principle *rebus sic stantibus* could be applied only by agreement among the parties or by an impartial judicial or arbitral body.

40. Some representatives, referring to the provision governing the application of a treaty in point of time (article 56), expressed agreement with paragraph 1, which held it to be a rule of *jus dispositivum* that the parties could depart from the principle of the non-retroactivity of treaties if they wished. Two different views were expressed with regard to paragraph 2 of the article. One representative thought that the paragraph should be reworded to take account of the acquired rights arising from the application of a treaty, which could be accomplished partly by replacing the words "unless the treaty otherwise provides" by the words "unless the contrary appears from the treaty". Another representative thought it advisable to delete the phrase "unless the treaty otherwise provides", since there could be no exception to the rule stated in paragraph 2. The same representative felt that the International Law Commission should include in the text of that article a provision which, reflecting paragraph (4) of the commentary on the article, regulated the question of facts or acts which occurred or arose "in part" while the treaty was in force. Finally, another representative stated that he found the entire article satisfactory as it stood.

41. The provision in the draft relating to the territorial scope of a treaty (article 57) met with the approval of some representatives and criticism from others. One of those expressing criticism felt that the provision had the effect of creating a refutable legal presumption and, moreover, was neither useful nor necessary. Other representatives observed that the article did not take account of the possibility that the provisions of a treaty might be intended to apply outside the territory of the parties, and they urged that it should be revised so as to cover treaties the scope of which went beyond the territory of the parties. One representative said that, if that change was not

made, it would be preferable to delete the article. Another representative, however, said that he would have preferred to see article 57 limit the application of a treaty explicitly to the metropolitan territory of the parties, since otherwise it could perpetuate a situation like that created in Africa by the General Act of the Conference of Berlin concerning the Congo, held in 1885, which placed the African continent under occupation by States situated in another continent. An exception could be made where a people which was not yet independent agreed, through a valid expression of opinion, to accept the treaty and its effects. If that was not done, such peoples would have no alternative, once they regained their sovereignty, but to denounce treaties in the conclusion of which they had had no part—treaties which often ran counter to their interests.

42. None of the representatives questioned the general rule limiting the effects of treaties to the parties (article 58). Some, however, said they favoured the inclusion in the general rule of a provision stating the absolute nullity of any obligation imposed on a third State by a treaty without its consent. They held that there must be no provision under international law for a treaty which sought to decide a people's future without its consent, even if the country in question was under colonial rule. Some representatives considered, in connexion with that provision, that it was essential for the draft articles to contain a precise definition of the term "contracting parties".

43. Some representatives expressed gratification that, in drafting the provisions relating to the *pacta tertiis* rule, the International Law Commission had been guided by the principle of the sovereign equality of States, so that no sanction was given to a situation of the kind created by colonialism. A number of representatives gave their express approval to the conditions specified in those provisions (articles 59, 60 and 61) so that a treaty could give rise to rights or obligations for third States, i.e. (a) the parties to the treaty must intend to provide for rights or obligations for third States and (b) the third State in question must agree to acquire such rights or assume such obligations. Some representatives, however, felt that those provisions, as they stood, still contained some danger to third States in that they could be invoked in an attempt to impose obligations on those States; the provisions should therefore be made clearer. One representative, on the other hand, found the wording of articles 60 and 61 unsatisfactory on the ground that two or more States could, effectively and directly, create rights for a third State by means of a treaty if that was their intention and that the rights thus created could be abolished at some future time.

44. One representative felt that articles 59 (obligations for third States) and 60 (rights for third States) should provide that the question of when the third State was to indicate its assent should be decided in accordance with the circumstances of each particular case. Another took the view that articles 59 and 60 could have been worded in a more similar manner and combined in a separate paragraph of the general rule contained in article 58. He questioned the necessity of including those provisions in a draft convention on the law of treaties, since, if it was required as a condition for the establishment of rights and obligations for third States that those States should assent thereto, the agreement—collateral or otherwise—concluded between the original parties to the treaty and the third

party would constitute an actual treaty. He added that, if those provisions of the draft were deleted, the rule stated in article 61 (revocation or amendment of provisions regarding obligations or rights of third States) would be rendered superfluous. Another representative thought that article 61 should be given further study, since it could have the effect of discouraging the inclusion in treaties of provisions which conferred benefits on a third State.

45. Some representatives referred to the difficulties or dangers inherent in the provision relating to "rules in a treaty becoming generally binding through international custom" (article 62). One representative considered that in order to avoid any misunderstanding the text of the article should include the idea expressed in paragraph (2) of the commentary on the article, that those rules were binding on third States only if those States recognized them as rules of customary law. Another representative considered that the article was unnecessary and that it did not settle the situation created when a number of States denounced a treaty concluded among them which, having been freely accepted by other States, had become a customary rule for the latter States. One representative considered it debatable whether the provision of article 62 should be included in a convention on the law of treaties, even though he recognized its usefulness in avoiding any conflict between draft articles 59, 60 and 61 and customary rules of international law originating from treaties. Another representative drew attention to the fact that, since regional international custom did not seem to be excluded from the phrase "customary rules" used in article 62, the rules laid down in a regional treaty might come to be tacitly binding on all the States in the region, whereas under article 59 the obligations arising from treaties could not bind third States unless they expressly agreed to be so bound. The decision to apply a particular rule would ultimately depend, according to that representative, on what customary law was taken to mean. Lastly, another representative maintained that there was nothing in the draft articles to preclude rules set forth in a treaty from being binding upon States not parties to that treaty if in the future those rules became generally accepted and recognized as customary rules of international law.

46. The rules relating to the application of treaties having incompatible provisions (article 63) were considered adequate and useful by the representatives who referred to them during the debate. One representative expressed his agreement with the International Law Commission's express recognition, in the text of the article, of the overriding character of obligations under the United Nations Charter, as laid down in Article 103 of the Charter. Another representative emphasized the close relationship between article 63 and the provisions of articles 58 to 60 (legal effects of treaties on third parties) and 65 to 68 (modification of treaties), and the need to avoid any duplication between article 63 and article 41 (termination implied from entering into a subsequent treaty). Some representatives, referring to the test for incompatibility prescribed by the rules laid down in article 63, considered that that test, as in part I, article 18, lent itself to subjective interpretation and ought therefore to be made more objective, or that provision should be made for an independent settlement of the disputes to which it might give rise. Lastly, another representative said that article 63 showed the need for precise drafting of the provisions

of multilateral treaties superseding or terminating previous treaties, and emphasized that paragraph 5 of the draft article was particularly important.

47. Some representatives expressed the opinion that, in codifying the law of treaties, the International Law Commission should have borne in mind the current development of contemporary international law and practice which recognized and regulated the rights and obligations of individuals, particularly with regard to human rights. Some representatives regretted that the International Law Commission had not retained in its draft articles a minimal provision such as that of article 66 (application of treaties to individuals) in the third report of Sir Humphrey Waldock, the Special Rapporteur for the subject (A/CN.4/167). One representative noted that some international instruments had laid down the principle of the most-favoured-nation clause in order not to restrict the rights accorded to individuals under other treaties. That principle of the most-favoured-nation clause would be closely related, in that representative's opinion, to the provision of draft article 63, paragraph 3, as well as to the principle of "acquired rights".

48. Regarding the effect of severance of diplomatic relations on the application of treaties (article 64), some representatives took the view that paragraphs 2 and 3, concerning the "disappearance of the means necessary for the application of the treaty" should be deleted or re-examined by the International Law Commission. According to those representatives, those provisions, in their present form, would give the impression that by severing diplomatic relations, or creating a situation which made it difficult or impossible to fulfil contractual obligations, States might evade the obligations arising from treaties. Some representatives said that it would be better for the International Law Commission to consider the question from a more general point of view rather than in relation to the article on the effect of severance of diplomatic relations. One representative pointed out that there were in reality very few treaties for which the disappearance of the means necessary for their application could provide a ground for suspending their operation and that, in every case where a protecting Power had been appointed, the idea of impossibility of performance by reason of the absence of diplomatic relations was inapplicable. Another representative said that it was necessary to avoid subjective interpretations and that, furthermore, the situation was adequately covered by articles 43 (supervening impossibility of performance) and 54 (legal consequences of the suspension of the operation of a treaty). Lastly, another representative noted that the severability of the provisions of treaties referred to in paragraph 3 of article 64, in paragraph 2 of article 45 (emergence of a new peremptory norm of general international law) and in article 46 (severability of treaty provisions for the purpose of the operation of the present articles) might create difficulties, since in practice most of the provisions of treaties were so interrelated that few of them were severable for purposes of application, from the rest of the treaty.

49. With regard to the provisions of the draft articles concerning the modification of treaties (articles 65 to 68), some representatives stressed that the basic principle to be observed was that laid down in the first sentence of article 65: namely, that the amendment of a treaty was a matter for agreement between the parties. Certain representatives thought that all

reference to "the established rules of an international organization" should be deleted from article 65 and from article 66, paragraphs 1 and 2, as making an incompatible, or unacceptable, exception to the above-mentioned basic principle. One representative considered that article 65 was redundant, since an agreement which amended a treaty constituted another treaty. In that representative's view, the best course would be to include a provision to the effect that consideration should be given to any proposal for the amendment of a treaty. Other representatives stressed the appropriateness of including in the draft articles the provisions relating to "Agreements to modify multilateral treaties between certain of the parties only" (article 67). According to those representatives, the provisions in question offered a useful procedure for parties contemplating the conclusion of a special agreement, and at the same time would enable the States affected to safeguard the rights centred on them by an existing treaty.

50. A number of representatives also commented on the provision concerning modification of a treaty by a subsequent treaty, by subsequent practice or by customary law (article 68). While some approved the clause relating to modification by a subsequent treaty (sub-paragraph (a)), others regarded it as an unnecessary repetition of the provision made in article 65. Modification by the subsequent emergence of a new rule of customary law (sub-paragraph (c)) was regarded by some representatives as an important and well-established rule, which would ensure that the changes which were gradually being introduced into general international law by the development of ideas could be reflected in treaties. Other representatives thought, on the contrary, that the sub-paragraph should be deleted, on the ground that it related to international law in general rather than to the law of treaties. Reference was also made to the difficulty of deciding objectively whether a customary rule was or was not compatible with treaty provisions. One of the representatives in favour of deleting the sub-paragraph held that, while in theory a custom could modify a treaty, in practice it was nothing more than an oral modification of the treaty. Lastly, other representatives drew attention to the connexion between that provision and the provision contained in draft article 45 concerning the emergence of a new peremptory norm of international law (*ius cogens*). With regard to the modification of a treaty by subsequent practice of the parties (article 68, sub-paragraph (b)), one representative pointed out that a contractual obligation could be modified only with the genuine consent of the parties, and that subsequent practice was not always the outcome of such consent. The same representative thought that it would be dangerous in international law to resort to assumptions, which were characteristic of specific legal systems, in order to determine the existence, nature, scope and degree of consent of the parties; he recalled that in the Temple of Preah Vihear case<sup>5</sup> the International Court of Justice, in explaining its decision, had found that the question at issue was the interpretation of a treaty, and had not mentioned modification of the treaty. Other representatives were in favour of including sub-paragraph (b) in the draft articles. One of them stated that the sub-paragraph would, in reality, be equivalent

to an oral modification of the treaty. Some representatives pointed to the difficulty of distinguishing between subsequent practice as modifying an original agreement and subsequent practice as interpreting that agreement; they said that the International Law Commission should revise sub-paragraph (b) of article 68 in conjunction with paragraph 3 (b) of article 69, in order to eliminate certain discrepancies between the two provisions.

51. Most representatives who referred to the provisions concerning interpretation of treaties (articles 69 to 73) thought that they represented a reasonable compromise and in general reflected existing international law and practice. Attention was also drawn to the value of codifying the rules of interpretation, which would obviate disputes between States regarding the application of treaties. Some representatives said that the International Law Commission had been wise to adopt the text of the treaty as the essential basis for interpretation. Others felt that it was difficult to accept priorities as between the different means of interpreting treaties, and that the only basic rule should be to try to discover—by all possible means and in all possible forms—what the intention of the parties was. Lastly, other representatives maintained that the order in which the rules of interpretation were given in the draft articles had no bearing on the importance of the factors mentioned in those rules. The importance of each factor would depend solely on its substantive effect, and on its influence on the true significance of the treaty.

52. While some representatives believed that the principle of useful effect was adequately expressed in the draft articles on interpretation, others considered that the text should contain an explicit reference to that principle or maxim. One representative thought that "subsequent practice" (article 69, para. 3 (b)) should be used only as an aid in interpreting ambiguous provisions, and not to distort the natural connotation of words or to extend the scope of the original terms of the treaty. Another representative observed that terms or words did not always have an "ordinary meaning" and that, furthermore, article 69, paragraph 1 (b) seemed to preclude any evolutionary interpretation. Another representative agreed with the provision that a treaty should be interpreted "in the light of the rules of general international law in force at the time of its conclusion". One representative explicitly approved the view adopted by the majority of the International Law Commission's members concerning the application to treaties of "inter-temporal" law (paragraph (11) of the commentary on article 69). Some representatives doubted whether it was appropriate or useful to refer in article 72, paragraph 2 (b) to "the established rules of an international organization", and recommended that the reference should be deleted. Lastly, one representative considered that, in view of the revision of part I of the draft articles, some of the rules of interpretation should be deleted from the final text.

(b) *Part I* (articles 0-29 bis) of the draft articles on the law of treaties: Conclusion, entry into force and registration of treaties (A/6009, chap. II)

53. Although some representatives refrained from commenting on this part of the report and drew attention to the written observations submitted by their Governments, others made preliminary observations on the revision carried out by the International Law Com-

<sup>5</sup> See *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports, 1962.*

mission at its seventeenth session. Some representatives expressed satisfaction at the improvements which the revision had made on the original text by simplifying some provisions and eliminating others which were not essential. Other representatives indicated that the revised articles were open to further improvement.

54. The limitation of the draft articles to treaties concluded between States came in for criticism from some representatives, who expressed the view that the text should cover treaties arrived at between other subjects of international law, especially those concluded between intergovernmental organizations or between intergovernmental organizations and States. That would make it unnecessary for the future convention on the law of treaties to be supplemented later on by the conclusion of further conventions or protocols. Consequently some of those representatives found the definition of a "Treaty" (article 1, para. 1 (a)) unsatisfactory. Other representatives, however, approved the limitation of the text to treaties concluded between States and the postponement to a later stage of the codification of rules relating to the conclusion of treaties by intergovernmental organizations.

55. Some representatives, while aware that the International Law Commission had reserved its position on the terminology to be used in the final draft text, drew attention to certain terminological inconsistencies and cases of vague language. Mention was made, in particular, of the provision concerning a "Party" (article 1, para. 1 (f) (*bis*)) in relation to article 17, sub-paragraph (b), and of the use, in part I of the draft articles, of the expressions "enter into force" and "enter into operation". It was also pointed out that a precise definition of a "Contracting State" was needed. While one representative welcomed the fact that the International Law Commission had not distinguished between "formal treaties" and "treaties in simplified form", another representative expressed regret that the reference to "treaties in simplified form" had been taken out of the text. Lastly, one representative took the view that the inclusion of the phrase "It appears from the circumstances" (article 4, para. 1 (b); article 11, paras. 1 (b) and 2 (a); article 12, para. 1 (b)) should be reconsidered because it might lead to disagreement and dispute.

56. With reference to the capacity of States members of a federal union to conclude treaties (article 3, para. 2), one representative considered that the International Law Commission should make it clear in the commentary on the article whether the relevant provision of the federal constitution would be decisive or whether the treaty would be invalidated only by flagrant breaches of the provisions of the federal constitution.

57. A number of representatives referred in their statements to the International Law Commission's decision to adjourn the examination of the provisions of the draft articles relating to participation in a treaty (articles 8 and 9) and to the use of the term "general multilateral treaty" (article 1, para. 1 (c)). Some representatives expressed the hope that the International Law Commission might find in the written comments submitted by their respective Governments a solution to the problems involved in drafting those provisions, having regard to the criticism expressed on the first version prepared by the Commission. One representative welcomed the fact that the International Law Commission had postponed its final decision on the provisions in question, and asserted that the principle of

universality was contrary to the very nature of treaties, which must be the outcome of the establishment of a consensual relationship. Drawing attention to the conditions laid down in Article 4 of the Charter of the United Nations for admission to membership in the Organization, and to the problems which the question of participation had created for international conferences and for the depositaries of treaties, that representative opposed the provision of paragraph 1 of the original text of article 8. In that representative's opinion, participation in a treaty should be left to those States which participated in the conference drawing up that treaty, and in the case of treaties concluded under the auspices of the United Nations the participation formula should continue to be that used in the codifying conventions concluded hitherto.

58. Other representatives found it unfortunate that the International Law Commission had not yet been able to reach a final agreement on the universality of general multilateral treaties. They expressed the hope that, when the provisions relating to participation in a treaty (articles 8 and 9) and to the definition of a "general multilateral treaty" came to be drafted in final form, the International Law Commission would take into consideration the need for general multilateral treaties to be open to all interested States. General multilateral treaties should be open to all States because they dealt with matters of interest to all States and because their purpose was to state or develop principles and rules of international law which were binding on all States. Limitation of participation in general multilateral treaties would violate the universality of contemporary international law, the principle of the sovereign equality of States and the nature of the law of treaties, and would at the same time have an adverse effect on peaceful coexistence and co-operation between States. Some of the same representatives stated that the problem of participation was not purely political but should also be considered in the light of the international community's legal needs. It was mentioned that the Treaty banning nuclear weapons tests in the atmosphere, in outer space and under water, signed at Moscow in 1963, was open to all States, and that that fact had not created difficulties for the depositaries or posed problems of recognition. Some representatives asserted that States were entitled to participate on a footing of equality in international relations and to be parties to general multilateral treaties whose objectives affected their existence. All those representatives opposing the perpetuation of what they considered discriminatory practices maintained that general multilateral treaties should be open to all States, irrespective of their political, economic and social systems.

59. One representative said that it would be desirable for the International Law Commission to adopt the most liberal possible solution regarding participation in general multilateral treaties, especially in those of such a nature as to make it repugnant that they should be open only to certain States, to the exclusion of others. In that representative's opinion it was essential to concede that at the very least in the absence of specific provision on the subject such treaties should be presumed to be open, in particular the treaties of codification. Lastly, another representative, referring to the difficulty of reaching agreement between those who favoured universality of participation in general multilateral treaties and those who favoured the contractual principle of the autonomy of will in treaties, said that

the International Law Commission should try again to find a way of reconciling the two positions.

60. With regard to consent to be bound by a treaty (articles 11 and 12), one representative said that, apart from the rule that the express or implied intention of the parties was decisive, the only rule really needed was a residual clause requiring merely a choice between signature, ratification, acceptance and approval. Another representative stated that the new provisions respecting ratification represented a certain deviation from the above principle that treaties should be ratified save in exceptional cases and that it would be interesting to see how the new provisions would be received in the comments submitted by Governments.

61. The provisions of the draft articles concerning reservations to multilateral treaties (articles 18 to 22) were also commented on during the debate. The representatives who referred to those provisions believed that, in general, the International Law Commission's review had improved the original text, and they expressed their appreciation for the Commission's effort to take account of comments on those provisions made in previous debates. Some representatives regretted, however, that the Commission had not fully distinguished in every case between the maximum and the minimum legal effects of objections raised against reservations to multilateral treaties. It was said by some that the clauses appearing in article 19, paragraph 4 (b) and article 21, paragraph 3 of the draft articles were too severe and did not facilitate the participation of the largest possible number of States in those treaties. In the view of those representatives, the maintenance in force, as between the State that made the reservation and the State that objected to the reservation, of those provisions of the treaty to which the reservation did not relate should not be subject to an express statement of acceptance by the State that had objected to the reservation. Some representatives believed that the presumption should be precisely that the treaty was in force as between the two States, save where the objecting State expressly declared that the treaty was not in force as between it and the reserving State.

62. One representative expressed the view that the International Law Commission should add to article 1 a new sub-paragraph which would distinguish between reservations and declarations, in order to cover the practice, frequent in some States, of including in the instruments of ratification of multilateral conventions declarations expressing objectives which the States wished to achieve and which did not constitute a reservation, as, for example, declarations expressing the need to put an end to situations of colonial dependence. Another representative, referring to the criterion of incompatibility of the reservation with the object and purpose of the treaty (article 18, sub-paragraph (c)), said he believed that the draft articles should include provisions for the independent settlement of disputes which might arise in connexion with the application of provisions of that type.

(c) *Preparation of a possible future diplomatic conference of plenipotentiaries on the law of treaties*

63. During the debate, a number of representatives referred to the possibility of convening in the near future a diplomatic conference of plenipotentiaries on the law of treaties. One representative said that before a decision was taken in the matter, it would have to be determined whether the advantages of a convention

on the law of treaties outweighed its disadvantages. Other representatives, without prejudging the future recommendations that might be made by the International Law Commission in connexion with its final draft articles on the law of treaties or the General Assembly's final decision on the draft articles, made some positive suggestions concerning the preparation of a possible future conference of plenipotentiaries on the law of treaties.

64. One representative requested that, in order that the Sixth Committee's debates on the convening of a conference should not be too abstract, the Secretariat should prepare for submission to the General Assembly at its twenty-first session: (a) a study of the procedural and organizational problems raised by the convening of a diplomatic conference to approve a multilateral convention on the law of treaties, and (b) a reference guide to the International Law Commission's draft articles on the law of treaties. The request was supported by other representatives. Another representative suggested that the Sixth Committee might, through its Chairman, request the International Law Commission to inform the General Assembly of its ideas concerning the procedural and organizational problems related to the preparation of a future diplomatic conference on the law of treaties.

65. At the 850th meeting the Secretary of the Committee said that, after informal consultations with the members of the International Law Commission, the Secretariat would, as requested, prepare for the General Assembly at its twenty-first session a study of the procedural and organizational problems involved in the future diplomatic conference. He also said that the Secretariat would prepare a reference guide to the draft articles on the law of treaties but could not be sure that the guide would be available by the twenty-first session of the General Assembly, since the International Law Commission would not adopt its final text until July 1966.

66. Lastly, another representative stated that the procedure hitherto followed in codification conferences was, in general, based on the rules of procedure of the General Assembly. He said that those rules, devised for political debates, were not well suited to legal discussions. Referring specifically to rules 91 and 92 of the rules of procedure of the General Assembly, he proposed certain remedies to alleviate the difficulties that might arise in plenary meetings of a codification conference as a result of resorting to provisions similar to those contained in the articles in question.

II. SPECIAL MISSIONS (A/5809, chap. III; A/6009, chap. III)

67. Most representatives who referred in their statements to the chapters of the International Law Commission's reports relating to special missions mentioned the importance, the utility and the necessity of codifying rules of international law governing special missions. It was stated that this would be a further step forward in the codification of modern diplomatic law initiated by the 1961 Vienna Convention on Diplomatic Relations<sup>6</sup> and the 1963 Vienna Convention on Consular Relations.<sup>7</sup>

<sup>6</sup> See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, *Annexes* (United Nations publication, Sales No.: 62.X.1).

<sup>7</sup> See United Nations Conference on Consular Relations, *Official Records*, vol. II, *Annexes* (United Nations publication, Sales No.: 64.X.1).

68. Some representatives pointed out that special missions were an age-old feature of international affairs. Historically they antedated permanent diplomatic missions, and for a long time had been the only form of diplomatic relations known to and employed by sovereigns in their mutual relations. It was pointed out that, apart from their historic interest, special missions had taken on new importance in contemporary international affairs. The expansion of the sphere of State activities which was characteristic of the modern State, the need for increasingly close and varied relations between States, and the technical and complex nature of many subjects of negotiation had impelled States to have more frequent recourse than in the past to the sending of special missions.

69. The proliferation of special missions of every kind, resulting from the dynamism of the times, had given a new dimension to special missions as an institution and had made it more urgent to adopt a uniform and generally accepted system for their regulation. As some representatives pointed out, the fact that customary general international law contained few rules relating to special missions increased still further the need for the codification and progressive development of international law on the subject. A number of representatives, acknowledging the difficulty of the task, considered that the work done on the subject by the International Law Commission and the Special Rapporteur for the topic was very praiseworthy.

70. Other representatives stated that special missions were, by virtue of their functions and by their nature, an institution which was distinct from permanent diplomatic missions and to which the 1961 Vienna Convention on Diplomatic Relations could not be directly applied, but that that Convention should serve as an inspiration and guide for the codification of the law on special missions.

71. A number of representatives, while reserving the final positions of their respective Governments, stated that the draft articles on special missions prepared by the International Law Commission were a noteworthy contribution and a true pioneering effort towards the codification of the law on special missions, and that they represented a solid basis for its further codification in the future. The International Law Commission's general approach, and the emphasis it placed on the preparation of the draft articles on special missions, gained the approval of many representatives. Some of them, however, stated that on second reading the International Law Commission should condense and reduce the final text. In that connexion, some representatives stated that the smallest possible number of rules should be drawn up in the simplest and briefest form. Other representatives announced that their Governments were studying the draft articles and would in due course submit such written comments as they deemed relevant. One representative emphasized that the collaboration of Member States through the submission of comments in writing was of great importance to the proper drafting of final rules on so mutable a subject as special missions. Lastly, other representatives welcomed the International Law Commission's intention to finish the draft on special missions at its next session.

72. With regard to the scope of the draft articles, one representative took the view that the International Law Commission should consider including provisions relating to delegates to international congresses and conferences.

73. The value of provisions relating to so-called high-level special missions was emphasized by one representative; at the same time he mentioned the need to bear in mind that there was a class of persons (Vice-Presidents, Deputy Prime Ministers, Ministers of State) who were usually of higher rank than Ministers for Foreign Affairs and who were increasingly being entrusted with special missions. Another representative felt that high-level special missions could not be treated in the same way as those composed of ordinary representatives, and that they therefore warranted a special chapter in the text. Lastly, another representative did not consider that the text on special missions should deal with so-called high-level special missions.

74. As to the form in which the law on special missions should be codified, almost all representatives who spoke on this point were in favour of a convention. One representative pointed out in this connexion that in many countries the grant of privileges and immunities to additional classes of aliens could be effected only through a treaty subject to legislative approval. Another representative, however, while agreeing with the International Law Commission's decision to prepare a draft which could be used as the basis for a convention, said that he was not convinced that it would be feasible to complete the codification of the law on special missions at a plenipotentiary conference, and that other possibilities should be considered. These fears were not shared by another representative, in whose opinion the existence of a body of general principles deduced from the practical rules applied from day to day by the ministries concerned, and from a substantial legal literature, afforded sufficient grounds for hope that a plenipotentiary conference would be able to adopt a convention on special missions.

75. Some representatives raised the question whether the text prepared by the future plenipotentiary conference should be a protocol to the 1961 Vienna Convention on Diplomatic Relations or should be a separate convention. One representative stated that he had not yet reached any conclusion on the question, but most of the representatives discussing the matter said that they were in favour of a separate convention on special missions even if it used the same terms as the 1961 Vienna Convention. According to one representative, the nature and functions of special missions were different from those of permanent diplomatic missions, and a formal merger of the legal rules applicable to the two institutions should therefore be avoided, for it might create needless difficulties in the future development of both institutions.

76. The term "special missions" was criticized by one representative, who wished to replace it by "temporary missions". This representative took the view that there were only two kinds of diplomatic missions—permanent and temporary. The term "temporary missions" would cover non-permanent missions of every kind, including "special missions".

77. A number of representatives considered that the terminology of the draft articles on special missions should so far as possible be reconciled with that used in the 1961 Vienna Convention on Diplomatic Relations or, where more appropriate, with that of the 1963 Vienna Convention on Consular Relations. Wherever different terms were used, the reason should be stated in the commentary on the draft articles on special missions. One representative pointed out that, whereas in the 1961 Vienna Convention on Diplomatic Relations

the expression "members of the mission" included the head of the mission and the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission, in articles 3, 4 and 6 of the draft articles on special missions the same expression appeared to cover only the head of the mission and its principal members, to the exclusion of the administrative and technical staff and the service staff of the mission. This representative drew attention to the difficulties which such discrepancies in the terms used might cause to the legislative organs of contracting States when they came to translate the provisions of conventions, which up to a certain point were similar, into rules of domestic law for their respective countries.

78. Several representatives cautioned the International Law Commission against the tendency to widen the notion of the special mission. Many of the representatives who spoke on the subject stressed the need for a precise definition of special missions. The definition given in the commentary on draft article 1 (A/6009, chap. III) seemed to them so vague as to create a danger that the notion of special missions would automatically include the thousands of persons who went abroad on official business every year. One representative held that what mattered most was to define "temporary missions". In the view of others, a distinction should be drawn between different kinds of special missions, and chiefly between those of a highly political nature and those that were purely technical. One representative, however, took the view that there could be no distinction between political special missions and technical special missions, since political missions could have technical aspects and vice versa.

79. In the view of a number of representatives, a precise definition of special missions and a distinction between different kinds of such missions would be very useful in delimiting the sphere of application of the draft articles and particularly of the provisions on the facilities, privileges and immunities of special missions. Those representatives took the position that any exaggerated extension of the privileges and immunities of special missions should be avoided in order to avert unnecessary difficulties and awkward situations, since States were not in favour of increasing the number of persons enjoying privileges and immunities in their territory. Such privileges and immunities should be made as tolerable as possible. The point of departure should be the principle of functional necessity, having regard above all to the purely technical character of most special missions, and to their temporary nature. One representative expressed the view that, in the case of special missions, personal diplomatic status could not always be the deciding factor in the granting of privileges and immunities. Another representative suggested that the level of representation of the members of a special mission could, if necessary, be taken into account in order to distinguish between persons who were entitled to privileges and immunities and persons who were not.

80. While some representatives gave the wording of the provisions on privileges and immunities in the draft articles on special missions their approval in so far as the text correctly reflected the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, others stressed the need to limit the scope of the privileges and immunities recognized in the draft articles. In their view the International Law Commission, after delimiting the notion of special missions,

should draw up the provisions on the privileges and immunities of such missions, specifying which privileges and immunities applied to each kind of special mission or which were granted to each category of members of such missions.

81. With respect to part I of the draft articles (general rules), one representative considered that the provisions of that part would be more appropriate to a code than to a convention. Other representatives made preliminary comments on certain specific provisions of part I of the draft articles.

82. Thus, regarding the sending and receiving of special missions, one representative pointed out that the draft articles prescribed no specific formalities for that purpose. The commencement of the functions of a special mission did not require the presentation of credentials (article 11); the sending State had to notify the receiving State of the composition and the arrival of the special mission, but if it failed to do so the text did not provide for the loss of the privileges and immunities accorded (article 8). Moreover, the functions of the special mission commenced as soon as the mission entered into official contact with the appropriate organs of the receiving State, which could be, by agreement, those with which the special mission was to conduct its official business, and not necessarily the Ministry of Foreign Affairs of the receiving State. That representative considered that it should be stipulated that the appropriate organ of the receiving State—in most cases the protocol department of the Ministry of Foreign Affairs—should in all cases be notified of the special mission and of its composition. Another representative questioned the necessity of mentioning consular relations in article 1, paragraph 2.

83. Having regard to the temporary nature of special missions, one representative expressed doubts about the pertinence of the provisions on persons declared *non grata* or not acceptable (article 4), freedom of movement (article 21) and professional activity (article 42), which had been drawn up for application to permanent diplomatic missions in the 1961 Vienna Convention.

84. The deletion of the articles on the commencement (article 11) and the end (article 12) of the functions of a special mission was suggested by one representative, who also considered that the words "normally" in article 7, paragraph 1, and "in principle" in article 14, paragraph 1, were inappropriate to a legal text. Another representative suggested that, if the provision concerning the right of special missions to use the flag and emblem of the sending State (article 15), was retained in part I of the draft articles, it should be stated that the exercise of that right was accompanied by the obligation to respect the laws and regulations of the receiving State, as prescribed in article 40 for persons enjoying diplomatic privileges and immunities. Lastly, one representative expressed the opinion that the provision relating to activities of special missions in the territory of a third State (article 16) should include the substance of paragraph (3) of the commentary on that article.

85. Referring to the future instrument codifying the law of special missions, one representative expressed the opinion that States would have the right to make exceptions to any of its clauses by express agreement among themselves, unless the text of the clause in question prohibited such action.

### III. OTHER DECISIONS AND CONCLUSIONS OF THE INTERNATIONAL LAW COMMISSION

#### (a) *Relations between States and intergovernmental organizations* (A/5809, paras. 41 and 42)

86. One representative said that he agreed that the International Law Commission should give priority to "diplomatic law" in its application to relations between States and intergovernmental organizations when work began on the codification of that topic.

#### (b) *Programme of work, dates and places of the next meetings of the International Law Commission* (A/6009, chap. IV and paras. 65 and 66)

87. All those who spoke in the discussion welcomed the International Law Commission's decision to complete the study of the law of treaties and of special missions before the end of 1966, and approved the Commission's programme of work for the coming year. Subject, in a few cases, to the reservation that a solution must be found for the administrative and financial problems involved, almost all the representatives who spoke also approved the Commission's proposals for the accomplishment of its aims: namely, that a four-week series of meetings should be held from 3 to 28 January 1966 and that the Commission should reserve the possibility of extending its summer session, scheduled to be held from 4 May to 8 July 1966, for an additional two weeks, i.e. to 22 July 1966. One representative, however, made reservations on these two proposals because of their financial implications and because of the administrative difficulties created by the proliferation of United Nations meetings and conferences. With regard to the invitation issued by the Government of the Principality of Monaco for the Commission to hold in Monaco the four-week session scheduled for January 1966, some representatives said that they had no objection to the acceptance of that invitation provided that it did not involve the United Nations in any expenses over and above the estimated cost of holding the session in question at the International Law Commission's Geneva headquarters.

#### (c) *Co-operation with other bodies* (A/5809, paras. 43-49; A/6009, paras. 57-63)

88. Many representatives noted with satisfaction that the International Law Commission was continuing its co-operation with the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee. Some referred in their statements to the possibility and desirability of carrying such co-operation further, in conformity with the relevant provisions of the International Law Commission's Statute, by extending it to other intergovernmental and private bodies throughout the world, whether regional or world-wide in scope, which were interested in the progress of international law. The Commission of Jurists of the Organization of African Unity was specifically mentioned by some representatives. One representative said that, in its relations with other bodies, the International Law Commission must always bear in mind that it differed from all the other agencies concerned with the codification and progressive development of international law in that it was an organ of the United Nations.

#### (d) *Exchange and distribution of documents of the International Law Commission* (A/6009, para. 64)

89. Some representatives said that the special attention given by the International Law Commission

to the problem of the exchange and distribution of its documents was satisfactory to them because of the particular importance of those documents to jurists and international legal scholars in all countries; they considered that the Commission had reached the right conclusions on that subject.

#### (e) *Seminar on International Law* (A/6009, paras. 70-72)

90. All the representatives who spoke on this question congratulated the European Office of the United Nations on its initiative in holding, concurrently with the Commission's seventeenth session, a Seminar on International Law for advanced students of the subject and young government officials responsible in their respective countries for dealing with questions of international law. They also approved the International Law Commission's recommendation that further seminars should be organized in conjunction with its future sessions. Many representatives expressed the hope that nationals of developing countries would be enabled to participate in those seminars in increasing numbers through the grant of fellowships to cover travel and subsistence expenses. One representative said that persons from Non-Self-Governing and Trust Territories should also take part in them. Some representatives emphasized that, by helping to disseminate knowledge of international law, those seminars served the cause of the progressive development of international law, one of the tasks conferred by the Charter on the General Assembly of the United Nations.

91. With regard to the future organization of the seminars, some representatives stressed that the high level of the discussions could be maintained only by keeping the total number of participants within reasonable bounds. Others expressed the view that the topics should be well chosen and that the lecturers should fairly represent the principal legal systems of the world. It was also stated that, in the future, seminars on international law might be held in other geographical areas, especially in Africa, Latin America and Asia, and that they could perhaps be organized on a regional basis in connexion with the future programme of technical assistance to promote the teaching, study, dissemination and wider appreciation of international law. One representative proposed that the proceedings of the seminars should be published for the benefit of persons other than the participants. Lastly, another representative suggested that next year the Secretariat should prepare a working paper on the seminars so that the Sixth Committee might have a clearer idea how they were organized and conducted.

92. The representative of Israel announced that his Government was prepared to defray the travel and subsistence expenses of a national of a developing country who desired to take part in the seminar and who was chosen by the Secretariat on the basis of such criteria as it might lay down for the purpose. The representative of Brazil said that his delegation would support any measure designed to encourage and develop such seminars. The representative of Costa Rica submitted an amendment (A/C.6/L.561) to the draft resolution (A/C.6/L.559) proposing the addition of a new operative paragraph requesting Member States, non-governmental organizations and foundations to grant fellowships so that nationals of developing countries might be able to participate in the seminars. Other representatives observed that it would facilitate the co-ordination of whatever measures were adopted

e question of fellowships for participation in the seminars was discussed under agenda item 89 "Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law". The representative of Costa Rica withdrew his amendment at the 852nd meeting, and the Sixth Committee adopted, as part of the draft resolution adopted, an amendment relating to seminars which was submitted by Ghana and Romania (A/C.6/L.560) and which is reproduced in paragraph 8 of this report concerning the proposals and amendments submitted.

#### VOTING

At its 852nd meeting, held on 14 October 1965, the Sixth Committee voted on the draft resolution sub-

mitted by Lebanon and Mexico (A/C.6/L.559) as modified by the amendment submitted by Ghana and Romania (A/C.6/L.560) and Tunisia (A/C.6/L.562), which had been accepted; the Committee adopted the draft resolution by 74 votes to none, with 2 abstentions.

#### *Recommendation of the Sixth Committee*

94. The Sixth Committee therefore recommends that the General Assembly adopt the following draft resolution:

[Text adopted by the General Assembly without change. See "Action taken by the General Assembly" below.]

### ACTION TAKEN BY THE GENERAL ASSEMBLY

At its 1391st plenary meeting, on 8 December 1965, the General Assembly adopted the draft resolution submitted by the Sixth Committee (A/6090, para. 94). For the final text, see resolution 2045 (XX) below.

#### **Resolution adopted by the General Assembly**

(XX). REPORTS OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTEENTH AND SEVENTEENTH SESSIONS

*At the General Assembly,*

*having considered* the reports of the International Law Commission on the work of its sixteenth and seventeenth sessions (A/5809, A/6009),

*recalling* resolution 1902 (XVIII) of 18 November 1964 by which the General Assembly recommended that the International Law Commission should continue its work of codification and progressive development of the law of treaties and its work on State responsibility, succession of States and Governments, special missions and relations between States and intergovernmental organizations,

*emphasizing* the need for further codification and progressive development of international law with a view to making it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

*noting* that the work of codification of the topics of the law of treaties and of special missions has reached an advanced stage,

*noting with approval* that the International Law Commission has proposed to hold a four-week series of meetings in January 1966 and has asked to reserve the possibility of a two-week extension of its summer session in 1966, in order to enable it to complete its draft articles on the law of treaties and on special missions before the end of the term of office of its present members,

*noting with appreciation* that the European Office of the United Nations organized in May 1965, during the seventeenth session of the International Law Commission, a Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law,

*Noting* that the Seminar was well organized and functioned to the satisfaction of all,

1. *Takes note* of the reports of the International Law Commission on the work of its sixteenth and seventeenth sessions;

2. *Expresses appreciation* to the International Law Commission for the work it has accomplished;

3. *Recommends* that the International Law Commission should:

(a) Continue the work of codification and progressive development of the law of treaties and of special missions, taking into account the views expressed at the twentieth session of the General Assembly and the comments which may be submitted by Governments, with the object of presenting final drafts on those topics in the report on the work of its eighteenth session, to be held in 1966;

(b) Continue, when possible, its work on State responsibility, succession of States and Governments and relations between States and intergovernmental organizations, taking into account the views and considerations referred to in General Assembly resolution 1902 (XVIII);

4. *Expresses the wish* that in conjunction with future sessions of the International Law Commission other seminars be organized which should ensure the participation of a reasonable number of nationals from the developing countries;

5. *Requests* the Secretary-General:

(a) To forward to the International Law Commission the records of the discussions at the twentieth session of the General Assembly on the reports of the Commission;

(b) To transmit to Governments at least one month before the opening of the twenty-first session of the General Assembly the final drafts prepared by the International Law Commission up to that time, and in particular the draft articles on the law of treaties.

*1391st plenary meeting,  
8 December 1965.*