VI. Legal Questions

A. HAYA DE LA TORRE CASE (COLOMBIA-PERU)

In a Judgment delivered on 20 November 1950,[1] the Court defined the legal relations between Colombia and Peru in regard to questions which those States had submitted to it concerning diplomatic asylum in general and, in particular, the asylum granted on 3-4 January 1949 by the Colombian Ambassador at Lima to Victor Raul Haya de la Torre. On the same day, Colombia asked the Court for an interpretation of this Judgment; the Court on 27 November ruled this request inadmissible-.[2]

Peru called upon Colombia to execute the Court's Judgment of 20 November by surrendering Victor Raul Haya de la Torre. Colombia replied that this would not only disregard the Court's Judgment but would also violate the Havana Convention on Asylum of 1928. Accordingly, it instituted proceedings before the Court by an Application filed on 13 December 1950.

In its Application and during the proceedings, Colombia asked the Court to state in what manner the Judgment of 20 November should be executed and further to declare that, in executing that Judgment, Colombia was not bound to surrender Haya de la Torre. Alternatively, the Court was asked to declare, in the exercise of its ordinary competence and without reference to the Judgment of 20 November, that Colombia was not bound to deliver Haya de la Torre to the Peruvian authorities.

Peru also asked the Court to state in what manner Colombia should execute the Judgment. It further asked:

> (1) the rejection of Colombia's submission requesting the Court to state solely that it was not bound to surrender Haya de la Torre; and (2) for a declaration that the asylum ought to have ceased immediately after the delivery of the Judgment of 20 November and that it "must in any case cease forthwith in order that Peruvian justice may resume its normal course which has been suspended."

Notice of Colombia's Application was, in accordance with the Court's Statute, transmitted to the Members of the United Nations and to other States entitled to appear before the Court. At the suggestion of the parties, the written proceedings were limited to the submission of a Memorial and a Counter-Memorial, which were filed within the time limits prescribed by an Order of the Court of 3 January.

As the Court did not include upon the Bench any judges of the nationality of the parties, Colombia and Peru, in accordance with Article 31, paragraph 3, of the Court's Statute, chose José Joaquin Caicedo Castilla and Luis Alayza y Paz Soldán, respectively, as ad hoc judges.

On 13 March, availing itself of the right conferred by the Court's Statute on States, parties to a convention the interpretation of which is in issue, to intervene in the proceedings, Cuba filed a Declaration of Intervention, stating its views on the construction of the Havana Convention. Peru contended that the intervention was inadmissible on the grounds that it was out of time and in the nature of an attempt by a third State to appeal against the Court's Judgment of 20 November. Colombia asked the Court to decide that Cuba was entitled to intervene.

The Court decided to hear first the observations of the Agents of the parties and of the Government of Cuba on the admissibility of that Government's intervention before the arguments on the merits of the case, and held a public hearing for that purpose on 15 May. On the following day, it decided, for reasons given in its Judgment (see below), to admit the Cuban intervention and to open immediately the oral proceedings on the merits of the case.

In the course of public hearings on 16 and 17 May, the Court heard statements by José Gabriel de la Vega, Agent, for Colombia, and G. Gidel, Counsel, for Peru, and a statement on the interpretation of the Havana Convention by Mme. Flora Díaz Parrado, Agent, for Cuba.

[1] I.C.J. Reports 1950, p. 266; see also Y.U.N., 1950, pp. 838-41.

[2] I.C.J. Reports 1950, p. 395; see also Y.U.N., 1950, pp. 843-44.

In its Judgment, delivered on 13 June 1951,[3] the Court examined first the admissibility of the Cuban Government's intervention. It stated that every intervention is incidental to the proceedings in a case and that therefore a Declaration of Intervention acquires that character, in law, only if it actually relates to the subject matter of the pending proceedings. The subject matter of the current proceedings, it stated, concerned a new question, the surrender of Haya de la Torre to the Peruvian authorities, which had been outside the submissions of the parties in the previous case and consequently had not been decided in the Judgment of 20 November. What had to be ascertained, therefore, was whether the object of the intervention was the interpretation of the Havana Convention in regard to the question whether Colombia was under an obligation to surrender the refugee. The Court observed that the Cuban memorandum had discussed questions decided in the Judgment of 20 November and to that extent did not satisfy the conditions of a genuine intervention. However, the Cuban Agent had stated at the hearing on 15 May that the intervention was based on the fact that the Court was required to interpret a new aspect of the Havana Convention which it had not been called upon to consider in its previous Judgment. On that basis, the Court decided to admit the intervention.

The Court then discussed the merits of the case. It observed that both parties were seeking to obtain a decision as to the manner in which the Judgment of 20 November was to be executed. That Judgment, in deciding on the regularity of the asylum, had been confined to defining the legal relations which the Havana Convention had established between the parties on this matter. It did not give any directions to the parties and entailed for them only the obligation to comply with the Judgment. The form in which the parties had formulated their submissions, the Court stated, showed that they wished the Court to make a choice among the various courses by which asylum might be terminated. Such a choice, however, could not be based on legal considerations, but only on grounds of practicability and political expediency, and was consequently outside the Court's judicial function. The Court stated that it was therefore impossible for it to give effect to the submissions of the parties in this respect.

As regards the surrender of the refugee, the Court considered that this was a new question, which was only brought before it by the Application of 13 December 1950 and which had not been decided by the Judgment of 20 November. Consequently no conclusion as to an obligation to surrender the refugee could be drawn from that Judgment. According to the Havana Convention, the Court observed, diplomatic asylum was a provisional measure for the temporary protection of political offenders and, even if regularly granted, had to be terminated as soon as possible.

The Court found, however, that the Convention did not give a complete answer as to how an asylum should be terminated. As to persons accused of or condemned for common crimes, it prescribed that they be surrendered upon request of the local government. For "political offenders" it prescribed the grant of a safe-conduct for the departure from the country. But a safe-conduct could only be claimed if the asylum had been regularly granted and maintained, and if the territorial State had required that the refugee should be sent out of the country. No provision was made in the Convention for cases in which the asylum had not been regularly granted and where the territorial State had not requested the departure of the refugee. The Court held that to interpret this silence as imposing an obligation to surrender the refugee if the asylum had not been granted regularly would be repugnant to the spirit of the Convention, which was in conformity with the Latin American tradition of asylum, according to which political refugees should not be surrendered. There was nothing in that tradition to indicate that exception should be made where asylum had been irregularly granted, and if it had been intended to abandon the tradition an express provision would have been made in the Convention to that effect. The silence of the Convention on this subject, the Court held, implied that it was intended to leave the adjustment of the consequences of such situations to decisions inspired by considerations of convenience or simple political expediency.

The Court recalled that in its Judgment of 20 November 1950 it had pointed out that, in principle, asylum cannot be opposed to the operation of justice, and that the safety which arises out of asylum cannot be construed as a protection against the regular application of the laws and against the jurisdiction of legally constituted tribunals. But, the Court stated, it would be an entirely different thing to say that the State granting an irregular asylum is obliged to surrender the refugee to the local authorities. Such an obligation to render positive assistance to these authorities in their prosecution of a political refugee would far exceed the Court's findings and could not be recognized without an express provision to that effect in the

[3] I.C.J. Reports 1951, p. 71.

Havana Convention. In the Court's opinion, therefore, the Havana Convention did not justify the view that the obligation incumbent on a State to terminate an asylum irregularly granted to a political offender imposed a duty on that State to surrender the person to whom asylum had been granted.

As regards Haya de la Torre, the Court in its Judgment of 20 November had found that it had not been proved that the acts of which he was accused before asylum was granted constituted common crimes. On the basis of article 2, paragraph 2, relating to political offenders, it had held that the asylum had not been granted in conformity with the Havana Convention. So far as the question of surrender was concerned, the Court considered, therefore, that the refugee must be treated as a person accused of a political offence. It concluded that Colombia was under no obligation to surrender Haya de la Torre to the Peruvian authorities.

Finally, the Court examined the Peruvian submissions, which Colombia asked it to dismiss, concerning the termination of the asylum. The Court stated that its Judgment of 20 November declaring that the asylum was irregularly granted entailed a legal consequence, namely, that of putting an end to the illegal situation by terminating the asylum. Peru was therefore legally entitled to claim that the asylum should cease. However, Peru had added to its submission a demand that the asylum should cease "in order that Peruvian justice may resume its normal course which has been suspended." This addition, the Court held, appeared to involve, indirectly, a claim for the surrender of the refugee, and could not be accepted.

The Court therefore concluded that the asylum had to cease, but that Colombia was under no obligation to bring this about by surrendering the refugee to the Peruvian authorities. It held that there was no contradiction between these two findings, since surrender was not the only way of terminating asylum.

The Court declared that, having defined, in accordance with the Havana Convention, the legal relations between the parties with regard to the matters referred to it, it had completed its task. It was unable to give any practical advice as to the various courses which might be followed with a view to terminating the asylum since, by doing so, it would depart from its judicial function. "It can be assumed," it said, "that the parties, now that their mutual legal relations have been made clear, will be able to find a practical and satisfactory solution by seeking guidance from those considerations of courtesy and good-neighbourliness which, in matters of asylum, have always held a prominent place in the relations between the Latin American republics."

In the operative part of its Judgment of 13 June 1951,[4] therefore, the Court unanimously rejected the parties' submissions asking it to make a choice as to the manner of giving effect to the Judgment of 20 November 1950. It found unanimously that the asylum granted to Victor Raul Haya de la Torre on 3-4 January 1949, and maintained since that time, ought to have ceased after the delivery of the Judgment of 20 November 1950 and should terminate. By 13 votes to 1, it declared that Colombia was under no obligation to surrender Haya de la Torre to the Peruvian authorities.

Alayza y Paz Soldán, Peruvian judge ad hoc,. attached to the Judgment a declaration explaining that if the Court had stated that Colombia was under no obligation "as the sole means of exercising the Judgment" to surrender the refugee to Peru, he would have been in a position to concur in the opinion of the majority of the Court. He was prevented from so doing, he said, by the brevity of the sentence employed which might be misunderstood.

B. THE ANGLO-NORWEGIAN FISHERIES CASE

On 28 September 1949, the United Kingdom filed an Application instituting proceedings before the Court against Norway to decide on the validity or otherwise, under international law, of the lines of delimitation of the Norwegian fisheries zone laid down in 1935 and amended in 1937. The Application referred to the declarations by both parties accepting the Court's compulsory jurisdiction.

The United Kingdom in its Application asked the Court:

"(a) to declare the principles of international law to be applied in defining the base-lines [the lines along the Norwegian coasts from which the territorial waters were to be measured], by reference to which the Norwegian Government is entitled to delimit a fisheries zone, extending to seaward 4 sea miles from those lines and

[4] I.C.J. Reports 1951, p. 71.

exclusively reserved for its own nationals, and to define the said base-lines in so far as it appears necessary, in the light of the arguments of the Parties, in order to avoid further legal differences between them;

"(b) to award damages to the Government of the United Kingdom in respect of all interferences by the Norwegian authorities with British fishing vessels outside the zone which, in accordance with the Court's decision under (a), the Norwegian Government is entitled to reserve for its nationals."

The Application was notified to the States entitled to appear before the Court.

The pleadings were filed within the extended time limits fixed by the Court's Orders. On 24 September 1951, the Court, applying article 44, paragraph 3, of its Rules, at the instance of the Norwegian Government and with the agreement of the United Kingdom Government, authorized the pleadings to be made public.

The case was ready for hearing on 30 April 1951, and the oral proceedings took place between 25 September and 29 October 1951. In the course of the hearings the Court heard Sir Eric Beckett, Agent, Sir Frank Soskice, Mr. R. O. Wilberforce and Professor C. H. M. Waldock, Counsel, on behalf of the United Kingdom Government; and Mr. Sven Arntzen, Agent and Counsel, and Professor Maurice Bourquin, Counsel, on behalf of the Government of Norway. In addition, technical explanations were given on behalf of the United Kingdom Government by Commander R. H. Kennedy.

The United Kingdom submitted to the Court thirteen principles which it sought to have the Court acknowledge as being decisive in determining the maritime limits which Norway was entitled to enforce as against the United Kingdom. Norway requested the Court to adjudge and declare that the delimitation of the fisheries zone fixed by the Norwegian Royal Decree of 12 July 1935 was not contrary to international law.

1. Judgment of the Court

In its Judgment,[5] delivered on 18 December 1951, the Court outlined the history leading up to the case.

Beginning in 1906, British fishing vessels, trawlers equipped with improved and powerful gear, appeared in the coastal waters off Norway. The local population became perturbed, and measures were taken by the Norwegian Government to prohibit fishing by foreigners in certain areas. In 1911 the first seizures of a British trawler under these measures took place; others being seized in subsequent years. From time to time, the two Governments entered into negotiations on these seizures and on their respective rights in the Norwegian coastal waters.

On 12 July 1935, a Norwegian Royal Decree was enacted delimiting the Norwegian fisheries zone north of 66°28.8' North latitude. The United Kingdom made urgent representations in Oslo. Pending the result of the negotiations, the Norwegian Government made it known that Norwegian fishery patrol vessels would deal leniently with foreign vessels fishing a certain distance within the fishing limits. In 1948, since no agreement had been reached between the two Governments, the Norwegian Government abandoned its lenient enforcement of the 1935 Decree; incidents then became more and more frequent. A considerable number of British trawlers were arrested and condemned. It was then that the United Kingdom instituted the present proceedings.

The Court observed that, although the July 1935 Decree referred to the Norwegian fisheries zone and did not specifically mention the territorial sea, there could be no doubt that the zone delimited by this Decree was none other than the sea area which Norway considered to be her territorial sea; that is, the area over which Norway had sovereignty. The Court also remarked that the extent of Norway's territorial sea was not the subject of the present dispute, since the four-mile limit claimed by Norway was acknowledged by the United Kingdom in the course of the proceedings. The point at issue was the line from which the four miles were to be measured, which in turn determined the extent of the area over which Norway had sovereignty.

The Court stated that it could not, in keeping with the suggestion of the United Kingdom, deliver a judgment which would confine itself to adjudicating the principles submitted by the United Kingdom, although these were elements which might be taken into account only in so far as they would appear to be relevant for deciding the sole question in the dispute, namely, the validity or otherwise under international law of the lines of delimitation laid down by the 1935 Decree.

The Court noted the very distinctive configuration of the Norwegian coastline which was at the crux of the dispute. In addition to the mainland, this coastline consisted of the "skjaergaard" (literally, rock rampart), made up of islands, islets, rocks and reefs. The 1,500-kilometre coast was very broken along its whole length, constantly

[5] I.C.J. Reports 1951, p. 116.

opening out into indentations often penetrating for great distances inland, sometimes as much as 75 sea miles. Thus, the coast of the mainland did not constitute, as it did in practically all other countries, a clear dividing line between land and sea. The Court observed that what mattered, what really constituted the Norwegian coast line, was the outer line of the "skjaergaard".

The United Kingdom maintained that in measuring the territorial sea the base-line should be low-water mark on permanently dry land which was part of Norwegian territory, or the proper closing line of Norwegian internal waters. The Court decided that since the Norwegian mainland was bordered in its western sector by the "skjaergaard" which constituted a whole with the mainland it was the outer line of the "skjaergaard" which had to be taken into account in delimiting the belt of Norwegian territorial waters.

The Court observed that the simplest method of measurement in applying the low-water mark rule, that of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities, known as "tracé parallèle", could not be applied to so irregular a coast as that of Norway. The United Kingdom had initially urged this method of tracé parallèle, and thereafter substituted the courbe tangente (envelopes of arcs of circles), which the Court observed also had the purpose of applying the principle that the belt of territorial waters must follow the line of the coast. Since the United Kingdom had admitted that this method was not obligatory by law, the Court did not deal with the United Kingdom's conclusions in so far as they were based on it.

The Court noted that, in order to apply the low-water mark principle, several States followed the straight base-lines method and had not encountered objections of principle by other States. This method consisted of selecting appropriate points on the low-water mark and drawing straight lines between them. This, it noted, had been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters.

The United Kingdom contended that Norway might draw straight lines only across bays. The Court was unable to share this view, asserting that if the belt of territorial waters must follow the outer line of the "skjaergaard", and if the method of straight base-lines must be admitted in certain cases, there was no valid reason to draw them only across bays and not also to draw them between islands, islets and rocks, across the sea areas separating them, even when such areas did not fall within the conception of a bay. It was sufficient that they should be situated between the island formations of the "skjaergaard".

The United Kingdom observed that Norway was entitled, on historic grounds, to claim as internal waters all fjords and sunds which had the character of a bay, whether the closing line of the indentation was more or less than ten sea miles long. Norway was also entitled on historic grounds, in the United Kingdom's opinion, to claim as Norwegian territorial waters all the waters of the fjords and sunds which have the character of legal straits, and, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland. These "historic waters" would, in the United Kingdom's view, constitute an exception and a derogation from the ordinary rules of international law, which, that country apparently maintained, permitted a closing line to be drawn across a bay only if it was not more than ten miles long.

The Court deemed it necessary to point out that although the ten-mile rule had been adopted by certain States it had not acquired the authority of a general rule of international law. In any event, the Court held, the ten-mile rule appeared to be inapplicable as against Norway, inasmuch as that country always opposed any attempt to apply it to the Norwegian coast.

The United Kingdom maintained, on the analogy of the alleged ten-mile rule regarding bays, that the length of the straight lines drawn across the waters lying between the various formations of the "skjaergaard" must not exceed ten miles. The Court held that in this connexion the practice of States does not justify the formulation of any general rule of law.

The United Kingdom maintained that the waters situated between the base-lines and the Norwegian mainland belonged to Norway on historic grounds, but that they fell into two categories: internal waters (i.e. those falling within the conception of a bay) and territorial waters (i.e. those having the character of legal straits). Thus the United Kingdom argued that the waters followed by the navigational route known as the Indreleia were territorial waters, having consequences for the determination of the territorial waters at the end of this waterway considered as a maritime strait. The Court could not accept this view which sought to give the Indreleia a status different from that of the other waters included in the "skjaergaard".

The Court noted that the delimitation of sea areas had always had an international aspect; it could be dependent merely upon the will of the coastal State as expressed in its municipal law. The validity of the delimitations of the coastal States with regard to other States depended upon international law. The Court referred to three criteria which could provide courts with an adequate basis for decisions on the validity of delimitations:

(1) the drawing of base-lines must not depart to any appreciable extent from the general direction of the coast;

(2) sea areas lying within base-lines had to be sufficiently closely linked to the land domain to be subject to the regime of internal waters;

(3) certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage, had to be considered.

The Court then examined the historical basis for the Norwegian claims to its coastal waters dating from the Royal Decree of 22 February 1812. The Court found that the Norwegian system of delimitation, now being challenged by the United Kingdom, was consistently applied by Norwegian authorities and that it had encountered no opposition on the part of other States until the time when the dispute arose.

The United Kingdom argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis for an historic title enforceable against it. The Court, considering that the United Kingdom was a maritime power traditionally concerned with the law of the sea and particularly to defend the freedom of the seas, was unable to accept this view.

The Court concluded that the method of straight lines established in the Norwegian system was imposed by the peculiar geography of the Norwegian coast; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bore witness to the fact that they did not consider it to be contrary to international law.

The Court concluded that the Decree of 12 July 1935 conformed in its drawing of base-lines to the traditional Norwegian system.

The United Kingdom asserted that certain of the base-lines adopted by the Decree were contrary to the principles stated by the Court as governing any delimitation of the territorial sea. The Court examined, in some detail, certain of the base-lines which had been criticized to determine whether they were really without justification, and concluded that the base-lines in these specific cases were justified as drawn.

The Court in its Judgment of 18 December 1951,[6] therefore found:

"by ten votes to two,

"that the method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12th, 1935, is not contrary to international law; and

"by eight votes to four,

"that the base-lines fixed by the said Decree in application of this method are not contrary to international law."

Judge Hackworth declared that he concurred in the operative part of the Judgment, but emphasized that he did so because he considered the Norwegian Government had proved a historic title to the disputed areas of water.

Judges Alvarez and Hsu Mo appended to the Judgment statements of their separate opinions and Judges Sir Arnold McNair and Read appended statements of their dissenting opinions.

2. Individual Opinions

Judge Alvarez, in his individual opinion, noted that it was only partly true to state that the present Court was a continuation of the former Permanent Court of International Justice and that, consequently, the International Court was bound to follow the methods and jurisprudence of the former Court. The World War had brought rapid and prolonged changes in international life and greatly affected the law of nations. It now happened with greater frequency than formerly, he stated, that, on a given topic, no applicable precepts were to be found, or that those which did exist presented lacunae or appeared to be obsolete. In all such cases, the Court had to develop the law of nations; it had to remedy its shortcomings, adapt existing principles to these new conditions and, even if no principles existed, create principles in conformity with such conditions.

Judge Alvarez stated that the starting point in considering the international law applicable to the dispute was the fact that, for the traditional individualistic regime on which social life has hitherto been founded, there was being substituted more and more a new regime, a regime of interdependence, and that consequently the law of social interdependence was taking the place of the old individualistic law. He listed the principles governing the case, including the following:

[6] I.C.J. Reports 1951, p. 116.

(1) The variations in geography and economic conditions of States did not make it possible to lay down uniform rules applicable to all governing the extent of the territorial sea and the way in which it was to be reckoned.

(2) Each State might determine the extent of its territorial sea and the way it was to be reckoned, provided: (a) this was reasonable, (b) the State was capable of exercising supervision of the zone, and (c) the State did not infringe the rights acquired by other States, or harm general interests. A State must indicate the reasons for fixing the breadth of its territorial sea.

(3) States had both rights and duties with respect to their territorial sea.

(4) States might alter the extent of the territorial sea provided they furnished adequate grounds to justify the change.

(5) States might fix a greater or lesser area beyond their territorial sea over which they might reserve for themselves certain rights such as customs and police rights.

(6) These rights were of great weight if established by a group of States, and especially by all the States of a continent.

(7) States might raise objection to another State's decision on the extent of its territorial sea; such disputes must be settled in accordance with the Charter.

(8) Similarly, for the great bays and straits there could be no uniform rules.

On the basis of these principles, Judge Alvarez arrived at the conclusion reached by the majority of the Court, that the Norwegian Decree of 1935 was not contrary to any express provisions of international law, or general principles of international law.

Judge Hsu Mo, in his individual opinion, agreed with the Court that the method of straight lines used in the Norwegian Decree was not contrary to international law. He regretted, however, that he was unable to share the view of the Court that all the straight base-lines fixed under that Decree were in conformity with the principles of international law.

He emphasized that the method of delimiting territorial waters adopted by Norway, by drawing straight lines between point and point, island and island, constituted a deviation from what he believed to be a general rule of international law, namely, that, apart from cases of bays and islands, the belt of the territorial sea should be measured, in principle, from the line of the coast at low tide. Accordingly, while international law permitted deviations from the general rule, in testing the validity of the base-lines actually drawn by Norway, the degree of deviation from the general rule had to be considered. The examination of each base-line could not be undertaken in total disregard of the coast line. Norway should not interpret the expression "to conform to the general direction of the coast" so liberally that the coast line was almost completely ignored.

He found two obvious cases in which the base-line could not be considered as having been justifiably drawn, that affecting Svaerholthavet and Lopphavet. He observed, also, that in both these instances Norway had not succeeded in establishing historic title to the waters in question. Accordingly, he concluded that neither by the test of conformity with the general direction of the coast, nor on historical grounds, could the two base-lines drawn be considered as being justifiable under the principles of international law.

3. Dissenting Opinions

Judge Sir Arnold McNair, in his dissenting opinion, summarized the relevant part of the law of territorial waters as follows:

(1) To every State whose land territory was at any place washed by the sea, international law attached a corresponding portion of maritime territory consisting of what the law called territorial waters.

(2) While the actual delimitation of the frontiers of territorial waters lay within the competence of each State because each State knew its own coast best, yet the principles followed in carrying out this delimitation were within the domain of international law and not within the discretion of each State.

(3) The method of delimiting territorial waters was an objective one and a State could not manipulate its maritime frontier in order to give effect to its economic and other social interests. The overwhelming consensus among maritime States was that the base-line of territorial waters was a line which followed the coastline along low-water mark.

(4) The calculation of the extent of territorial waters from the land was the normal and natural thing to do; its calculation from a line drawn on the water was abnormal.

(5) An exception existed in the case of those indentations which possessed such a configuration, both as to their depth and as to the width between their headlands, as to constitute landlocked waters, whether called "bays" or by whatever name. Where the headlands were so close that the bays could really be described as landlocked, the maritime belt was measured from a closing line drawn across it between its headlands. In practice, a distance between headlands somewhat longer than twice the width of territorial waters was often recognized as justifying the closing of a bay. It could not yet be said that a closing line of ten miles formed part of a rule of customary international law. The other category of bay whose headlands might be joined for the purpose of fencing off the waters on the landward side as internal waters was the historic bay, and to constitute an historic bay it did not suffice merely to claim a bay as such; evidence was required of a long and consistent assertion of dominion over the bay and of the right to exclude foreign vessels except on permission.

Judge McNair was unable to reconcile the Norwegian Decree of 1935 with the conception of

territorial waters as recognized by international law, because:

(1) the delimitation was inspired by such factors as the policy of protecting the economic and other social interests of the coastal State;

(2) the limit of four miles was measured not from land but from imaginary lines drawn in the sea;

(3) the Decree, so far from attempting to delimit the belt or bande of maritime territory in conformity with international law, comprised within its limits areas of constantly varying distances from the outer line to the land and bearing little resemblance to a belt or bande.

With regard to the assertions that the United Kingdom was precluded from objecting to the Norwegian system embodied in the Decree by previous acquiescence in the system, he concluded, after examining the historical records, that the system in reality only dated from 1935. This was too short an interval to provide an adequate test of acquiescence.

Examining the claim to waters based upon historic title, he found the evidence of such title inadequate and unconvincing.

Accordingly, Judge McNair concluded that the delimitation of territorial waters made by the Norwegian Decree of 1935 was in conflict with international law, and that its effect would be to injure the principle of the freedom of the seas and to encourage further encroachments upon the high seas by coastal States.

In his dissenting opinion, Judge Read stated that, while he agreed with the majority of the Court in accepting the Norwegian contentions as regards the inland waterway called the Indreleia and as regards the Vestfjord, he was unable to concur in parts of the Judgment which related to other sections of the coast. He found that the establishment of certain of the base-lines by the Royal Norwegian Decree of 1935 was not in conformity with international law. He had no doubt of the existence of a rule of international law which required the measurement of territorial waters from low-tide mark.

After reviewing the development of the rules of international law governing the sea, Judge Read stated that he found it difficult to justify the Norwegian system of measurement of territorial waters as an exercise of powers inherent in State sovereignty in conformity with those rules. By measuring from long straight base-lines, Norway, he considered, was extending its domain in a way which purported to exclude all other States from areas of the high seas, depriving other States of their rights and privileges. He concluded that the power to delimit its maritime domain given to a coastal State by international law did not permit it to go beyond the territorial limits of its existing sovereignty, if such a course impaired rights or privileges conferred by international law on other States.

After reviewing Norwegian historical practice in delimiting its territorial sea, as well as the practice of other States, Judge Read concluded that the rules of international law which, under comparable circumstances, were applicable to other countries in other parts of the world had to be applied to the coast of Norway.

Examining the Norwegian claims as based upon historic title to waters, Judge Read held that the Norwegian system was not actually applied to the disputed areas of sea until after 11 August 1931, a date long after the dispute had arisen, and, accordingly, he concluded that the Norwegian contention failed.

Thereupon, he examined whether the Norwegian system could be treated as a doctrine of special international law recognized by the international community. He concluded from the historical record that it had not been proved that the Norwegian system was made known to the world in time and in such a manner that other nations, including the United Kingdom, knew about it or must be assumed to have had constructive knowledge.

In view of these considerations, Judge Read concluded that the Norwegian Decree was not in conformity with international law.

C. ANGLO-IRANIAN OIL COMPANY CASE

1. Proceedings before the International Court of Justice

a. UNITED KINGDOM APPLICATION

On 26 May 1951 the United Kingdom addressed an Application to the Court instituting proceedings against Iran in the Anglo-Iranian Oil Company Case.

The Application reviewed the terms of the Agreement concluded on 29 May 1933 between the Government of Iran and the Anglo-Iranian Oil Company and the course of the dispute which had arisen out of the Iranian Oil Nationalization

Act of 1 May 1951. The United Kingdom submitted that the Court had jurisdiction to determine the dispute between itself and Iran on the ground that it was covered by Iran's declaration deposited with the Secretariat of the League of Nations on 19 September 1932 accepting the compulsory jurisdiction of the Permanent Court of International Justice.[7] Alternatively, the United Kingdom stated, it expected that Iran as a Member of the United Nations, would agree to appear before the Court voluntarily.

The United Kingdom Application asked the Court to declare that Iran was under an obligation to submit its dispute with the Anglo-Iranian Oil Company to arbitration, in accordance with article 22 of the 1933 Convention[8], and to accept and carry out any award issued as a result of such arbitration.

Alternatively, the Court was asked to declare:

(1) that the putting into effect of the Oil Nationalization Act of 1 May 1951 in so far as it purported to effect a unilateral annulment or alteration of the terms of the 1933 Convention contrary to articles 21 and 26 of the Convention[9] would be an act contrary to international law for which Iran would be internationally responsible;

(2) that article 22 of the Convention continued to be legally binding on Iran and that by denying the Company the exclusive legal remedy provided in the Convention, Iran had committed a denial of justice contrary to international law;

(3) that the Convention could not lawfully be annulled or its terms altered by Iran except by agreement with the Company or in accordance with article 26 of the Convention.

The Court was asked to adjudge that Iran should give full satisfaction for all acts committed in relation to the Company which were contrary to international law or the 1933 Convention and to determine the manner of such satisfaction and indemnity.

The United Kingdom reserved the right to request the Court to indicate, in accordance with Article 41 of the Court's Statute, provisional measures to protect its rights so that its national, the Anglo-Iranian Oil Company, should enjoy the rights to which it was entitled under the terms of the 1933 Convention.

b. THE QUESTION OF INTERIM MEASURES

On 22 June, the United Kingdom requested the Court to indicate interim measures of protection in the case in accordance with Article 41 of the Court's Statute and article 61 of its Rules. The United Kingdom's request asked, inter alia, that:

(1) the Anglo-Iranian Oil Company should be permitted to continue without hindrance the operations it had been carrying on prior to the Nationalization Act of 1 May 1951;

(2) its property and the monies it earned should not be sequestered or seized;

(3) the Iranian Government should ensure that no steps were taken capable of prejudicing the execution of a decision by the Court on the merits of the case in favour of the United Kingdom, should the Court render such a decision;

(4) the Iranian and United Kingdom Governments should ensure that no steps were taken capable of aggravating the dispute and, in particular, the Iranian Government should abstain from propaganda calculated to inflame Iranian opinion against the Company and the United Kingdom.

The text of the request was transmitted to the Iranian Government and to the Secretary-General

[7] The Iranian (Persian) declaration was signed on 2 October 1930, and its ratification was deposited on 19 September 1932. It was effective for a period of six years and thereafter until notification was given of its abrogation.

Its conditions were that it was effective without special agreement in relation to any other State accepting the same obligation "in any disputes arising after the ratification of the present declaration with regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia and subsequent to the ratification of this declaration," with the exception of:

(1) disputes relating to the territorial status of Persia, including those concerning the rights of sovereignty of Persia over its islands and ports;

(2) disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement;

(3) disputes with regard to questions which, by international law, fall exclusively within the jurisdiction of Persia;

(4) subject to the condition that Persia reserves the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to the Council of the League of Nations. For text of the declaration, see I.C.J. Yearbook 1946-1947, p. 211.

[8] The first paragraph of article 22 reads as follows: "A. Any differences between the parties of any nature whatever and in particular any differences arising out of the interpretation of this Agreement and of the rights and obligations therein contained as well as any differences of opinion which may arise relative to questions for the settlement of which, by the terms of this Agreement, the agreement of both parties is necessary, shall be settled by arbitration." The remaining paragraphs describe the machinery for arbitration.

[9] The relevant paragraph of article 21 reads as follows:

"This Concession shall not be annulled by the Government and the terms therein contained shall not be altered either by general or special legislation in the future, or by administrative measures or any other acts whatever of the executive authorities."

Article 26 states that the concession is granted to the Company for a period ending 31 December 1993 and that it "can only come to an end in the case that the Company should surrender the Concession ... or in the case that the Arbitration Court should declare the Concession annulled as a consequence of default of the Company in the performance of the present Agreement."

and the Members of the United Nations and to other States entitled to appear before the Court.

On 23 June, the President of the Court sent a message to the Prime Minister and the Minister for Foreign Affairs of Iran suggesting that instructions be given "to avoid all measures which might render impossible or difficult the execution of any judgment which the Court might subsequently give and to ensure that no action is taken which might aggravate the dispute submitted to the Court. Any measures taken by the Imperial Iranian Government for this purpose", it was stated, "would in no way prejudice such representations" as that Government may deem it appropriate to make to the Court either during the proceedings on interim measures or on the United Kingdom Application.

The Iranian Minister for Foreign Affairs replied to this message on 29 June and a final text of the reply was delivered to the President of the Court the following day. It expressed the hope "that the Court would declare that the case is not within its jurisdiction because of the legal incompetence of the complainant and because of the fact that the exercise of the right of sovereignty is not subject to complaint. Under these circumstances, the request for interim measures of protection would naturally be rejected."

A public hearing was held at The Hague on 30 June, when the Court heard a statement by the Agent of the United Kingdom Government. The Iranian Government was not represented at this hearing.

In an Order of 5 July 1951, the Court, pending its final decision on the merits of the case, indicated the following provisional measures[10] to apply on the basis of reciprocal observance:

"1. That the Iranian Government and the United Kingdom Government should each ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of any decision on the merits which the Court may subsequently render;

"2. That the Iranian Government and the United Kingdom Government should each ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;

"3. That the Iranian Government and the United Kingdom Government should each ensure that no measure of any kind should be taken designed to hinder the carrying on of the industrial and commercial operations of the Anglo-Iranian Oil Company, Limited, as they were carried on prior to May 1st, 1951;

"4. That the Company's operations in Iran should continue under the direction of its management as it was constituted prior to May 1st, 1951, subject to such modifications as may be brought about by agreement with the Board of Supervision referred to in paragraph 5;

"5. That, in order to ensure the full effect of the preceding provisions, which in any case retain their own authority, there should be established by agreement between the Iranian Government and the United Kingdom Government a Board to be known as the Board of Supervision composed of two Members appointed by each of the said Governments and a fifth Member, who should be a national of a third State and should be chosen by agreement between these Governments, or, in default of such agreement, and upon the joint request of the Parties, by the President of the Court.

"The Board will have the duty of ensuring that the Company's operations are carried on in accordance with the provisions above set forth. It will, inter alia, have the duty of auditing the revenue and expenses and of ensuring that all revenue in excess of the sums required to be paid in the course of the normal carrying on of the operations and the other normal expenses incurred by the Anglo-Iranian Oil Company, Limited, are paid into accounts at banks to be selected by the Board on the undertaking of such banks not to dispose of such funds except in accordance with the decisions of the Court or the agreement of the Parties."

The Court, in its Order, referred to the following principal reasons for its adoption:

(1) That in the Application instituting proceedings, the United Kingdom Government had adopted the cause of the British Company and was proceeding in virtue of the right of "diplomatic protection";

(2) That the complaint made in the United Kingdom Application was of an alleged violation of international law by the breach of the Agreement for a concession of 29 April 1933 and by a denial of justice resulting from the refusal of the Iranian Government to accept arbitration in accordance with that Agreement, and that it could not be accepted a priori that a claim based on such a complaint fell completely outside the scope of international jurisdiction;

(3) That these considerations sufficed to empower the Court to entertain the request for interim measures of protection;

(4) That the indication of such measures in no way prejudged the question of the Court's jurisdiction on the merits and left unaffected the right of the respondent to submit arguments against such jurisdiction;

(5) That the object of interim measures was to preserve the respective rights of the parties pending the Court's decision;

(6) That it followed from the terms of the Statute and the Rules that the Court must be concerned to preserve by such interim measures the rights which might be subsequently adjudged to belong to either one of the parties;

(7) That the existing state of affairs justified the indication of interim measures of protection.

Judges Winiarski and Badawi Pasha, declaring that they were unable to concur in the Court's Order, appended a joint statement of their dissenting opinion.[11]

They held that the question of interim measures of protection was linked, for the Court, with the

[10] I.C.J. Reports 1951, p. 89.
[11] I.C.J. Reports 1951, p. 96.

question of jurisdiction, and that the Court had power to indicate such measures only if it held, even if only provisionally, that it was competent to hear the case on its merits. Since interim measures of protection were exceptional and liable to be regarded as a scarcely tolerable interference in the affairs of a sovereign State, the Court should not indicate them unless it considered that its competence, if challenged, appeared nevertheless reasonably probable. If there were weighty arguments in favour of the challenged jurisdiction such interim measures could be indicated but they could not, in the opinion of the dissenting judges, if there existed serious doubts or weighty arguments against the Court's jurisdiction.

The present case, moreover, was not one in which the objection to the jurisdiction was regarded as a mere ground of defence, in which the party overruled in its objection continued to take part in the proceedings. Iran had affirmed that it had not accepted the jurisdiction of the Court and was in no way bound in law, and had refused to appear before the Court, giving its reasons for this refusal.

The Court ought therefore to decide, in a summary way and provisionally in order to arrive at a decision on interim measures, which conclusion it was the more likely to reach on the question of its jurisdiction.

These judges stated, further, that a summary consideration of the United Kingdom grounds for alleging the Court's jurisdiction led to the provisional conclusion that if Iran did not voluntarily accept the Court's jurisdiction in the case, the Court would be compelled to hold itself without jurisdiction in this case, and that, in these circumstances, interim measures of protection should not have been indicated.

c. IRANIAN WITHDRAWAL OF ACCEPTANCE OF COMPULSORY JURISDICTION

The Minister of Foreign Affairs of Iran, on 9 July, sent a communication (United Nations Registry Number 46/04(8)) to the Secretary-General stating, among other things, that the matter did not come within the scope of Iran's acceptance of the compulsory jurisdiction of the Permanent Court of International Justice, since it was a matter exclusively within Iran's domestic jurisdiction, relating to a concession, which had been imposed through the creation of special circumstances but which, even if valid, was one granted by the Iranian Government to a private legal person.

In conformity with the right to self-determination, as proclaimed in the United Nations Charter, and with a view to liberating themselves from a usurping company which had long served as an instrument of interference in Iran's internal affairs, the Government and people of Iran had proclaimed the nationalization of the oil industry. Each country had the incontestable right to nationalize any of its industries.

The Court, it was stated, was not competent to give a ruling in this alleged dispute: Iran had not consented to the submission of the matter to the Court; the Charter did not authorize the Court to assume jurisdiction in this case; there were no international treaties or conventions conferring such jurisdiction on the Court; and the matter did not come within the scope of Iran's acceptance of the Court's compulsory jurisdiction. Iran had drawn these matters to the Court's attention.

The Court had, however, impaired the confidence of Iran in international justice, in particular by its Order of 5 July 1951.

(1) Before taking any decision the Court should have declared its lack of jurisdiction in the case.

(2) Contrary to the Court's Rules, only five days had been allowed for the Iranian reply to the United Kingdom request for measures of protection.

(3) The consequence of the Court's Order of 5 July 1951, if it were enforceable, would be that Iran's right of sovereignty in a solely domestic matter was abolished as the result of a complaint which the United Kingdom was not legally competent to make and which was not within the Court's jurisdiction. The decision would involve the establishment of a new system of capitulations for the benefit of the nationals of the Great Powers to the detriment of those of weak and small countries. It was against the Charter provisions concerning the sovereign equality of Members of the United Nations.

(4) By its Order, the Court had also acted contrary to the Charter provision stating that the United Nations should not intervene in matters within the domestic jurisdiction of any State.

(5) "By a crowning injustice", the Court had exceeded the United Kingdom demands in ordering the establishment of a Board of Supervision to include two members appointed by the United Kingdom. This Order, if it were enforceable, would entitle the United Kingdom to intervene in Iran's internal affairs.

(6) The Court had also instructed this Board to ensure that the Company's excess of revenue over expenses should be paid into selected banks. Even if the former concession contract were still temporarily valid, certain sums, not disputed, would have to be paid to the Iranian Government.

The judges, it was stated, might be under the impression that, because Iran was in a difficult financial situation, the sequestration of its oil profits and the designation of a distant time limit for a decision on the substance of the case might persuade it to abandon its national aims.

In view of these considerations, Iran withdrew its declaration concerning acceptance of the Court's, compulsory jurisdiction.

d. TIME LIMITS FOR WRITTEN PROCEEDINGS

By an Order of 5 July 1951[12] the Court fixed the following time limits for presentation of written proceedings: 3 September for the United Kingdom Memorial and 3 December for the Iranian Counter-Memorial. The United Kingdom having, on 16 August, requested an extension of the time limit for the filing of the Memorial, the Court by an Order of 22 August 1951[13] postponed the time limits to 10 October for the United Kingdom Memorial and 10 January 1952 for the Iranian Counter-Memorial. Iran having, on 17 December, requested an extension, the time limit for the presentation of the Counter-Memorial was postponed by an Order of 20 December[14] until 11 February 1952.

e. UNITED KINGDOM MEMORIAL

In its Memorial, the United Kingdom asked the Court to give a declaration and judgment that the putting into effect of the Iranian Oil Nationalization Act in so far as it purported to effect a unilateral annulment or alteration of the terms of the 1933 Convention was an act contrary to international law and that the Convention could not be altered except as a result of agreement with the Company or according to the terms of the Convention (article 26).

It asked the Court to rule that the Iranian Government was bound within a period to be fixed by the Court to restore the Company to the position existing prior to the Act and to abide by the terms of the Convention, including its article 22, providing for arbitration of any differences. It further asked the Court to state that the Company was entitled to compensation for loss and damage suffered as a result of acts by the authorities of the Iranian Government contrary to the provisions of the Convention and which had occurred between 1 May and the restoration to the Company of its former position. The amount of compensation should be assessed by the Arbitration Court provided in accordance with article 22 of the Convention or in such other manner as the Court would decide.

Alternatively, if the Court decided it should not give judgment for restoration of the status quo ante and for damages up to the time of such restoration, the United Kingdom asked for a judgment that the Iranian Government should pay the United Kingdom Government on behalf of the Company "in accordance with the principles with relation to expropriation which violate international law accepted in international jurisprudence and formulated by the Permanent Court of International Justice" compensation, which should include:

(1) the value of the undertaking expropriated and the loss of future profits, that is, a sum corresponding to the value which would be represented by restoration in kind;

(2) damages for loss sustained which would not be covered by restitution in kind (or payment in place of it).

The amount, it was proposed, should be assessed in a manner decided by the Court.

If the Court decided that the United Kingdom was not entitled to a declaration and judgment in accordance with any of the foregoing submissions and that the Oil Nationalization Act of 1 May only infringed international law in so far as its compensation provisions were inadequate, then, it was asked, the Court should declare that the provisions of the Act did not satisfy the requirements of international law in regard to compensation. It should further declare that the amount of compensation should be decided by arbitration proceedings provided in article 22 of the Convention, and if Iran failed to agree to arbitration as provided therein, the amount of compensation should be determined by the Court.

2. Complaint before the Security Council

On 28 September, the United Kingdom complained to the Security Council that the Iranian Government had failed to comply with the provisional measures indicated by the Court, and asked that the Council consider the situation arising from this failure. It proposed a draft resolution (S/2358) which would refer, inter alia, to the order passed by the Government of Iran for the expulsion of all the remaining British staff of the Anglo-Iranian Oil Company as being contrary to the provisional measures indicated by the Court. Under the draft resolution, the Council would:

(1) express concern at the dangers inherent in this situation and at the threat to peace and security which might be involved; (2) call on Iran to act in conformity with the provisional measures and, in particular, to permit the continued residence at Abadan of the staff affected by the expulsion orders, or its equivalent; and (3) request Iran to inform the Council of the steps taken to carry out the resolution.

[12] I.C.J. Reports 1951, p. 100.
[13] I.C.J. Reports 1951, p. 106.
[14] I.C.J. Reports 1951, p. 208.

a. DISCUSSIONS ON INCLUSION OF THE ITEM IN THE AGENDA

At the Council's 559th meeting on 1 October, the inclusion of the item in the agenda was opposed by the representatives of the USSR and Yugoslavia, who held that the matter was not within the Council's competence. The USSR representative stated that such questions as the nationalization of its oil industry, the activities of foreign industrial concerns and the presence of foreign citizens on its territory were all within the domestic jurisdiction of Iran; discussion of the complaint would constitute an interference in Iran's internal affairs, contrary to Article 2, paragraph 7, of the Charter, and would be a gross violation of the Iranian people's sovereignty.

The representative of Yugoslavia stated that the Council was not bound by the decision of the Court on competence; besides, the Court's Order made it clear that it was not prejudging the question of jurisdiction and indicated grave doubt on the point.

The representatives of China, Ecuador, France, India, the Netherlands, Turkey, the United Kingdom and the United States spoke in favour of including the item in the agenda.

The representatives of China and India, while reserving their positions on both the Council's competence and the substance of the complaint, considered that the item must be placed on the agenda to enable the Council to discuss the subject in order to decide the question of competence with all the facts before it.

The representatives of Ecuador and Turkey considered that the Council could hardly refuse to consider any matter which a Member State felt contained a threat to international peace.

In the view of the United States representative, the question of whether the matter was within Iran's domestic jurisdiction depended on a consideration of the very substance of the matter. Clearly the dispute might lead to international disturbance, and it was important that the Council should place any such dispute on its agenda in order to bring to bear upon the parties concerned the restraints necessary to the carrying out of justice while a case was pending. He added that the United States considered the Security Council competent to consider the dispute on its merits; the Council had the responsibility of considering any dispute or situation which might affect the maintenance of international peace and security. He considered that a decision on competence should be taken after Iran had been invited to the Council table.

The representative of the Netherlands stated that the Council had been dealing thus far with the same problem which had confronted the Court, that of competence. The Court, which was the greatest authority on matters of competence, had, by indicating interim measures, suggested its competence in the matter so far. There seemed, therefore, to be no doubt of the competence of the Council.

The representative of France argued that the divergence of views on the question of competence indicated the need for a debate.

The representative of China stated that he could not agree with the United States view that the matter was one involving the Council's responsibility in matters of peace and security; the matter concerned property, in regard to which no party would resort to armed force in seeking a solution.

The representative of Yugoslavia suggested that the Government of Iran might be invited to participate in the debate not on the agenda item itself but on whether the agenda should be adopted, a procedure which would be in the spirit of the Council's rules of procedure and the practice of the General Assembly.

The representative of the United Kingdom agreed that the question of competence could be decided later. Regarding the statement of the USSR representative, he recalled the statement of the four sponsoring Governments at the San Francisco Conference, that an individual member alone could not prevent the Council's consideration of a question. He suggested that the finding of the Court on interim measures, indicating the existence of a case at least prima facie internationally judicable, was binding on all Members. That finding, he said, gave rise to obligations under the Charter which it was the duty of the Council to uphold. As regards the Yugoslav suggestion, the United Kingdom representative argued that it would be an extremely bad precedent to invite non-members to help the Council on procedural questions.

The Council decided to include the item in its agenda by 9 votes to 2 (USSR and Yugoslavia). At the invitation of the President the representative of Iran took his seat at the Council table.

b. UNITED KINGDOM STATEMENT AND REVISED DRAFT RESOLUTION

During the discussions in the Council which took place between 1 and 19 October, the representative of the United Kingdom traced the his-

tory of the oil concessions from 1901 when a concession was first granted to W. K. D'Arcy. Under the terms of that arrangement, certain amounts in cash and shares and 16 per cent of the net profits were to be paid to Iran. Iran's income varied with the profits. During the slump of the early 'thirties when Iran's income fell sharply, Iran declared the concession cancelled. The United Kingdom took the matter to the League of Nations but, before it could be heard, a new Agreement was personally negotiated with the Shah in 1933 which enabled Iran to participate in the Company's profits during good years with protection during bad years by a fixed payment per ton of oil. Article 22 of that Agreement provided for arbitration when there was a difference of opinion between the parties. The present Iranian Prime Minister, it was stated, was in the habit of alleging that the Agreement had been concluded under duress. In 1949 some of the financial terms of the Agreement were revised in favour of the Iranian Government in a Supplemental Oil Agreement signed by the Iranian Finance Minister, subject to ratification by the Iranian Parliament (Majlis). The Agreement would have meant an income for the years 1948-50 of no less than £76.66 million instead of £38.67 million. But the terms were never properly explained to public or parliamentary opinion and the Iranian Parliament did not ratify the Agreement. A campaign of nationalization was started during which the United Kingdom informed the Iranian Government that under the 1933 Agreement the concession could not be terminated by an act such as nationalization. At the same time the Company proposed negotiations for a new agreement on the basis of an equal share in the profits. On 10 March, Prime Minister Razmara was assassinated, three days after presenting to the Majlis Oil Committee reports from Iranian experts which were unfavourable to nationalization. By 2 May, the legislative processes for nationalization, including implementation laws, were completed. After further efforts at negotiations the United Kingdom submitted the matter to the International Court and obtained the Interim Order.

In subsequent negotiations, resumed at the instance of Averell Harriman, personal representative of the President of the United States, proposals were submitted to the Iranian Government on the basis of the United Kingdom's recognition of the nationalization law. While offering withdrawal of the Anglo-Iranian Company from Iran, the proposals aimed at ensuring technical efficiency for the production of oil and for its distribution and sale in world markets. It was further proposed to retain the British technical staff and a management in which that staff could have confidence. The Iranian Government, however, insisted that only the problems relating to the purchase of oil to meet the United Kingdom's own requirements, the compensation to be paid to the Anglo-Iranian Oil Company and the transfer of British technicians to the service of the Iranian National Oil Company could be discussed. The notification by the Iranian Government on 25 September to the remaining British staff to leave the country represented a final flouting of the Interim Order of the Court.

Turning to legal aspects of the case, the representative of the United Kingdom said that reference of the case to the Security Council was based on Articles 34 and 35 of the Charter. No one, he said, could doubt the inflammatory nature of the situation in Iran even with the goodwill and restraint shown by the United Kingdom, nor the potential threat to peace.

Anticipating the argument that Article 94, paragraph 2, of the Charter applied only to final judgments of the Court and laid no obligation on Iran to comply with decisions on interim measures, he said that there would be no point in making the final judgment binding if one of the parties could frustrate that decision in advance by actions which would render it nugatory. The steps which Iran had taken to bring the industry to a standstill were clearly contrary to the letter and spirit of the Court's Order.

Further, the Court's notification to the Council of interim measures under Article 41, paragraph 2, of its Statute implied the Council's competence. The whole object of the interim measures, it was stated, was to preserve the respective rights of the parties and to prevent a situation in which the final decision would be rendered inoperative.

Given a minimum of goodwill, he concluded, there was no reason why an arrangement satisfactory to both sides should not be worked out. The Iranians had not to date played a great part in what should, in principle, be a joint undertaking. But their part had become increasingly great and under the latest proposals they would enter into genuine partnership, while direct Iranian participation in the operating concern would be very considerable.

At the 560th meeting on 15 October, the representative of the United Kingdom explained that on 12 October a revised draft resolution (S/2358/Rev. 1) had been substituted for the original draft resolution in consequence of the changed Iranian situation, including the expulsion of the remaining

British staff of the Anglo-Iranian Oil Company. The revised draft resolution read as follows:

"Whereas a dispute has arisen between the Government of the United Kingdom and the Government of Iran regarding the oil installations in Iran, the continuance of which dispute is likely to threaten the maintenance of international peace and security and

"Whereas the efforts to compose the differences between the United Kingdom Government and the Government of Iran regarding the installations have not succeeded and

"Whereas the Government of the United Kingdom requested the International Court of Justice for an indication of provisional measures and

"Whereas the International Court of Justice, acting under Article 41, paragraph 2 of its Statute, notified the Security Council of the provisional measures indicated by the Court on July 5, 1951, pending its final decision as to whether it had jurisdiction in the proceedings instituted on May 26, 1951, by the United Kingdom Government against the Government of Iran, and

"Whereas the United Kingdom Government accepted the indication of the provisional measures and the Government of Iran declined to accept such provisional measures;

"The Security Council

"Concerned at the dangers inherent in the dispute regarding the oil installations in Iran and the threat to international peace and security which may thereby be involved;

"Noting the action taken by the International Court of Justice on July 5, 1951, under Article 41, paragraph 2 of its Statute;

"Conscious of the importance, in the interest of maintaining international peace and security, of upholding the authority of the International Court of Justice;

"Calls for:

"1. The resumption of negotiations at the earliest practicable moment in order to make further efforts to resolve the differences between the parties in accordance with the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrangements are made consistent with the Purposes and Principles of the United Nations Charter;

"2. The avoidance of any action which would have the effect of further aggravating the situation or prejudicing the rights, claims or positions of the parties concerned."

c. IRANIAN STATEMENT

Also at the 560th meeting, the Prime Minister of Iran appeared before the Security Council; his statement covered the following, among other points.

Although Iran had produced a total of 315 million tons of oil during the 50 years that the United Kingdom had the concession, its entire gain had been only £1.10 million. In 1948, the net revenue of the former Anglo-Iranian Oil Company had been £61 million, but Iran had received only £9 million, while £28 million had gone into the United Kingdom Treasury by way of income tax alone. In the oil region of southern Iran, it was stated, people were living in absolute misery. If such exploitation of the oil industry were to continue, the Iranian people would remain forever in a state of poverty. Therefore, the Iranian Parliament had voted unanimously for nationalization of the oil industry. Iran's oil resources being the property of the people they had absolute rights over them. The exercise of Iran's sovereign rights in such matters was its domestic concern and hence the Security Council had no competence to deal with the question.

It was further stated that the new law provided for the payment of compensation to the dispossessed Company and that 25 per cent of the earnings of the new Company were being set aside for that purpose. It was also provided that customers of the former Company could purchase, at current market prices, the same quantity of oil previously purchased by them and that they were to be given priority in the purchase of available additional supplies.

The Iranian Government, the Iranian representative said, had also declared its readiness to enter into a long-term contract to sell oil to the United Kingdom and to take the British technicians into the employ of its National Oil Company and give them the necessary authority to carry on their technical tasks. Furthermore, Iran had concluded no agreement of any kind, whether by treaty, contract or otherwise, with other States in abridgment of its rights over its oil resources. Yet, the United Kingdom had illegally trespassed on that right by seeking to take advantage of the iniquitous concession of 1933. It had further interfered in the affairs of Iran. It had sought to incite internal dissension and sedition, to instigate strikes, and to intimidate Iran by stationing military forces in its vicinity.

The United Kingdom, it was stated, had also made abusive use of the International Court of Justice by misrepresenting the Agreement of 1933 as an abridgment of Iran's sovereign rights in favour of the former Company, by taking a non-judicable action to the Court, and by invoking a tribunal known to be without competence to hear such a complaint without Iran's consent. In its note of 9 July 1951 (United Nations Registry Number 46/04(8)) to the Secretary-General, the Government of Iran had declared the Court to be without competence and its Order invalid because it was outside the terms of the Iranian declaration of 2 October 1930 recognizing the compulsory jurisdiction of the Court.

Apart from the bar to the Security Council's competence interposed by Article 2, paragraph 7, of the Charter, the Council could not do what the United Kingdom asked and enforce compliance under Article 94 of the Charter[15] since the Court's Statute attributed binding force only to a final judgment and not to provisional interim measures indicated under Article 41.

The attempt to derive the Council's authority from the requirement of notice, under Article 41, paragraph 2, of the Statute was open to the objection, it was stated, that an international instrument which concerned exclusively the rights and duties of the International Court could not confer powers on the Council by implication.

As regards the suggestion that the Council must have jurisdiction because of the existence of a threat or potential threat to international peace and security, the representative of Iran stated that such a threat could not originate from Iran in view of its small resources and complete lack of war potential. If there was any threat, it could originate only from the display of force by the United Kingdom. If, as had been publicly declared, the United Kingdom had abandoned the tactics of displaying force, there would be no danger whatever. A complaint therefore could not be pressed on those grounds.

In a review of United Kingdom policies in Iran, the representative of Iran stated that destiny had placed Iran as a barrier between two large empires, the Russian and the British. In 1907, the United Kingdom had concluded an agreement with Tsarist Russia for the division of Iran into two spheres of influence. After the Russian revolution, the Soviet Union had concluded a treaty with Iran in 1921, renouncing, inter alia, rights under the 1907 agreement. The United Kingdom, on the other hand, had sought in 1919, by treaty with a subservient Government, to impose a virtual protectorate. The effort had been frustrated by the resistance of the Iranian people and by support given them by some liberal nations, notably the United States. However, a military coup d'etat had taken place in 1921 with British connivance and had resulted in a dictatorial regime which the British had fostered for twenty years. It was that dictatorship which had made possible the iniquitous Agreement imposed in 1933. The alliance of Iran with the victors in the Second World War had made no difference in British policy. Not only had national life been disorganized by foreign armies, but Iran had had to bear the financial burdens of the British under an onerous monetary and financial exchange agreement which set the price of sterling at a fictitious level and brought about great inflation.

As for the economic policy of the United Kingdom in Iran, he continued, among the first steps to reduce Iran to economic servitude was the concession to W. K. D'Arcy in 1901. The Anglo-Persian Oil Company which replaced D'Arcy as the concessionaire had paid less than £11 million in royalties by 1932. By curtailing production and by presenting fictitious balance sheets, the Company showed an ostensible reduction of its earnings in 1932 to one fourth of those of the previous year and thus goaded the Iranian Government to annul the D'Arcy concession. There was abundant evidence that plans for that annulment had been laid by the Company in order to prepare the way for a more favourable agreement. The British Government brought the matter before the League of Nations and, by pressure brought to bear upon Iran, effected replacement of the D'Arcy concession, which would have expired in 1961, by the 1933 Agreement which extended it to 1993.

Glaring disadvantages of that Agreement included, it was stated, an income-tax provision under which, in 1948, only 2 per cent of the net revenues of the Company were paid to Iran while 45 per cent went to the British Treasury in taxes; a price for oil consumed in Iran based on prevailing prices in the Gulf of Mexico and exorbitantly high considering the low production cost in Iran; exemption from the payment of custom duties and, most important, postponement of the transfer to Iran of the Company's installations by extension of the Agreement.

The former Company, it was said, also declined to give effect, through false and restrictive interpretation, to certain provisions by not paying the 20 per cent royalties due on all the profits of subsidiary and associated companies; by preventing auditing of accounts by the Iranian Government and verification of the amount of oil exported; by sabotaging the principle of Iranian technical development and increasing the number of foreign employees from 1,800 in 1943 to 4,200 in 1948; by not carrying out the obligation to make any information available at any time, in particular regarding the amounts of oil sold to the British Admiralty at very low prices; and by not assuring health services and housing for its employed Iran-

[15] Article 94, paragraph 2, provides that if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

ian labourers, of whom more than 80 per cent were without housing.

These policies, it was stated, had led to mounting resentment and had resulted in legislation in 1944 prohibiting future oil concessions and in the mandate by the Majlis in 1947 charging the Government to restore to Iran all rights to its natural resources. Repressive measures were adopted by the subservient Government against organizations which sought to defend national interests, and in 1948 a secret Supplemental Agreement was negotiated which was defeated in Parliament because of the firm backing given to the opposition by public opinion.

After the passage of the nationalization laws in 1951, the Iranian Government complied with the former Company's request for negotiations which were subsequently discontinued because the Company's proposals were contrary to the Oil Nationalization Law and because they involved a revival of the former Company in a new guise.

The representative of Iran then referred to the mediation efforts of Mr. Harriman, whose formula had been accepted by the United Kingdom as a new basis for negotiations. This provided for United Kingdom's recognition of the Nationalization Law and for Iran's willingness to negotiate with the United Kingdom regarding the manner of enforcement of that Law in so far as it concerned United Kingdom interests. Under this formula, the United Kingdom mission submitted an eight-point proposal which would provide, inter alia. for:

(1) payment of compensation to the former Company; (2) establishment of a purchasing organization on behalf of the former Company which would get a practical monopoly of the purchase of oil; (3) equal division of the profits between the National Iranian Oil Company and the purchasing organization; and (4) an operating agency, to act on behalf of the National Iranian Oil Company, composed of the British Staff with an Iranian representative on the Board.

These proposals, the Iranian representative stated, were rejected because they were contrary to the Oil Nationalization Law and did not comply with the approved formula.

Counter proposals submitted by the Iranian Government would have provided for:

(1) the sale to the British Government of the amount of oil purchased in previous years at a price to be based on the prevailing international rates on the basis of the f.o.b. value at any Iranian port;

(2) the employment of British technicians in order to manage the industry on an efficient basis; and

(3) settlement of the compensation claims of the former Company.

Iran was not prepared to divide the oil receipts into halves, nor to accept any kind of partnership contrary to ordinary commercial usage. After the failure of these negotiations, the British staff of the former Company were asked to leave. Their departure took place without incident. Nevertheless, Iran was willing to reopen negotiations on the sale of oil to the United Kingdom and on compensation as soon as the United Kingdom showed a real desire to reach a settlement.

The representative of Iran concluded by stating that the revised United Kingdom draft resolution (S/2358/Rev.1) was as unacceptable as the old one because the Security Council was not competent to deal with the complaint.

d. REPLIES OF THE UNITED KINGDOM AND IRAN

In reply, the representative of the United Kingdom stated that the Iranian representative had suggested that the United Kingdom had not accepted the principle of nationalization, which it had, and he had implied that the United Kingdom had used some kind of force, which it had not. The Security Council, he stated, had competence in the matter because international law prescribed the conditions and the circumstances in which foreign property could be validly expropriated. Moreover, Iran had broken certain treaties, which was not a matter of domestic jurisdiction. Further, anything done by a Government on its own territory in relation to foreign private companies could not be considered a matter of domestic jurisdiction because there were rules of international law governing the treatment of foreigners.

Referring to the indictment of the Company by the Iranian representative, the representative of the United Kingdom cited figures to show that some of the accusations were false and others were much exaggerated. The Iranian representative, it was said, had not truly represented the Company's increasing financial value to Iran, the superior social conditions it provided and the greater increase in Iranian than in foreign employees during 1933-1948. The fact was that 60 per cent of the Company's 9,100 salaried staff occupying the highest positions were Iranians.

As to the economic benefits received by Iran from the Company's operations, the United Kingdom representative asserted that the entire basis of the industrial potential and future prosperity of Iran had been the development of oil, which Iran could never have achieved without the Company.

At the 563rd meeting, in reply to the United Kingdom representative, the representative of Iran set forth data to refute the facts and figures cited by the United Kingdom. These related to comparative returns from the Iranian Oil Company to the United Kingdom and the Iranian Governments, to unsatisfactory labour conditions in the oil industry, and to the status of Iran in oil production compared with its oil-producing neighbours. He also referred to the Company's effort to maintain a monopoly on technical knowledge and to its interference in the internal affairs of Iran. The acknowledgement by the representative of the United Kingdom that the undertaking should have been joint came after nearly 50 years of exploitation. What might have been accepted at the beginning was no longer possible, since Iran had bought and paid many times over for the share in the enterprise now offered. Iran was certainly not behind the United Kingdom in its eagerness to negotiate, he continued, but the former Company would never again operate in Iran. In conclusion, he argued that expropriation of aliens' property was governed by only one condition, the payment of compensation, which had been provided for in this case. Several proposals had been made to settle this question but the United Kingdom had not replied to them.

e. CONSIDERATION OF THE UNITED KINGDOM REVISED DRAFT RESOLUTION

At the 561st meeting of the Council on 16 October, the representatives of India and Yugoslavia jointly submitted amendments (S/2379) to the United Kingdom revised draft resolution. These would call for the deletion of the last two paragraphs of the preamble (which referred to the provisional measures) and also for the deletion in paragraph 1 of the operative part of the words "the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrangements are made consistent with", so that negotiations would be called for simply in accordance with the Purposes and Principles of the Charter. In paragraph 2 of the operative part, it was proposed to delete the reference to the "rights" and "claims" of the parties.

The representative of India explained that the amendments were designed to safeguard the legitimate position of each party and to offer a real possibility for resuming negotiations in a favourable atmosphere. To make the resolution acceptable so far as possible to both parties, references to the provisional measures indicated by the Court had been deleted. As regards the Council's competence, the Indian representative stated that the Council might ask for the resumption of negotiations without prejudging the question, just as the Court had indicated provisional measures without prejudging the question.

The representative of China then suggested additional amendments, designed to avoid the characterization of the dispute as a threat to the maintenance of international peace, to delete all references to the International Court of Justice, and to replace the phrase "calls for" with the word "advises" so that the resolution would not prejudice the question of competence but would simply urge the parties to resume negotiations.

The representative of the USSR expressed opposition to the draft resolution, even if the suggested amendments were adopted, on the ground that the purpose of the draft was to force Iran to negotiate and to make a question which lay exclusively within the domestic jurisdiction of Iran the subject of international discussion contrary to Article 2, paragraph 7, of the Charter.

At the 562nd meeting on 17 October, the representative of the United Kingdom stated that he had reluctantly accepted the joint amendments proposed by India and Yugoslavia and had incorporated them in a second revised draft resolution (S/2358/Rev.2).

The representative of Ecuador considered that the nationalization of the oil industry in Iran was a domestic matter and was legally unassailable, provided that those whose lawful rights were affected by it were given fair compensation. There had been no refusal by Iran to pay such compensation, and it was therefore highly debatable whether the present case was a dispute justifying Security Council action, particularly as there was no likelihood of either country attacking the other. Since the power of the Council in relation to the Court came into play only when a final judgment had been made by the Court, there would be no justification for invoking Article 94 of the Charter. Also, the question of competence was still to be decided by the Court. He stated that he would, therefore, not be able to vote for the United Kingdom draft resolution even as amended. A direct settlement, he said, would be more likely if the Council without declaring its competence or incompetence merely used its moral influence. Accordingly, he submitted a draft resolution (S/2380) which, without deciding on the competence of the Council, would advise the parties to reopen negotiations as soon as possible with a view to making a fresh attempt to settle their dif-

ferences in accordance with the Purposes and Principles of the Charter.

At the 563rd meeting of the Council on 17 October, the representatives of Brazil, France, the Netherlands and the United States made statements in support of the second revised draft resolution submitted by the United Kingdom. They held that the Council had the right and the duty to enquire into the matter and to do what it could to promote a peaceful settlement. The representative of the United States quoted from the statements of the Iranian representative to show that the dispute was of a dangerous nature. The representative of Brazil stated that the amended draft resolution did not prejudge the merits of the case nor condemn the position of the Iranian Government. At the same time it asserted the primary responsibility of the Council in dealing with any situation the continuance of which was likely to affect peaceful relations between Member States.

f. ADJOURNMENT OF THE DEBATE

At the 565th meeting, the representative of France stated that the International Court had not yet ruled on its own competence and he suggested that the debate be adjourned until the ruling of the Court was available. The representative of the United Kingdom agreed to the suggestion. The representative of the USSR stated that he could not agree to the proposal for adjournment, since he considered that the Council was not entitled to discuss the question at all.

In a concluding statement the representative of the United Kingdom stated that both the Company's request for arbitration, and his Government's attempt to negotiate had been fruitless because of the completely negative attitude of Iran. There had been a denial of justice. The fact that the Security Council was declining to act effectively might create a most serious precedent.

As regards the future, he continued, his Government would still not refuse to discuss matters, provided the Iranian Government did not insist on discussing only the questions of compensation and sale of oil to the United Kingdom. Whatever the Iranian representative might say to the contrary, his view would not be acceptable to any Government or company in a similar situation. How could the Iranian Government, he asked, conceivably pay compensation or discuss the sale of oil, if Iran had neither the revenues nor the oil to sell because it was unable to operate its oil industry effectively? There was nothing, he added, in the various offers made by his Government which could be regarded as in any way inconsistent with full and complete nationalization, that is, the ownership by the Iranian Government of the oil industry of its country.

At the 565th meeting on 19 October, the Council adopted the motion presented by the representative of France by 8 votes in favour, 1 against (USSR) and 2 abstentions (United Kingdom and Yugoslavia).

In explanation of his vote the representative of Yugoslavia stated that he had abstained from voting because the motion implied that the question of the competence of the Security Council depended, at least to a certain degree, on the decision of another United Nations body, an opinion which he did not share.

D. OTHER CASES BEFORE THE INTERNATIONAL COURT OF JUSTICE

1. Case Concerning Rights of Nationals of the United States of America in Morocco (France-United States)

This case had been brought before the Court by France by an Application filed with the Registry of the Court on 28 October 1950.[10] On 21 June 1951, the time limit fixed by the Court for the filing of the United States Counter-Memorial, the United States filed a Preliminary Objection. In accordance with article 62, paragraph 3, of the Rules of the Court, the proceedings on the merits were thereby suspended, and the Acting President of the Court (as the Court was not sitting), in an Order of 25 June 1951,[17] fixed 6 August 1951 as the time limit within which France might present a written statement concerning the United States Objection.

The French written statement was presented within the required time limit. The Court on 4 October 1951 asked the Agent of the French Government to clarify the capacity in which the French Republic was proceeding in that case and, in particular, to specify whether it was appearing both on its own account and as Protecting Power in Morocco.

In a letter of 6 October 1951, the Agent of the French Government, in reply, stated that the

[16] See Y.U.N., 1950, p. 845.
[17] I.C.J. Reports 1951, p. 86.

French Republic was proceeding in the case both on its own account and as Protecting Power in Morocco, the judgment of the Court to be binding upon France and Morocco.

In a letter of 22 October 1951, the Agent of the United States Government stated that, in view of the terms of this letter, his Government was prepared to withdraw its objection. The Agent of the French Government on 27 October indicated that he did not oppose this withdrawal.

The Court, therefore, in an Order of 31 October,[18] placed on record the discontinuance by the United States Government of the proceedings instituted by the Preliminary Objection and ordered them removed from the Court's list. It recorded that the proceedings on merits were resumed and fixed 20 December 1951 as the time limit for the filing of the United States Counter-Memorial, 15 January for the French reply, and 11 April for the United States rejoinder.

2. Ambatielos Case (Greece-United Kingdom)

On 9 April 1951, Greece deposited with the Registry of the Court an Application instituting proceedings against the United Kingdom in this case. It invoked the combined provisions of the Treaty of Commerce and Navigation between Greece and Great Britain of 10 November 1886, of the Declaration accompanying the Greco-Britannic Treaty of Commerce and Navigation of 16 July 1926, and also of article 29 of the latter Treaty.

The Application stated that Nicolas Eustache Ambatielos, a Greek shipowner, concluded with the United Kingdom Government on 17 July 1919 a contract for the purchase of nine steamships, which were being built in the dockyards at Hong Kong and Shanghai at a rate of £40 per ton for vessels of 5,000 tons and of £36 per ton for vessels of 8,000 tons, the total price amounting to £2,275,000. The vessels allegedly were not delivered at the dates which had been fixed by agreement between the parties, delay amounting in some cases to as much as eight months.

Freight rates fell appreciably, the purchaser was considerably prejudiced and, as a result, in November 1920 Mr. Ambatielos was in debt to the British Government for an amount of £750,000. To guarantee this debt he mortgaged the seven ships which had been delivered and signed the necessary mortgage instruments. Although his debt was amply covered by the value of the mortgaged vessels, the United Kingdom Government, it was stated, refused to deliver to him the remaining two ships, Mellon and Stathis, although they were not included in the mortgage contract and were free of any charge and could have been used by the purchaser who had freighted them to the Argentinian Government on very favourable terms. The seven other ships were similarly seized and remained unused for two years, with the result that Mr. Ambatielos, who had already paid a total of £1,650,000 to the British Government, was completely ruined.

In May 1951, Mr. Ambatielos went to London and negotiated with a representative of the British Ministry of Shipping, who allegedly consented to reduce the agreed price by £500,000 and agreed to arbitration in regard to the delayed delivery of the seven vessels and the failure to deliver Mellon and Stathis. An arbitrator was appointed. However, the United Kingdom Government, instead of proceeding with the arbitration, brought a legal action against Mr. Ambatielos for the payment of the sum it believed due to it. Mr. Ambatielos counter-claimed for the payment of an indemnity in compensation for the loss he had suffered. On 15 January 1923, the British court ruled that Mr. Ambatielos had to pay £300,000 to the United Kingdom Board of Trade and disallowed his counter-claim. Greece claimed that the Court tried the case without knowledge of the essential facts, since two principal witnesses were not called. Mr. Ambatielos appealed to the United Kingdom Court of Appeal against this judgment on 17 February 1923, but his appeal was denied and, as it was impossible for him to produce the data essential for his claim, he thought it useless to plead the case any further.

In its Application to the International Court of Justice, Greece stated that the United Kingdom Board of Trade had withheld essential evidence such as statements by reliable witnesses who could swear that payment had been understood to be conditional on the agreed delivery dates which had not been kept.

Greece charged that the treatment of Mr. Ambatielos violated the 1886 Greco-British Treaty of Commerce and Navigation, which guarantees to the subjects of each of the parties free access to courts of the other party "for the prosecution and defence of their rights." The Greek Government, it stated, had first taken up the case in 1925. Diplomatic correspondence had frequently been exchanged on the subject. The United Kingdom

[18] I.C.J. Reports 1951, p. 109.

Government had, it was stated, refused to submit the case to international arbitration in 1925, 1933, 1934, 1939 and 1940.

Greece, stating that the means for a direct and amicable settlement having been exhausted, therefore requested the Court to declare:

(1) that the arbitral procedure referred to in the Final Protocol of the Greco-Britannic Treaty of Commerce and Navigation of 1886 must be applied in the present case; and

(2) that the Commission of Arbitration provided for in this protocol shall be constituted within a reasonable period, to be fixed by the Court.

On 7 May 1951, the United Kingdom notified the Court that it intended to contest the Court's jurisdiction. Three postponements were subsequently granted by the Court for the filing of the written proceedings.

3. Nottebohm Case (Liechtenstein-Guatemala)

On 17 December 1951, Liechtenstein filed with the Registry of the Court an Application instituting proceedings against Guatemala in this case. The Application referred to the declarations by the two States accepting the compulsory jurisdiction of the Court.

Liechtenstein complained that Guatemala had treated Friedrich Nottebohm, a national of Liechtenstein, in a manner contrary to international law.

The Application stated that Friedrich Nottebohm, born a German national, took up residence in Guatemala in 1906, and acquired Liechtenstein nationality in 1939, although still maintaining residence in Guatemala. Guatemala entered the war against the Axis Powers at the end of 1941 and, on 19 November 1943, Mr. Nottebohm was arrested. The next day he was taken on board an American vessel to the United States and interned there as an enemy alien, and soon afterwards all his property was sequestrated. Liechtenstein, in its Application, stated that it was not clear whether continued sequestration of the property continued under a confiscation law of 1949 (which confiscates property of nationals of a State later at war with the Allies or placed on the black list of the United States) or under previous wartime legislation affecting enemy aliens. Mr. Nottebohm, the application stated, had been put on both the United States and United Kingdom black lists. On 7 March 1944, however, the civil attaché of the British Legations in Central America issued a document declaring that, after thorough investigation of Mr. Nottebohm and his affairs, the attaché considered that he had not helped the Nazis and was not a Nazi sympathizer.

Mr. Nottebohm had been informed that his Guatemalan registration as a Liechtenstein national had been cancelled, and that he could not re-enter Guatemala under his present nationality.

Property itemized in the application included plantations, houses, bank accounts and shares, registered under the name of Nottebohm Hermanos, and amounted to US.$1,509,566, with an estimated yearly income of a minimum of $70,000.

Attempts by Liechtenstein to negotiate with Guatemala, it was stated, were unsuccessful.

Liechtenstein asked the Court to declare that Guatemala had acted contrary to international law and had incurred international responsibility by the unjustified detention, internment and expulsion of Mr. Nottebohm and by the sequestration and confiscation of his property, that Guatemala was bound to restore property belonging to Mr. Nottebohm or to pay him compensation for such property as it could not restore, and that it was bound to pay compensation for the use of and profits derived from sequestrated and confiscated property and for damage thereto. It further claimed compensation for the unlawful detention and internment of Mr. Nottebohm and for his having been prevented by the Government of Guatemala, in a manner amounting to unjustified expulsion, from returning to Guatemala. It asked the Court to determine the amount of compensation.

4. Minquiers and Ecrehos Case (United Kingdom-France)

On 14 December 1951, the United Kingdom filed with the Registry of the Court a Special Agreement by which the United Kingdom and France submitted to the Court a dispute which had arisen between them concerning sovereignty for the Minquiers and Ecrehos islets. Both States claimed sovereignty over these islets which are situated in the English Channel. The Court was asked to determine to which of the two States sovereignty over these islets and rocks belongs, in so far as they are capable of appropriation.

E. RESERVATIONS TO MULTILATERAL CONVENTIONS

The General Assembly at its fifth session, in resolution 478(V) of 16 November 1950:[19]

(1) asked the International Court of Justice for an advisory opinion on certain questions concerning the effect of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and of objections to them;

(2) asked the International Law Commission for a report on the questions of reservations to multilateral conventions both from the point of view of codification and of progressive development of international law; and

(3) instructed the Secretary-General, pending consideration by the Assembly at its sixth session, to continue his prior practice in regard to reservations without prejudice to the legal effect of objections to them.

1. Advisory Opinion of the International Court of Justice

The questions addressed to the Court by the Assembly were as follows:

"In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification:

"I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others?

"IL If the answer to Question I is in the affirmative, what is the effect of the reservation as between the reserving State and:

"(a) The parties which object to the reservation?

"(b) Those which accept it?

"III. What would be the legal effect as regards the answer to Question I if an objection to a reservation is made:

"(a) By a signatory which has not yet ratified?

"(b) By a State entitled to sign or accede but which has not yet done so?"

On 17 November 1950, the Assembly's resolution was sent by the Secretary-General to the Registry of the Court; on 25 November it was notified to all States entitled to appear before the Court.

On 1 December the President (as the Court was not sitting) fixed 20 January 1951 as the time limit for the filing of written statements. By the terms of this Order, such statements could be submitted by all States entitled to become parties to the Genocide Convention, that is, any Member of the United Nations as well as any non-member State to which an invitation to this effect had been addressed by the General Assembly in its resolution 368 (IV)[20] of 3 December 1949.

On the same date, the Registrar addressed the special direct communication provided for in Article 66, paragraph 2, of the Court's Statute to all these States.

The following States and organizations presented written observations: Bulgaria, the Byelorussian SSR, Czechoslovakia, Israel, Jordan, the Netherlands, the Philippines, Poland, Romania, the Ukrainian SSR, the USSR, the United Kingdom and the United States; the International Labour Organisation, the Organization of American States and the Secretary-General of the United Nations.

At sittings from 10-14 April 1951, the Court heard oral statements on behalf of the Secretary-General of the United Nations, France, Israel and the United Kingdom.

It delivered its Advisory Opinion on 28 May 1951.[21]

a. THE COURT'S OPINION

In its Opinion the Court dealt first with objections raised regarding its competence. The first objection was founded on the argument that the making of an objection to a reservation constituted a dispute between States, and that, to avoid adjudicating on the dispute, the Court should refrain from giving an opinion on Questions I and II. The Court held that a reply to a request for an opinion should not, in principle, be refused, and that it had the power to decide whether the circumstances in a particular case should lead it to decline to reply to the request for an opinion. In the present case, it held, there was no reason to refuse to reply, since the object of the request for an opinion was to guide the United Nations in respect of its own action, the General Assembly and the Secretary-General being interested to know the legal effects of reservations and objections to reservations to the Genocide Convention.

The second objection was that a request for an opinion would constitute an inadmissible interference by the General Assembly, because only States which were parties to the Convention were entitled to interpret it. In this connexion, the Court stated that the part played by the Assembly

[19] See Y.U.N., 1950, p. 879.
[20] See Y.U.N., 1948-49, p. 961.
[21] I.C.J. Reports 1951, p. 15.

in preparing the Convention as well as its association with the life of the Convention as evidenced in the Convention's articles and in Assembly resolutions showed that the precise determination of conditions for participation in the Convention constituted a permanent interest of direct concern to the United Nations which had not disappeared with the Convention's entry into force. The Assembly's request did not impair the inherent right of States parties to the Convention in the matter of its interpretation.

The third objection was that the Convention itself laid down a procedure for the settlement of disputes concerning its interpretation; it was contended that no dispute existed, and if there was no dispute, it was stated, the Court was deprived not only of contentious jurisdiction, but also of power to give an advisory opinion. The Court held that the existence of a procedure for the settlement of disputes did not debar it from giving an opinion, since the Charter had conferred on the General Assembly in general terms the right to request an advisory opinion on any legal question. Moreover, the application of the Convention's procedure for settling disputes was applicable only between contracting parties and could not therefore, it was stated, be invoked against a request the object of which was to determine the conditions for participation in the Convention.

Turning to the three questions addressed to it, the Court noted that they were all expressly limited to the Genocide Convention and were purely abstract in character. The Court's replies were therefore necessarily and strictly limited to that Convention, and did not refer to any particular reservations which had been made, nor to objections to them.

The first question, the Court observed, referred not to the possibility of making reservations to the Genocide Convention, but only to the question of whether a contracting State maintaining a reservation could be regarded as a party to the Convention while some parties accepted and some objected to its reservation.

In its treaty relations, the Court stated, a State cannot be bound without its consent; consequently it can only be bound by a reservation if it agrees thereto. It was also a generally accepted principle, it said, that a multilateral convention is the result of an agreement freely concluded, so that none of the parties is entitled to frustrate its purpose by unilateral decisions or particular agreements. To this principle was linked the notion of the integrity of the convention as adopted, a notion which in its traditional concept involved the proposition that no reservation was valid unless accepted by all the contracting parties.

This concept, the Court stated, inspired by the notion of contract, was of undisputed value as a principle, but as regards the Genocide Convention its application was made more flexible by a variety of circumstances, including the universal character of the United Nations, under whose auspices the Convention was concluded, and the very wide degree of participation envisaged by the Convention. Wide participation in conventions of this type had already, it was stated, given rise to greater flexibility in practice.

"More general resort to reservations, very great allowance made for tacit assent to reservations, the existence of practices which go so far as to admit that the author of reservations which have been rejected by certain contracting parties is nevertheless to be regarded as a party to the convention in relation to those contracting parties that have accepted the reservations—all these factors are manifestations of a new need for flexibility in the operation of multilateral conventions."

The Court pointed out further that the Genocide Convention was the result of a series of majority votes, and that the majority principle might make it necessary for certain States to make reservations, as had been shown by the great number of reservations made in recent years to multilateral conventions.

In these circumstances, it stated, it could not be inferred that the absence of an article in the Convention providing for reservations meant that they were prohibited. It was necessary in determining the possibility of reservations and their effects to consider the particular character of the convention, as well as its mode of preparation, provisions and purpose. An understanding, the Court stated, was reached in the Assembly on the right to make reservations, and it concluded that States becoming parties to the Convention gave their assent to this.

The kind of reservations and objections permitted could be determined by considering the special characteristics of the Genocide Convention. It was intended that this Convention would be universal in scope, and its purpose was purely humanitarian and civilizing. The Convention did not provide a contractual balance of rights and duties of individual States but merely served a common interest. The purpose of securing as wide as possible participation in the Convention would be defeated if an objection to a minor reservation should produce complete exclusion and this would detract from the authority of the moral and humanitarian principles which were the Convention's basis. On the other hand, the contracting

parties could not have intended to sacrifice the very object of the Convention in favour of securing as many participants as possible. The compatibility of a reservation with the object and purpose of the Convention was, therefore, the criterion by which States must be guided individually in making reservations and in appraising their admissibility.

The Court rejected the view that any State entitled to become a party to the Convention might do so while making any reservation it chose by virtue of its sovereignty; such an extreme application of the idea of State sovereignty, it considered, could lead to a complete disregard of the Convention's object and purpose. It also did not agree on the applicability of an alleged rule of international law to the effect that a reservation was subject to the express or tacit consent of all the contracting parties, if it could be established that the parties intended to admit the possibility of making reservations. Furthermore, the conception of the absolute integrity of the convention as adopted, on which this theory rested, had not, it considered, been transformed into a rule of international law, having regard to the considerable part played by tacit assent in estimating the effect to be given to reservations and taking into account that the examples of objections had been too rare in international practice to have given rise to such a rule.

The administrative practice followed by the Secretariat of the League of Nations and by the Secretary-General of the United Nations in his capacity of depositary of conventions did not have the effect of creating a rule of international law. Moreover, it did not, in the Court's view, constitute a decisive factor in determining the views of the contracting States to the Genocide Convention concerning the rights and duties arising from that Convention. A different practice, it was pointed out, was followed by the Organization of American States, permitting reserving States to become parties to conventions despite objections raised to their reservations. There was nothing to show that the contracting parties in drafting the Genocide Convention had any particular administrative practice in mind; further the debates at the Assembly's fifth session had shown a wide divergence of views on the subject.

The Court concluded that an absolute answer could not be given to Question I, and that the appraisal of a reservation and the effect of objections to it depend upon the particular circumstances of each individual case.

The Court considered that the same considerations applied to Question II—regarding the effect of a reservation between the reserving State and the parties which object to it and those which accept it. Since no State could be bound by a reservation to which it had not consented, each State, on the basis of its individual appraisal of the reservations within the limits of the criterion of the objects and purpose of the Convention, would or would not consider the reserving State a party to the Convention. Ordinarily this would only affect the relations between the reserving State and the objecting State, but in the event of a disagreement between parties as to the admissibility of a reservation certain parties might wish to settle the dispute by special agreement or by the procedure laid down in the Convention. Also, any State could come to an understanding with the reserving State that the Convention should enter into force between them, except for the clauses affected by the reservation. The disadvantages from this possible divergence of views could have been remedied by an article on reservations; they were mitigated by the common duty of contracting States to be guided in their judgment by the compatibility or incompatibility of a reservation with the object and purpose of the Convention. It had to be assumed that the contracting parties wished to preserve intact at least what was essential to the object of the Convention. Such being the situation, the task of the Secretary-General as depositary would be confined to receiving reservations and objections and notifying them.

In regard to Question III, the Court held that a State entitled to sign and ratify the Convention but which had not done so had no rights under the Convention which could exclude another State. In the case of a State which had signed but not yet ratified, it had the right to formulate as a precautionary measure objections which would have a provisional character and would express its attitude on becoming a party. If the State's signature was followed by ratification, the objection would become effective, otherwise it would disappear.

The Court's Opinion was adopted by 7 votes to 5. It gave the following answers to the questions addressed to it:

On Question I:

"A State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention;

otherwise, that State cannot be regarded as being a party to the Convention."

On Question II:

"(a) If a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention;

"(b) if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a parry to the Convention."

On Question III:

"(a) An objection to a reservation made by a signatory State which has not yet ratified the Convention can have the legal effect indicated in the reply to Question I only upon ratification. Until that moment it merely serves as a notice to the other State of the eventual attitude of the signatory State;

"(b) an objection to a reservation made by a State which is entitled to sign or accede but which has not yet done so, is without legal effect."

b. DISSENTING OPINIONS

Two dissenting opinions were appended to the Opinion; one jointly by Vice-President Guerrero and Judges Sir Arnold McNair, Read and Hsu Mo, and the other by Judge Alvarez.

The joint dissenting opinion stated that the existing rule of international law, and the current practice of the United Nations, were to the effect that, without the consent of all the parties, a reservation to a multilateral convention could not become effective and the reserving State could not become a party to a convention. States negotiating a convention could modify this rule and practice by making express provision in the convention and frequently did so. They did not do so in the Genocide Convention and therefore they contracted on the basis of existing law and current practice.

It was stated further that the attempt in the Court's Opinion to classify "compatible" and "incompatible" reservations would lead to a classification of the provisions of the Convention into categories of major and minor importance; reservations to major provisions would be "incompatible", while those to minor ones would be "compatible". Opinions of States on this classification might differ. Since this was a new rule for which there was no existing legal basis and one which would be very difficult to apply, it would have to be deduced from the intentions of the parties. They had, however, refrained from making any provisions for reservations in the Genocide Convention although this question had been discussed. Further, it was difficult to see how the rule would work. Did the object and purpose of the Genocide Convention, for example, comprise any or all of its enforcement articles? If the contracting States each made its own appraisal of whether a reservation was compatible or not, there would be no certainty as to the status of reserving States, unless this question was subsequently referred for a judicial decision. In consequence it would not be clear when a convention was in force. However, the Assembly wished to know whether a reserving State could or could not be regarded by the law as a party to the Genocide Convention, not whether an existing party individually considered it so. It had been stated that difference of opinion regarding the compatibility of a reservation could be settled by reference to the Court, but eight States had already made reservations concerning the article providing for such reference.

These dissenting judges believed that the integrity of the terms of the Convention was of greater importance than mere universality of acceptance. In a common effort to promote a great humanitarian object, such as the Genocide Convention, every State expected every other interested State not to seek any individual advantage but to carry out the measures resolved by common accord, so that every party had to be given the right to decide whether to exclude a reserving State. This applied particularly in the case of the Genocide Convention.

These four judges therefore dissented from the Court's reply to Question I; Question II did not therefore arise for them. While dissenting from the reply given on Question III they stated that, because of the dominating importance they attached to the issues raised by Question I, they did not add their reasons for dissent on this question.

In his dissenting opinion, Judge Alvarez drew attention to the development of international law. In his view, as a result of the great changes in international life the Court in determining the present state of law in each case was free to develop law and indeed, if necessary, to create it. In the new international law, there were four categories of multilateral conventions, three of which were formerly unknown:

(1) those seeking to develop world international organization or to establish regional organizations;

(2) those seeking to determine the territorial status of certain States;

(3) those seeking to establish new and important principles of international law; and

(4) those seeking to regulate matters of a social or humanitarian interest with a view to improving the position of individuals.

The Genocide Convention belonged to the last two categories.

The four categories of conventions had a universal character. They were established for the general interest, differing from other conventions in that they imposed obligations without granting rights. They were discussed at length in United Nations Assemblies, and were adopted by majority vote. These conventions, he considered, were almost real international laws; they established principles which must be observed by all States by reason of their interdependence and of the existence of an international organization. They could not therefore be interpreted with reference to their preparatory work or in the light of arguments drawn from domestic contract law. By their nature and the manner in which they were formulated they constituted an indivisible whole, therefore they could not be made the subject of reservations which would be contrary to the purpose of the general interest and the social interest. This was shown in the case of the Charter of the United Nations and the Statute of the International Court of Justice which were accepted without reservations. In practice it had been shown that States were unwilling to remain aloof from such international instruments even if they could not make reservations to them. States which had an opportunity of making criticisms during the drawing up of these types of conventions could not be allowed by independent action to destroy an instrument approved by the Assembly. Judge Alvarez suggested that, to avoid such difficulties, conventions of these types ought to be established in their essential points without going into details, so that they could be accepted by the greatest possible number of States.

He disagreed with both the Court's Opinion and the joint dissenting opinion.

Following the Court's Opinion, States would differ as to whether reservations were or were not in conflict with the aim of the Convention, and if such controversies were referred to the Court it would be so overburdened that its functions would be distorted. It would be better to state that reservations were inadmissible in the four categories of multilateral conventions mentioned, in particular in the case of the Genocide Convention. If reservations were admissible, conventions should state so plainly and determine the scope of such reservations. If they were not provided for, in his opinion, if a reservation was not accepted by one or several parties to the convention the reserving State would not be a party to the convention; if it was accepted by the majority of the parties, the convention would become another convention to which those not accepting the reservation would not be parties; if it was accepted by some States and objected to by others, there would be no convention.

He therefore answered Question I negatively; Question II did not therefore arise. As regards Question III, he considered that legal effect must be given to reservations to conventions in the first two of the four categories outlined.

2. Report of the International Law Commission

In accordance with Assembly resolution 478(V), the International Law Commission considered the question of reservations to multilateral conventions at its third session from 16 May—27 July. The Assembly had asked the Commission, in the course of its work on the codification of the law of treaties, to study this question both from the point of view of codification and from that of the progressive development of international law, to give priority to the study, and to report to the Assembly's sixth session.

The Commission had before it a "Report on Reservations to Multilateral Conventions (A/CN. 4/41) submitted by Mr. Brierly, special rapporteur on the topic of the law of treaties, as well as memoranda presented by Mr. Amado (A/CN.4/L. 9 and Corr.1) and Mr. Scelle (A/CN.4/L14). The Commission also took into account, as requested by the Assembly, the views expressed during the Assembly's fifth session. The Court's Advisory Opinion on the Genocide Convention was also communicated to the Commission.

In its report (A/1858) the Commission noted that the Court's Opinion referred specifically to the Genocide Convention and was given on the basis of the Court's interpretation of existing law. Since it had been asked to study the general question both from the point of view of codification and from that of the progressive development of international law it felt at liberty to suggest the practice which it considered the most convenient for States to adopt for the future. The Commission reviewed three practices:

(1) that used by the League of Nations, and followed substantially by the Secretary-General of the United Nations; (2) that followed by the Organization of American States; and (3) that suggested by the Court.

The practice of the Organization of American States, it said, provides that the texts of reservations prior to their deposit are communicated to the signatory States to ascertain whether they

accept or not. The reserving State, taking account of these reservations may then decide to adhere or not. Treaties are in force in the form in which they were signed between countries ratifying without reservations. They are in force between States ratifying with reservations and signatory States accepting the reservations in the form in which they are modified by the reservations. They are not in force between Governments ratifying with reservations and others which have already ratified and which do not accept the reservations.

The Commission considered that this system, although it might be applicable to a regional organization such as the Organization of American States, was not suitable for application to multilateral conventions in general. In cases where universality was more important than the integrity of a convention it would be possible to adopt this procedure by inserting a suitable provision in the convention. But the Commission questioned whether it had had the effect of promoting universality in the history of the conventions adopted by the Conferences of American States. It considered, also, that integrity and uniform application of conventions were more important considerations than universality, particularly in the case of conventions drawn up under the auspices of the United Nations. These were conventions of a law-making type where States accepted limitations on their freedom of action on the understanding that the other participating States would accept the same limitations. The Pan-American practice, in the Commission's opinion, would be likely to stimulate reservations and tend to split them up into a series of bilateral conventions and thus reduce their effectiveness. Mr. Yepes (Colombia) voted against this part of the Commission's report. He considered that the Pan-American system could be successfully applied in the United Nations, particularly as it was a vaster and less closely-knit organization. He stated that, as this system was used in practice by the majority of United Nations Members, it could be regarded as existing law and therefore should be adopted by the Commission.

The Commission considered that the criterion of compatibility applied by the Court in its Advisory Opinion (see above) was not suitable for general application. It involved dividing the provisions of a convention into two categories and it was reasonable to assume that the drafters of a convention regarded its provisions as an integral whole. Such a distinction, moreover, would be made subjectively by individual States, and the status of reserving States in relation to the convention would remain uncertain. Even were it possible to refer differences of views to judicial decision this might not be resorted to and would in any case involve delay. The status of the convention itself might also be thrown into doubt. Further, the function of the Secretary-General as depositary of conventions would be made difficult and unduly complex.

While it was desirable that conventions should have the widest possible acceptance, it was also desirable that they should impose uniformity of obligations.

The Commission recommended that the negotiating States should provide in the text of a convention for the limits within which, if at all, reservations would be admissible and the effect to be given to such reservations. In some cases, it was suggested, all possibility of reservations should be excluded, in others the precise text could be set out or the scope of reservations might be limited by requiring them to relate only to particular parts of the text. If no limit were placed on reservations and there were no established organizational procedure, the text should establish a procedure providing in particular for the following points:

(1) how and when reservations may be tendered;

(2) notifications to be made by the depositary as regards reservations and objections to them;

(3) categories of States entitled to object to reservations, and the manner in which their consent to them may be given;

(4) time limits within which objections are to be made; and

(5) effect of the maintenance of an objection on the participation in the convention of the reserving State.

The Commission believed that multilateral conventions were so diversified in character and object that when the text did not deal with the admissibility or effect of reservations, no single rule uniformly applied could be wholly satisfactory. It considered that a rule which would be suitable for application in the majority of cases could be found in the practice hitherto followed by the Secretary-General, with some modifications. Under this practice, the unanimous consent of States which have ratified or acceded to conventions was necessary for a State to become a party subject to reservations. The modifications suggested were that the objection of a signatory State, and not only of a State which had already ratified, should be taken into account, but that a time limit of twelve months should be prescribed beyond which the objection of a signatory State, if it had not meantime ratified or accepted the convention, would cease to have the effect of preventing the reserving State from becoming a party.

In its conclusions, the Commission suggested that:

"organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them."

In the absence of contrary provisions in a convention, it suggested the following procedure:

(1) Communication of reservations to all States entitled to become parties to the convention.

(2) States should be requested to express their attitude to the reservation within a specified period. If within the period they do not do so or they sign, ratify or otherwise accept the convention without expressing an objection to the reservation they should be considered as having consented to the reservation.

(3) All replies in respect of reservations should be communicated to all States entitled to become parties.

(4) If the convention enters into force on signature, a reserving State may become a party only in the absence of objection by any State which has previously signed the convention; if it is open for signature during a limited fixed period, only in the absence of objection by any State which signs during that period.

(5) If ratification or acceptance in some form is necessary to bring the convention into force, (a) a reservation made by a State at signature should have no effect unless repeated or referred to in the State's later ratification or acceptance; (b) a reserving State may become a party only in the absence of objection by any State which has previously signed, ratified or otherwise accepted the convention and, if the convention is open for signature for a limited period only, in the absence of objection by States signing, ratifying or otherwise accepting the convention before the end of that period, provided that an objection by a signatory State will cease to have effect if it has not ratified or otherwise accepted the convention in twelve months.

3. Consideration by the General Assembly at its Sixth Session

The question was considered by the General Assembly at its sixth session, at the 264th to 278th meetings of the Sixth Committee from 5 December 1951-5 January 1952 and at the Assembly's 360th plenary meeting on 12 January. The Commission decided to consider the Court's Opinion and the Commission's report together.

a. GENERAL DISCUSSION IN THE SIXTH COMMITTEE

During the general discussion, there was a large measure of agreement that, as far as the particular case of the Genocide Convention was concerned, the Advisory Opinion of the Court should be applied. Certain representatives, including those of Belgium, Brazil, Canada, Ethiopia, France, Norway and the United Kingdom, however, emphasized that, in their view, the reason for such acceptance was the respect due to the Court as the principal judicial organ of the United Nations.

Some representatives did not accept the Court's Opinion. Those of Pakistan and Yugoslavia, in particular, stated that the Genocide Convention did not admit of reservations. The representative of Indonesia considered that such reservations required the unanimous consent of the parties. The representatives of Czechoslovakia, Poland and the USSR took the view that States had an absolute right to make whatever reservations they chose to the Genocide Convention.

Any rule on reservations laid down by the Assembly, the representatives of Belgium, France, India, the Netherlands and Norway insisted, could not be retroactive and could not apply to existing conventions. The representatives of Belgium, France, the Netherlands and Sweden considered that such a determination of the law would be beyond the Assembly's competence. The representatives of Argentina, the USSR and the United States, however, held that the Assembly was fully competent to give the Secretary-General instructions on reservations to existing conventions.

There was wide agreement with the suggestion of the International Law Commission that a reservations clause should be inserted in future conventions. Some representatives, for example those of Cuba and Greece, considered that it should be inserted in all conventions, others, including the representatives of the United States and Uruguay, that it should be left to the negotiators to decide if it was advisable to insert such a clause. The representatives of Czechoslovakia and Poland considered that such clauses should only be adopted by unanimous vote of the drafting conference.

Broadly speaking, the main division of opinion was between those who favoured the so-called "League of Nations" or "classical" system (recommended with certain modifications by the International Law Commission (ILC)), under which the unanimous consent of the parties to a convention is required for a State maintaining a reservation to become a party, and those who favoured a more liberal practice in regard to reservations.

Those in favour of adopting the system proposed by the ILC (see above) included the representatives of Australia, Brazil, Canada, Chile, China, Ethiopia, France, India, Norway, Pakistan, the Philippines, the United Kingdom and Yugoslavia. Among the arguments advanced in favour of this procedure were the following. It was

important to preserve the integrity of conventions as drafted and not to allow them to be broken up into a number of bilateral agreements. It was inequitable that different States parties to the same multilateral conventions should have different obligations; this would discourage States from negotiating and ratifying conventions. To allow reservations freely without the consent of all parties would result in confusion and uncertainty as to the status of conventions, for example, whether they were or were not in force. Individual States should not be allowed to alter to suit their own convenience texts which had already been negotiated and agreed to by the majority of States.

To meet the criticism that this rule might operate inequitably if a single State, by objecting to a reservation, could exclude a reserving State and thereby frustrate the desires of a large majority of the parties who might be willing to accept the reservation, the United Kingdom representative suggested the requirement of unanimous consent might be replaced by one of acceptance by a qualified majority, such as three quarters or two thirds, of the States concerned. This suggestion was favourably commented on by the representatives of Australia, Canada, Chile, Cuba, Indonesia, Iran and the Netherlands. It was opposed by the representatives of Belgium and Poland, who considered that the same majority which had adopted clauses in a convention to which the minority objected might prevent that minority from adhering to the convention. The United States representative stated that it would not meet the objection that States objecting to a reservation could debar reserving States from becoming parties to a convention. The Egyptian representative doubted whether the United Kingdom proposal could be applied in practice.

Certain representatives, including those of Iran and Sweden, considered that the Secretary-General should, at least for the time being, be asked to continue his prior practice, under which only States which had ratified or acceded to a convention and not signatory States had the right to object to reservations so as to prevent a reserving State from becoming a party.

Those in favour of adopting a more liberal practice with regard to reservations and arguing against the adoption of the procedure advocated by the ILC included the representatives of Argentina, Belgium, Bolivia, Colombia, Cuba, Czechoslovakia, the Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Lebanon, Poland, Uruguay, the USSR, the United States and Venezuela. They advanced various different arguments among which were the following. A more flexible system with regard to reservations was necessary to safeguard the sovereign equality of States. Since conventions were now adopted by a majority vote, the position of the minority would be safeguarded by enabling it to make reservations. To adopt a flexible system would make possible a greater acceptance of conventions by a greater number of States, thus contributing to the development of international law. States needed to make reservations because of their different circumstances and constitutional procedures. One State should not be allowed to veto reasonable reservations to which other States might agree.

The representatives of Czechoslovakia, Poland and the USSR considered that States, by virtue of their sovereignty, had an inalienable right to make reservations. They stated that this was the existing rule of international law. Since conventions were adopted by majority vote, States required this right to protect their sovereignty. An objection to a reservation, in their view, would be without legal effect and would be an attempt to interfere in matters exclusively within the competence of reserving States. The representative of Syria also considered that States, by virtue of their sovereignty, were entirely free to make any reservations to conventions which did not expressly preclude reservations.

The representatives of Belgium, Bolivia, Guatemala, Indonesia, Peru, Poland, the United States, Uruguay and Venezuela considered that a more general application could be given to the principles contained in the Court's opinion on the Genocide Convention—according to which a State making a reservation which had been objected to by another State could nevertheless be a party to a convention if its reservations were compatible with the object and purpose of the convention. The United States representative, while recognizing that certain multilateral agreements, such as the United Nations Charter, did not admit of reservations except with unanimous consent, considered that this principle should be applied to a large class of other conventions. The representative of Venezuela thought that it should be applied to other multilateral conventions of a humanitarian type, the representative of Indonesia that it should be applied to conventions negotiated outside the United Nations, and the representatives of Bolivia and Peru that it could be applied to law-making treaties.

The representatives of Czechoslovakia, the Dominican Republic, the USSR and the United States, among others, considered that the effect of a re-

servation or an objection to it should not be decided upon by the Secretary-General but should be left to be decided by the States concerned. The United States representative held that a party had also the right to refuse to accept a reservation whether or not it was incompatible with the object and purpose of the convention.

A number of representatives, including those of Argentina, Australia, Brazil, China, Cuba, the Dominican Republic, Ecuador, France, the Netherlands, Norway, Pakistan, the United Kingdom and Yugoslavia, considered that the Court's Opinion should not be applied generally. It would, they held, be difficult to apply and would lead to confusion, since it would involve subjective determination by individual States as to whether reservations were or were not compatible with the object and purpose of a convention.

Several representatives, including those of Argentina, Bolivia, Colombia, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Uruguay and Venezuela, argued in favour of the adoption of the system employed by the Organization of American States (see above). In favour of this system, it was stated that it enabled more States to accede to conventions and thus contributed to the development of international law and that, through the circulation of reservations, States were enabled to judge whether to maintain them in the face of objections by other States.

Some representatives, including those of Australia, Brazil, Canada, Chile, France, India, Iran and the United Kingdom, maintained that although this system might be suitable for a relatively homogenous group like the Latin American States it would not be suitable for a more loosely knit organization like the United Nations. It was also stated that the system had not, in fact, led to a wide acceptance of multilateral conventions. In reply to these objections, it was stated that such a system was even more applicable to a more diverse organization like the United Nations and that the system had enabled the Latin American States to make a greater contribution to the development of international law than they would have done under the unanimity rule.

Some representatives, including those of Israel, Mexico and Peru, considered that it was impossible to apply a single rule on reservations to all multilateral conventions and thought that a careful study should be made to define categories of conventions and establish rules applicable to each.

The representative of Greece doubted whether any of the proposed rules constituted in all its details an existing rule of international law, and referred to the great diversity of opinions expressed. He considered there were then no pressing problems of objections to reservations making such a rule necessary and was not in favour of attempting to lay one down.

A number of representatives, including those of Australia, Burma, Chile, Ethiopia, Iran, Israel, Mexico, the Netherlands, Sweden, the United Kingdom and Yugoslavia, thought that the Assembly should not take a final decision on the matter, perhaps by a small majority, at its current session. They considered that further study might make it possible to arrive at a rule combining the best features of those advocated so far and which could obtain wide agreement. They were, therefore, in favour of referring the matter back to the International Law Commission to be dealt with in the course of the Commission's work on the codification of the law of treaties.

The representatives of Belgium, Brazil, Egypt, Greece and the United States were not in favour of referring the question back to the International Law Commission. They stated that since the ILC had already given its views on the question of reservations and objections to them there was no point in referring the question back to the Commission since its members could hardly be expected to change their views.

The representative of Iran pointed out that the Commission would in any case take up the subject in the normal course of its work on the law of treaties. The representative of Belgium considered that the Commission, in its work on the law of treaties, should take the Assembly's discussions into consideration; he also suggested that it should consider definitions of reservations, objections and conditions.

The representatives of Canada, Guatemala and the United States were in favour of a final decision at the current session. They stated that to postpone the matter might merely mean a repetition of the debates of the last and current sessions. The representatives of Canada, Guatemala and Iraq were in favour of setting up a sub-committee to draft a resolution which a large majority of the Committee could adopt.

b. Resolutions before the Sixth Committee

The Committee had before it a number of draft resolutions and amendments reflecting the various points of view:

(1) United States Draft Resolution and Amendments

The United States draft resolution (A/C.6/L.188) would commend to all States the Court's Advisory Opinion, recommend to all organs of the United Nations that they be guided in their work by this Opinion, so far as applicable, and recommend that drafters of multilateral conventions should bear in mind the possible consideration of a reservations clause. It would also authorize the Secretary-General:

(1) to provide administrative services in connexion with the deposit of documents relating to ratifications, accessions or reservations (including objections thereto) without passing upon their legal effect; and

(2) to communicate the text of such documents to all States concerned, with a statement, when reservations are involved, of his understanding: (a) that all States which have ratified or acceded and which have been notified of a reservation will be considered as having accepted it unless they notify him of objections by a certain date, and (b) that all States which later ratify or accede and which have been notified of a reservation will be considered as having accepted it unless they notify him of objections when depositing their documents of ratification or accession.

The United States accepted the following amendments to this draft:

(a) A Lebanese amendment (A/C.6/L.189) to recommend that the drafters of multilateral conventions, in the light of the nature of particular conventions, should bear in mind the possibility of inserting either a reservations clause or a clause precluding reservations.

(b) A joint amendment by Afghanistan, Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen (A/C.6/L.200). This would redraft the second paragraph of the preamble, delete the first two operative paragraphs, commending the Court's Opinion to States and recommending that United Nations organs be guided by it, and redraft the instructions to the Secretary-General to invite him to continue to provide appropriate services in connexion with the deposit of documents relating to ratifications, accessions or reservations (including objections thereto), without passing upon the legal effect of such documents, and to communicate the text of such documents to all States concerned, leaving it to each State to draw all the legal consequences from such communication.

(c) An oral amendment to the joint amendment proposed on behalf of the sponsors by Egypt, to the effect that the decision of any one State would not be sufficient to prevent the participation in the convention of a State whose reservations had been accepted.

These amendments were incorporated in a revised United States draft resolution (A/C.6/L.188/Rev.1).

After the acceptance by the United States of the Egyptian oral amendment to the joint amendment, a joint amendment (A/C.6/L.191) submitted by Argentina, Bolivia, Colombia, Cuba, the Dominican Republic, Ecuador, El Salvador and Honduras was withdrawn.

This would have deleted the first two operative paragraphs and the part of the fourth paragraph concerning the statement of the Secretary-General's understanding. It would have added a provision establishing the rules to govern the procedure applicable to, and the legal effect of reservations in conventions not containing precise provisions concerning them and of which the Secretary-General is the depositary. The rules proposed were those used by the Organization of American States. The International Law Commission would have been instructed to take these rules into account in its work on the codification of the law of treaties.

Two further amendments had been submitted to the original United States draft resolution (A/C.6/L.188), by the United Kingdom (A./C 6/L.190) and by Venezuela (A/C.6/L.197/Rev.1).

(a) The United Kingdom amendment (A/C.6/L.190) would have:

(1) deleted the first operative paragraph, commending the Court's Opinion to all States, and

(2) substituted for the recommendation that all States should be guided by the Court's Opinion a recommendation that they should be guided by the Commission's report.

These two provisions were withdrawn following the revision of the United States draft resolution.

The other provisions of the United Kingdom amendments were applied to the revised United States draft resolution.

The first proposed that the reservations clause to be inserted should refer to the ILC's report and should be worded as recommended by the Commission to urge that the inclusion of reservations clauses should be considered during the drafting of conventions.

After the United Kingdom had agreed to delete the reference to the ILC's report, this amendment was adopted by 24 votes to 15, with 7 abstentions.

Finally, the United Kingdom proposed that the Secretary-General should be requested to conform his practice in relation to the Genocide Convention to the Court's Opinion and to follow the procedure suggested by the ILC in relation to other conventions of which he is the depositary, subject to the provisions of the convention regulating reservations.

The first part of this amendment was adopted by 23 votes to 14, with 12 abstentions, and the second was rejected by 29 votes to 11, with 8 abstentions.

(b) The Venezuelan amendment (A/C.6/L. 197) had originally been proposed to the first Israeli draft resolution (see below) but was later transferred (A/C6/L.197/Rev.1) to the United States draft resolution and then to the revised United States draft resolution.

It would recommend that all States be guided in regard to the Genocide Convention and other multilateral conventions of a humanitarian nature by the Court's Advisory Opinion.

The part referring to "other multilateral conventions of a humanitarian nature" was rejected

by 21 votes to 12, with 14 abstentions, and the remainder was adopted by 17 votes to 6, with 24 abstentions.

Three further amendments were submitted to the revised United States draft resolution by Argentina, Belgium and Egypt jointly (A/C.6/L. 202), by Iran (A/C.6/L.203) and by Poland (A/C.6/L.204).

(a) The joint amendment by Argentina, Belgium and Egypt (A/C.6/L.202) would recommend that in the drafting of multilateral conventions the desirability of inserting either a reservations clause or a clause precluding reservations should be borne in mind, in the light of the nature of particular conventions.

This was withdrawn following the adoption of the United Kingdom amendment covering this point.

The joint amendment would also reword the instructions to the Secretary-General to state that in respect of future conventions concluded under United Nations auspices and of which he is the depositary, he should:

(1) continue to exercise his functions as depositary in connexion with the deposit of documents relating to ratifications or objections to them, without pronouncing upon their legal effect; and (2) communicate the text of such documents to the States concerned, leaving it to each State to draw the legal consequences from such communication.

This part of the amendment was adopted in a series of five votes, (1) (above) being adopted by 30 votes to 16, with 2 abstentions, and (2) by 28 votes to 17, with 3 abstentions.

A final phrase which would have stated that the Secretary-General should not however for the purposes of his action as depositary regard the decision of any one State as being able to debar States formulating reservations from participation in the convention in relation to States which have not objected thereto was rejected by a roll-call vote of 24 to 18, with 7 abstentions.

(b) The Iranian amendment (A/C.6/L.203) proposed:

(1) a recommendation on the insertion of a reservations clause, worded in the same terms as a paragraph of the United Kingdom amendment which was adopted; and

(2) proposed to delete from the instructions to the Secretary-General the references to ratification, accessions and objections to reservations.

It was withdrawn following the adoption of the United Kingdom amendment with regard to the first point and the joint amendment by Argentina, Belgium and Egypt with regard to the second.

(c) The Polish amendment (A/C.6/L.204) proposed to add the words "by any other State" at the end of the United States revised draft resolution.

It was not voted upon as the text to which it applied was superseded by the adoption of the joint amendment of Argentina, Belgium and Egypt.

The Committee adopted the revised United States draft resolution, as amended, by a roll-call vote of 23 to 18, with 7 abstentions.

It then decided by 22 votes to 18, with 2 abstentions, that this had disposed of all other draft resolutions and amendments on the subject and that they did not therefore require to be voted on.

(2) Draft Resolutions Which Were Withdrawn

Three of the other draft resolutions which had been presented to the Committee had been withdrawn prior to the voting on the revised United States draft and the amendments to it. These were:

(1) A draft resolution by Sweden (A/C.6/L.192). This had provided for a recommendation concerning the insertion of a reservations clause in accordance with the ILC's report and had called upon the Assembly to ask the Secretary-General, pending further Assembly action, to continue his prior practice with respect to reservations.

It was withdrawn on 3 January.

(2) A draft resolution by Indonesia (A/C.6/L.196). This, in its operative part, would have provided for a recommendation on the insertion of a reservations clause in the terms in which it was adopted by the Committee. It would have recommended that the rules proposed by the International Law Commission should be followed with regard to conventions, particularly those of a general humanitarian and social character, drafted and concluded under United Nations auspices, with the modification that reservations should be admitted in the absence of objection by a majority rather than in the absence of objection by any of the States concerned.

The draft resolution also proposed that the Court's Opinion should be taken as guidance and that the procedural rules suggested by the International Law Commission should be applied to conventions negotiated outside the framework of the United Nations. The rules proposed by the ILC, as modified, should, it was suggested, be applied to the Genocide Convention.

This draft resolution was withdrawn on 4 January.

(3) A draft resolution by Iraq (A/C.6/L.199). It would have provided that the agenda item should be referred to a seven-member sub-committee, which would study the question thoroughly in the light of the Sixth Committee's discussions and would report to the Committee within two weeks.

It was withdrawn on 20 December.

(3) Other Proposals before the Sixth Committee

When the Sixth Committee decided, following its adoption of the amended, revised United States draft resolution, not to vote on any other draft resolutions or amendments it had before it two draft resolutions proposed by Israel (A/C.6/L. 193/Rev.1. and A/C.6/L.194) with an amendment to the second proposed by Iran (A/C.6/L. 195), and a joint draft resolution proposed by Denmark, India, Iran, Israel, Mexico, the Netherlands, Peru and Sweden (A/C.6/L.198).

(1) The first Israeli draft resolution, as revised (A/C.6/L.193/Rev.1), would recommend that all States be guided by the Court's Opinion in regard to the Genocide Convention and would instruct the Secretary-General to conform his practice to the Opinion in relation to this Convention. It would also, in its unrevised form, have instructed him to continue as hitherto to exercise his functions of depositary, subject to the provisions of particular conventions, and to consult the Assembly and the States concerned if and when difficulties arose.

(2) The second Israeli draft resolution (A/C.6/L.194) in its operative part, would express appreciation of the work of the International Law Commission and call its report on reservations to the attention of States and international diplomatic conferences. It would have provided for a recommendation on the insertion of a reservations clause in the terms in which it was adopted by the Sixth Committee. It would also request the ILC to include in its report on the law of treaties a chapter concerning the functions, rights and duties of the depositary of international conventions and would have the Assembly resolve to consider further the Commission's report on reservations when its report on the law of treaties was submitted.

(a) The Iranian amendment (A/C.6/L.195) would add to this draft a paragraph requesting the ILC to re-examine the question of the rights and duties of the depositary of multilateral conventions, taking into account the opinions expressed in the Assembly, more especially with regard to the Court's Opinion.

(3) The joint draft resolution by Denmark, India, Iran, Israel, Mexico, the Netherlands, Peru and Sweden (A/C.6/L.198) would also express appreciation of the ILC's work and provide for a recommendation on the insertion of a reservations clause in the terms in which it was adopted by the Sixth Committee. It would request the ILC to examine further the question of reservations to multilateral conventions when preparing its codification of the law of treaties, and would resolve to give further consideration to the Commission's report on reservations when its report on the law of treaties was submitted to the Assembly. It would invite the Secretary-General, pending further Assembly action, to continue his prior practice with respect to the receipt and notification of reservations "without prejudice to the legal effect of objections to reservations."

The Committee had previously voted by 25 votes to 22, with 2 abstentions, at its 274th meeting on 20 December 1951 not to give priority in the voting to this joint draft resolution.

(4) Canada submitted a memorandum (A/C.6/L.201) for the record, suggesting a set of rules for dealing with reservations to conventions and objections to them. The memorandum proposed that the act, which would normally bind a state but which could not be immediately effective because accompanied by a reservation, should be recorded on a "suspense register".

The representative of Canada stated that it was hoped the memorandum might be useful as a working paper for the International Law Commission when it reconsidered the question.

c. CONSIDERATION BY THE GENERAL ASSEMBLY IN PLENARY SESSION

When the Sixth Committee's report (A/2047) was considered at the Assembly's 360th plenary meeting, the Netherlands proposed an amendment (A/2055) to the draft resolution proposed by the Committee (see below).

This would add two paragraphs to the preamble:

(1) referring to the widely divergent views expressed in the Sixth Committee and the strong desire to find rules which might be acceptable to the great majority of States, and

(2) stating that it would be desirable that the International Law Commission, while codifying the law of treaties, should re-examine the question of reservations with due regard to opinions expressed in the Committee's discussions, in order to formulate new rules for the future.

In the operative part it would:

(1) add a provision stating that, pending further Assembly action, the Secretary-General should continue to follow his prior practice with respect to reservations without prejudice to the legal effect of objections to them;

(2) re-number the sub-paragraphs;

(3) in paragraph 3 (b) of the draft resolution (see below) add after the word "depositary" the words "in the absence of any contractual provisions to the contrary";

(4) delete the words "to continue" in sub-paragraph (i) of the draft; and

(5) add two further paragraphs to ask the International Law Commission to examine further the question of reservations in the light of the considerations in the draft resolution when it is preparing its codification of the law of treaties; and to have the Assembly resolve to consider further the Commission's report on reservations when the report of the law of treaties was submitted to it.

The representatives of France, the Netherlands, the United Kingdom and Yugoslavia spoke in favour of the amendment. They stated that the Sixth Committee's draft resolution by leaving it to each State, with respect to future conventions, to draw the legal consequences from communications concerning reservations and objections to them would lead to a state of confusion and legal anarchy. It was particularly important that there should be certainty as to which States were or were not parties to conventions. The uncertainty resulting from the absence of any objective determination as to which States were parties to conventions would be harmful to the development of international law. The draft resolution, moreover, might make impossible one of the Secretary-General's essential functions of a depositary—that of stating when a convention entered into force and when it was terminated.

The representative of Yugoslavia opposed the Sixth Committee's draft resolution, in particular, as not answering the Secretary-General's question as to how to proceed in the case of the Genocide Convention. It instructed him to conform his practice to the Court's Advisory Opinion, but that Opinion had stated that it would be necessary to decide whether reservations were compatible with the object and purposes of the Convention. If the Secretary-General were to settle such questions he would be going beyond his purely administrative functions. Moreover, the Yugoslav representative considered the Genocide Convention did not allow for reservations.

The representatives of Burma and Iraq also spoke in favour of the Netherlands amendment. The representative of Iraq stated that he had supported the Sixth Committee's draft resolution as omitting everything in favour of one system or another and leaving the door open for further consideration. The representative of Burma stressed the importance of finding a rule acceptable to the great majority of States.

The representatives of Belgium, Bolivia and Egypt spoke in favour of the Sixth Committee's draft resolution and opposed the Netherlands amendment. They stated that there was no point in referring the question back to the International Law Commission, which had already stated its opinion in favour of the unanimity rule which the majority of Members had rejected in the Sixth Committee. The ILC could not be expected to reverse itself. The proposal to refer the question back to the Commission was merely intended to delay a decision. The Sixth Committee's decision, these representatives stated, had been taken by a sufficiently large majority, and it was impossible at this stage to obtain a great majority of States in favour of any rules on a delicate question of this kind.

The representative of Bolivia said that he would have preferred the draft resolution to have stated that a mere objection by one State could not bar a reserving State from becoming a party to a convention. However, the Sixth Committee's draft resolution provided a flexible formula and did away with the unanimity rule which the majority of States did not want.

The Netherlands amendments were rejected in paragraph-by-paragraph votes. The amendments to the preamble were rejected by 27 votes to 23, with 5 abstentions; the first two amendments to the operative part were rejected by 29 votes to 20, with 5 abstentions; the third by 24 votes to 23, with 8 abstentions; the fourth by 25 votes to 19, with 8 abstentions; and the fifth by 26 votes to 22, with 6 abstentions.

After adopting paragraph 3(b) of the Committee's draft resolution by 32 votes to 18, with 4 abstentions, the Assembly adopted the resolution as a whole by 32 votes to 17, with 5 abstentions as resolution 598(VI). It read:

"The General Assembly,

"Bearing in mind the provisions of its resolution 478 (V) of 16 November 1950, which (1) requested the International Court of Justice to give an advisory opinion regarding reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and (2) invited the International Law Commission to study the question of reservations to multilateral conventions,

"Noting the Court's advisory opinion of 28 May 1951 and the Commission's report, both rendered pursuant to the said resolution,

"1. Recommends that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them;

"2. Recommends to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;

"3. Requests the Secretary-General:

"(a) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;

"(b) In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:

"(i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

"(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications."

F. THE QUESTION OF DEFINING AGGRESSION

At its fifth session, the General Assembly, in resolution 378 B (V),[22] referred a proposal concerning the definition of "the concept of aggression", submitted by the USSR in connexion with the agenda item "Duties of States in the event of an outbreak of hostilities", and the records of the First Committee dealing with the question to the International Law Commission (ILC) "so that the latter may take them into consideration and formulate its conclusions as soon as possible".

1. Report by the International Law Commission

The International Law Commission studied the matter at its third session, held from 16 May-27 July 1951. In its report to the General Assembly (A/1858), it stated that some of its members were of the opinion that the Assembly's resolution merely meant that the ILC should take the Soviet proposal and the discussions on it into consideration when preparing the draft code of offences against the peace and security of mankind. The majority, however, considered that the Commission had been requested by the Assembly to attempt to define aggression and to report on the result of its efforts.

A report entitled "The Possibility and Desirability of a Definition of Aggression" was presented to the Commission by Mr. Spiropoulos, the special rapporteur on the draft code of offences (A/CN.4/44). This report, after surveying previous attempts to define aggression, stated that whenever Governments were called upon to decide on the existence or non-existence of "aggression under international law" they based their judgment on criteria derived from the "natural" notion of aggression. This notion, it was stated, contained both objective and subjective elements: the fact that a State had been the first to commit an act of violence and that it had been committed with an aggressive intention. The kind and degree of violence which constituted aggression depended, however, on the circumstances in the particular case. Mr. Spiropoulos concluded that the "natural notion" of aggression was a concept in itself and not susceptible of definition. He considered that a legal definition would be an artificial construction which could never be comprehensive enough to comprise all imaginable cases of aggression, the methods of which were constantly evolving.

Memoranda on the subject were also presented by Mr. Amado (A/CN.4/L.6 and Corr.1) and Mr. Alfaro (A/CN.4/L.8). Both stated that a definition of aggression based on an enumeration of aggressive acts could not be satisfactory. Each proposed a general and flexible formula.[23]

Mr. Yepes submitted a proposal (A/CN.4/L.7) for determining aggression by the enumerative method, but later submitted a further proposal (A/CN.4/L.12) to define it in general terms. A proposal was also submitted by Mr. Hsu (A/CN. 4/L.11 and Corr.1) in which particular stress was laid on indirect aggression, and a draft was submitted by Mr. Cordova (A/CN.4/L.10) of a provision for inclusion in the draft code of offences to make aggression and the threat of aggression offences under the code.

The Commission considered it undesirable to define aggression by a detailed enumeration of aggressive acts since no enumeration could be exhaustive. It was also thought inadvisable unduly to limit the freedom of judgment of the competent United Nations organs by a rigid and necessarily incomplete list of acts constituting aggression. The ILC therefore decided to aim at a general and abstract definition.

Taking as a basis the definition proposed by Mr. Alfaro as the broadest general definition before it, the Commission amended it to include indirect aggression and the threat as well as the use of force. On this point, opinion was divided, some members considering that the threat of force amounted only to a threat of aggression. The definition, as revised by the Commission, read as follows:

"Aggression is the threat or use of force by a State or government against another State, in any manner, whatever the weapons employed and whether openly or otherwise, for any reason or for any purpose other than individual or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations."

Some members of the Commission considered this definition unsatisfactory as not comprehending all conceivable acts of aggression and as liable to restrict unduly the necessary freedom of action of United Nations organs. The Commission rejected the definition by 7 votes to 3, with 1 abstention. It rejected, by 6 votes to 4, with 1 abstention, a

[22] See Y.U.N., 1950, p. 213-

[23] For texts of the definitions suggested see General Assembly, Official Records: Sixth Session, Supplement No. 9. (A/1858), pp. 8-10.

proposal to make further attempts to define aggression on the basis of each of the texts submitted by other members.

The question was later reconsidered at the request of Mr. Scelle (A/CN.4/L.19 and Corr.1), who submitted a general definition and proposed that aggression should be explicitly declared an offence against peace and security. On the basis of this and other proposals, the Commission inserted the following provisions in article 2 of the draft Code of Offences against the Peace and Security of Mankind:[24]

"The following acts are offences against the peace and security of mankind:

"(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

"(2) Any threat by the authorities of a State to resort to an act of aggression against another State."

2. Consideration by the General Assembly at its Sixth Session

a. GENERAL DISCUSSION IN THE SIXTH COMMITTEE

The Sixth Committee discussed the question of defining aggression at its 278th to 295th meetings from 5-22 January 1952.

The Committee's discussions were concerned primarily with the question as to whether it was possible and desirable to define aggression.

Some representatives, in particular those of Australia, Belgium, Greece, India, the United Kingdom and the United States, thought that the General Assembly should not attempt to formulate a definition of aggression, holding that no satisfactory definition could be found. In this connexion, the representative of Greece put forward the view he had expressed in the International Law Commission that aggression was a "natural notion" which did not lend itself to definition.

These representatives argued that a definition attempting to enumerate all possible acts of aggression would necessarily leave out some acts which ought to be included, and would thus be positively dangerous. Attention was drawn to the constant state of evolution of acts of aggression, and also to the importance of indirect aggression by subversive action. To adopt an incomplete enumeration, it was stated, would constitute an invitation to potential aggressors by showing them how they could accomplish their aims without actually being branded as aggressors, since they could avoid coming within the letter of the definition and claim that they were technically justified.

An abstract and general formula, on the other hand, it was stated, would use terms which themselves required definition and would be too wide and vague to be useful. To combine the enumerative and abstract methods would, it was stated by the representatives of Belgium and the United Kingdom, only cumulate their disadvantages.

Those representatives opposing a definition considered that, in accordance with the Charter, the United Nations organs called on to determine the aggressor in case of international conflict should have full discretion to consider all the circumstances of each case. It was necessary to take account of the circumstances in order to judge whether there was aggressive intent; a similar act might in one case constitute aggression and in another be a legitimate measure of self-defence. This distinction could not be provided for in a definition, which might also include certain acts which, if considered in their proper context, would not be considered by the international community as acts of aggression at all. Moreover, it was considered, a definition might actually hamper the Security Council by causing less stress to be placed on acts not included in it and by giving an opportunity to an aggressor State to cause delays.

In certain cases, where acts of aggression had occurred, the representatives of Belgium and the United Kingdom considered, it might also be politic to refrain from naming a State an aggressor if there seemed to be a prospect of a just settlement without recourse to hostilities; this would be difficult if certain acts were listed in advance as constituting aggression. Other representatives, in particular the representative of the USSR, opposed this view, stating that it was equivalent to condoning aggression.

Some representatives, while not opposed in principle to the continuance of efforts to reach a definition, were doubtful of its value, or considered that the political situation of the world made it at any rate inopportune to undertake the task of defining aggression for the time being. These included the representatives of Argentina, Brazil, Canada, Denmark, Israel, the Netherlands, the Philippines, Sweden and Uruguay.

Certain representatives, including those of Israel, Uruguay, the United Kingdom and the United States, emphasized that what was needed was not to define aggression but to ensure that it should

[24] For draft code of offences, see p. 842.

be overcome through the application of the principles of the Charter and the provisions of the Assembly's resolutions. The representative of Uruguay, in particular, stated that what was necessary was for the Security Council to put an end to violence and for disputes to be submitted to arbitration or judicial procedure.

On the other hand, a large number of representatives took the view that a definition was possible, and was necessary or highly desirable from the legal and political standpoints. These included the representatives of Afghanistan, Bolivia, Burma, the Byelorussian SSR, Chile, Colombia, Cuba, Czechoslovakia, the Dominican Republic, Egypt, France, Iran, Indonesia, Lebanon, Mexico, Pakistan, Peru, Poland, Syria, the Ukrainian SSR, the USSR and Yugoslavia. In the opinion of these representatives, a definition would be a great step forward in international law and would also provide a useful guide for the United Nations organs called upon to determine whether aggression had been committed and assist in avoiding arbitrary decisions. It was emphasized particularly that, although a definition would not do away with aggression, it would act as a deterrent to potential aggressors and would also serve to mobilize public opinion against an aggressor. It was also stated that a definition would be a useful supplement to the system of collective security established by the Charter and would be a logical completion of the Charter's provisions. Even an imperfect definition, it was argued by the representatives of Burma, Chile, Egypt and Yugoslavia, among others, was better than none, and any imperfections could be remedied as they were discovered.

Some representatives, including those of the Byelorussian SSR, Czechoslovakia, Egypt, Poland, the Ukrainian SSR and USSR, were of the opinion that a definition should be formulated with a view to furnishing guidance to the Security Council and the General Assembly in their task of maintaining international peace and security. It was pointed out, for example by the representative of Mexico, that the adoption of a definition would not prevent the international organ applying it from taking into account the circumstances of each particular case.

Others, in particular the representative of France and also the representatives of Iraq, the Netherlands, Norway and Sweden, thought that the primary purpose to be envisaged was the inclusion of a definition in a code of offences against the peace and security of mankind, which would be applied by an international criminal tribunal if one were created. In this connexion, the representative of France drew a distinction between the police activity of the Security Council aimed at putting an end to an act of aggression, in which case a definition would be useful but not binding, and the judicial determination of an aggressor by an international court, on which it would be binding.

Some representatives, including those of Burma, the Dominican Republic, Ecuador, Iran and Lebanon, thought that a definition should both serve as guidance to the United Nations organs and be included in an international code.

As to the kind of definition to be drafted, the representatives of the Byelorussian SSR, Czechoslovakia, Poland and the USSR thought it desirable to enumerate all the objective acts which constituted aggression, to specify the circumstances which could not be used to justify attacks, and to list the measures which might be taken by a State threatened with an attack. A satisfactory definition of this kind, these representatives held, could be worked out by the combined efforts of the Sixth Committee, and would have great advantages of clarity and ease of application. Reference was made, in particular, to the definition proposed by the USSR at the London Disarmament Conference of 193.3 (known as the Litvinov definition), and to the so-called Litvinov-Politis definition which had been adopted on the basis of the USSR proposal by the Committee for Security Questions of that Conference comprising representatives of seventeen States and which was incorporated in bilateral agreements between the USSR and eleven States. Certain representatives, however, including, in particular, those of Belgium, the Netherlands and the United States, stated that these agreements had not in practice prevented aggression.

The representatives of Egypt, Iran and Mexico approved especially the proposal made in the USSR draft resolution (see below) that a list of circumstances not justifying attacks should be included. The USSR representative stated that the circumstances included in this list were those which had been used by aggressors to justify their acts. The United Kingdom representative expressed the fear that such a list would constitute an invitation to States that they could commit the illegal acts mentioned without fear of armed retaliation. The representatives of Egypt, Lebanon and Mexico considered that such illegal acts should call for United Nations action.

Varying views were expressed on whether particular circumstances gave rise to a right to use

force in self-defence, although it was generally agreed that the question of what constituted legitimate self-defence and what constituted aggression were inextricably connected.

On the one hand, the representatives of Bolivia, Burma, Egypt, Lebanon, Mexico and Syria stated that, under the collective security system of the United Nations, the question of what was legitimate self-defence was no longer a matter to be decided by individual States. Armed force, it was stated, was only permissible to meet an act of aggression, and it should be conditioned by the nature of the attack. It should not enable a State, it was emphasized, to invade the territory of another State.

On the other hand, the representatives of Belgium, Greece, the United Kingdom and the United States considered that, in certain particular circumstances, a State which was threatened by impending attack would be justified in attacking first in self-defence. The representatives of Poland, the Ukrainian SSR and the USSR, stressing that aggressors had always justified their aggression as self-defence, considered that such a doctrine amounting to the right to wage "preventive war" was equivalent to condoning aggression. In their opinion, a threatened State could have recourse to diplomatic and other measures of peaceful settlement and could mobilize its forces, but could not cross the frontier.

The representatives of China and the Netherlands considered that victims of indirect aggression could exercise their right of self-defence in the same way as victims of direct aggression.

To meet the point that some objective acts constituting aggression might be overlooked in an attempt at exhaustive enumeration, it was suggested by the representatives of Bolivia, Burma, Chile, Colombia, Cuba, the Dominican Republic, Mexico and Yugoslavia that a provision might be included that additional acts might be qualified as aggressive by the competent organs of the United Nations. In this connexion, reference was made to the Inter-American Treaty of Mutual Assistance signed in Rio de Janeiro in 1947, which contains such a formula.

It was also suggested by the representatives of Bolivia, China, Colombia, Cuba, Ecuador, Iran, Lebanon, Pakistan and Saudi Arabia, among others, that the dangers of omissions could best be remedied by the inclusion in the definition of a general formula in addition to a list of examples of acts of aggression. The general formula, it was argued, would serve as a safeguard, as new cases falling within the general principles enunciated could always be determined by the organs called upon to apply the definition.

Some representatives, including those of Bolivia, Chile and Mexico, thought that any act included in the list of examples should always be deemed aggressive. The representative of Lebanon thought that the list should be merely indicative, and preferred to reserve for the organ applying the definition the discretion to decide that a particular case covered by an example did not constitute aggression.

The representatives of Cuba, Lebanon, Mexico and the Philippines favoured the inclusion in a definition of aggression of some provision concerning the intent with which the aggressive acts concerned were committed.

It was suggested by the representative of Peru that the rejection by one of the parties to a conflict of measures recommended by an international organ to put an end to hostilities was an important circumstance which that organ should consider in determining the aggressor.

The representatives of Bolivia, China, the Dominican Republic, Indonesia, the Netherlands, Pakistan and Yugoslavia thought a definition should include indirect aggression by such means as subversion and economic pressure, as well as the illegal use of armed force. This view was opposed by the representatives of Czechoslovakia, Egypt, Poland and the USSR, who held that indirect aggression was a fictitious concept which found no support in the letter or the spirit of the Charter.

As to the practical course by which a definition could be formulated, the representatives of Bolivia, Burma, the Byelorussian SSR, Czechoslovakia, Egypt, Indonesia, Pakistan, Poland, the Ukrainian SSR and the USSR preferred that the General Assembly should adopt one at its current session. Towards the end of the discussions the majority of the Committee wished the attempt to formulate a definition to be continued but felt that so much time had been devoted to preliminary questions that it was impossible to devote sufficient study to the various draft definitions presented.

The representatives of Chile, Mexico and Sweden favoured referring the question back to the International Law Commission. The representative of Colombia, supported by the representative of Ecuador, advocated the appointment of a special committee to study the problem carefully and report to the General Assembly at its next session. The representatives of Argentina, Canada, France,

Iran and Venezuela preferred to obtain the considered written opinions of Member Governments, and to take the question up again at the next session. It was felt that a report by the Secretary-General, in which the question would be discussed in the light of the Sixth Committee's debates and the drafts submitted would be useful when the Assembly reconsidered the question.

b. DRAFT RESOLUTIONS BEFORE THE SIXTH COMMITTEE

The Committee had before it the following draft resolutions and amendments, representing the various points of view expressed.

(1) Greek Draft Resolution

This draft resolution (A/C.6/L.206) would state that it was apparently impossible to define aggression in a formula covering all possible cases, that the formulation of an incomplete definition might encourage a possible aggressor to evade it and that the existence of such a definition might create doubt and confusion and delay the taking of a decision by the General Assembly or the Security Council if called upon in the future to determine an aggressor. It would also state that a definition of aggression drafted by the Assembly would not be binding on the Security Council and could not therefore restrict the Council's freedom to decide at its discretion what constituted aggression. For these reasons, the draft resolution would state that it appeared inappropriate to attempt to define aggression. It would therefore have the Assembly decide to take no action on the USSR proposal concerning the definition of aggression and leave it to the competent United Nations organs to determine at their discretion what constituted aggression.

(2) USSR Draft Resolution

This draft resolution (A/C.6/L.208) would have the Assembly declare:

"1. That in an international conflict that State shall be declared the attacker which first commits one of the following acts:

"(a) Declaration of war against another State;

"(b) Invasion by its armed forces, even without a declaration of war, of the territory of another State;

"(c) Bombardment by its land, sea or air forces of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter;

"(d) The landing or leading of its land, sea or air forces inside the boundaries of another State without the permission of the Government of the latter, or the violation of the conditions of such permission, particularly as regards the length of their stay or the extent of the area in which they may stay;

"(e) Naval blockade of the coasts or ports of another State;

"(f) Support of armed bands organized in its own territory which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid or protection;

"2. Attacks such as those referred to in paragraph 1 may not be justified by any arguments of a political, strategic or economic nature, or by the desire to exploit natural riches in the territory of the State attacked or to derive any other kind of advantages or privileges, or by reference to the amount of capital invested in the State attacked or to any other particular interests in its territory, or by the affirmation that the State attacked lacks the distinguishing marks of statehood;

In particular, the following may not be used as justifications for attack:

"A. The internal position of any State; as, for example:

"(a) The backwardness of any nation politically, economically or culturally;

"(b) Alleged shortcomings of its administration;

"(c) Any danger which may threaten the life or property of aliens;

"(d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes;

"(e) The establishment or maintenance in any State of any political, economic or social system;

"B. Any acts, legislation or orders of any State, as for example:

"(a) The violation of international treaties;

"(b) The violation of rights and interests in the sphere of trade, concessions or any other kind of economic activity acquired by another State or its citizens;

"(c) The rupture of diplomatic or economic relations;

"(d) Measures in connexion with an economic or financial boycott;

"(e) Repudiation of debts;

"(f) Prohibition or restriction of immigration or modification of the status of foreigners;

"(g) The violation of privileges granted to the official representatives of another State;

"(h) Refusal to allow the passage of armed forces proceeding to the territory of a third State;

"(i) Measures of a religious or anti-religious nature;

"(j) Frontier incidents;

"3. In the event of the mobilization or concentration by another State of considerable armed forces near its frontier, the State which is threatened by such action shall have the right of recourse to diplomatic or other means of securing a peaceful settlement of international disputes. It may also in the meantime adopt requisite measures of a military nature similar to those described above, without, however, crossing the frontier."

Two amendments were proposed to the **USRR** draft:

(a) An amendment by Colombia (A/C.6/L. 210), would:

(1) insert a declaration that aggression was an offence against the peace and security of mankind, which consisted in any resort to force contrary to the provisions of the Charter of the United Nations for the purpose of modifying the state of positive international law in force or resulting in the disturbance of public order;

(2) state that, "apart from action which may be defined as aggression by the competent organs of the United

Nations", in an international conflict that State should be declared the attacker which, "if not acting in pursuance of instructions by the United Nations", first committed one of the enumerated acts; and

(3) provide that a State which was threatened might also in the meantime adopt requisite measures of a military nature similar to those described, without, however, crossing the frontier "unless it is acting in self-defence or on the authority of the United Nations".

(b) An amendment by Egypt (A/C.6/L.213 and Corr.1) would:

(1) insert a new preamble and a declaration that any act whereby a State infringed the territorial integrity or political independence of another State constituted aggression;

(2) state that in any international dispute, situation or conflict that State should be declared the attacker which first committed, "inter alia", one of the enumerated acts; and

(3) add a new provision stating that the exercise of the right of self-defence referred to in Article 51 of the Charter should not be deemed to be an act of aggression.

(3) Bolivian Draft Resolution

This draft resolution (A/C.6/L.211) would have the Assembly resolve:

(1) that apart from the determination of acts of aggression by the competent organs of the United Nations, an aggression should in all cases be considered to have been committed when any State invaded the territory of another State, crossing the frontiers established by treaty or by judicial or arbitral decisions and demarcated in accordance therewith, or when, in the absence of frontiers thus demarcated, the invasion affected the territories under the effective jurisdiction of a State;

(2) that a declaration of war, an armed attack by land, sea or air forces against the territory, ships or aircraft of another State and support given to armed bands for the purposes of invasion, as well as action taken by a State, overtly or covertly, to incite the people of another State to rebellion with the object of changing the political structure for the benefit of a foreign Power, should also be qualified as aggressive acts;

(3) that any threat or use of force against the territorial integrity or political independence of any State, or any threat or use of force which is in any other way incompatible with the purposes of the United Nations, including unilateral action to deprive a State of the economic resources derived from the fair practice of international trade, or to endanger its basic economy, thus jeopardizing the security of that State or rendering it incapable of acting in its own defence and co-operating in the collective defence of peace, should also be considered as an aggressive act; and

(4) that apart from the cases described in paragraphs (1) and (2), which should justify the automatic exercise of the right of collective self-defence, other acts of aggression should be determined when they occurred by the competent organs established under the Charter of the United Nations in accordance with its provisions.

(4) Joint Draft Resolution by France, Iran and Venezuela

This draft resolution (A/C.6/L.209) had a preamble in five paragraphs which would state:

(1) that the question of defining aggression had been referred to the ILC by the General Assembly at its fifth session;

(2) that the Commission had not furnished an express definition but had merely included aggression in its draft Code of Offences against the Peace and Security of Mankind;

(3) that the problem of defining aggression was important for the development of international criminal law;

(4) that the General Assembly had decided not to examine the draft Code at its sixth session and had included it in the provisional agenda of its seventh session; and

(5) that the problem of defining aggression had important political aspects.

The operative part provided that the General Assembly would:

(1) decide to study the question of defining aggression when it examined the draft Code of Offences against the Peace and Security of Mankind; and

(2) request Member States, when transmitting their observations on the draft Code to the Secretary-General, to give in particular their views on the problem of defining aggression.

The following amendments were submitted to the joint draft resolution:

(a) By India (A/C.6/L.212).

It proposed to substitute for the third paragraph of the preamble a paragraph stating that the problem of defining aggression was within the scope of international criminal law.

(b) By Colombia (A/C6/L214/Rev.1). It would:

(1) substitute for the first paragraph of the operative part a paragraph whereby the General Assembly would decide to include the question of defining aggression in the agenda of its seventh session; and

(2) add two new paragraphs to the operative part, providing for the appointment of a special committee of fifteen members, to meet at the Headquarters of the United Nations, to consider the records of the debates in the First and Sixth Committees on the question of defining aggression and the draft resolutions, amendments and other documents relating to this question, to study the problem further, and to submit a draft definition of aggression, together with a report, to the Assembly's seventh session.

c) By Syria (A/C.6/L.215). It would:

(1) replace the third paragraph of the preamble with a paragraph stating that, although the notion of aggression might be inferred from the circumstances peculiar to each case, it was nevertheless desirable, for the development of international criminal law, to define aggression by reference to the elements which constituted it;

(2) delete the fourth paragraph of the preamble;

(3) replace the fifth paragraph of the preamble with a paragraph stating that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as might be called upon to determine the aggressor;

(4) add to the first operative paragraph an instruction to the Secretary-General to submit to the General Assembly at its seventh session a report in which the question of defining aggression should be thoroughly discussed in the light of the views expressed in the Sixth Committee at the sixth session and which should duly take into account the draft resolutions and amendments submitted concerning the question; and

(5) amend the second operative paragraph to request Member States to communicate to the Secretary-General, if they considered it advisable, their observations or views on the question of defining aggression.

Mexico submitted a sub-amendment (A/C.6/L.216) to the Syrian amendment, proposing to replace the third paragraph of the preamble with a paragraph stating that although the existence of the offence of aggression might be inferred from the circumstances peculiar to each particular case, it was nevertheless possible and desirable, for the development of international criminal law, to define aggression by reference to the elements which constituted it.

The representative of Mexico accepted amendments to his sub-amendment proposed orally by Belgium and Lebanon, jointly, and by Egypt. The first substituted the word "crime" for the word "offence"; and the second inserted the words "with a view to ensuring international peace and security and" after the words "possible and desirable".

The Mexican amendment as thus modified was accepted by Syria.

The Committee decided to vote first on the joint draft resolution and the amendments to it.

It adopted the first paragraph of the Colombian amendment by 28 votes to 14, with 6 abstentions, but rejected the second paragraph (providing for a special committee), by 33 votes to 5, with 10 abstentions.

The first paragraph of the Syrian amendment, as modified, was adopted by 25 votes to 24, with one abstention, the third and fourth paragraphs by 25 votes to 23, with 3 abstentions, and by 25 votes to 21, with 4 abstentions respectively. The second and fifth paragraphs were rejected, each by 22 votes to 20, with 8 abstentions.

In view of the adoption of the first paragraph of the Syrian amendment, the Indian amendment (A/C.6/L.212) was not put to the vote.

The Committee adopted the amended joint draft resolution as a whole by 28 votes to 12, with 7 abstentions. It then decided not to vote on the remaining draft resolutions and amendments.

c. CONSIDERATION BY THE GENERAL ASSEMBLY IN PLENARY SESSION

The draft resolution proposed by the Sixth Committee (A/2087) was considered by the General Assembly at its 368th plenary meeting on 31 January.

A number of statements, made in explanation of vote, were concerned in particular with the two paragraphs (paragraphs 4 and 5 of the preamble, see below) of the Committee's draft resolution which had formed part of the revised Syrian amendment to the joint draft resolution of France, Iran and Venezuela.

The representatives of Belgium, the Netherlands and the United States opposed these paragraphs as prejudging the issue by stating, inter alia, that a definition was possible and desirable. The Netherlands and United States representatives explained that they were doubtful as to whether a satisfactory definition could be found and that an unsatisfactory definition would not be of assistance, but they were nevertheless prepared to review the question again at the Assembly's seventh session. The representative of Belgium expressed the view that a definition would serve no useful purpose. The representative of France, while stating that he believed that a definition would be valuable from the point of view of the development of a judicial system embracing crimes against the peace and security of mankind, said that he would abstain on the draft resolution if the last two paragraphs of the preamble were retained.

On the other hand, the two paragraphs in question were supported by the representatives of Bolivia, Burma, Colombia, Czechoslovakia, Egypt, Lebanon, Syria, the USSR and Yemen. They emphasized the importance of adopting a definition of aggression so that an aggressor could be clearly identified. This, they held, though it would not put an end to acts of aggression, would assist in deterring an aggressor. It would also be a guarantee that any decision taken by a United Nations organ in designating an aggressor would be in accordance with law and not merely arbitrary. A definition, they said, would represent a step forward in the efforts to strengthen peace and security, and the General Assembly should adopt this statement of principle.

The representative of Burma referred to an appeal he had made in the Sixth Committee that if an act of aggression occurred before a definition were adopted, Members should nevertheless not be slow to take action to remove invaders from an invaded territory and should not take measures which would only make the invaded country "another Korea". He stated that the eastern part of Burma had been invaded by the armed forces of the "de facto Kuomintang Government on the

Asiatic island of Formosa". What was needed to get the invaders out was for those countries which had been opposed to a definition of aggression but which nevertheless favoured collective measures in the United Nations to state that they would withdraw their support of that Government unless the invaders were withdrawn; but any action had been slow. Such an example, the Burmese representative stated, showed the need for taking action to define aggression.

In reply, the representative of China read a statement made by the Chinese representative in the First Committee on this question. It was to the effect that General Li Mi had been sent to command in a part of the province of Yunnan in 1949, that he was a native son of that province and in view of the geographical inaccessibility of his troops acted independently of the Chinese Government. That Government had not sent reinforcements to him and had no intention of making Burma a military base of any kind.

The General Assembly adopted the resolution proposed by the Sixth Committee in parts and then as a whole. The first three paragraphs were adopted by 53 votes to none, with 1 abstention; the fourth paragraph was adopted by a roll-call vote of 29 to 24, with 2 abstentions as follows:

In favour: Afghanistan, Bolivia, Burma, Byelorussian SSR, Chile, China, Colombia, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, Indonesia, Iran, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian SSR, USSR, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Brazil, Canada, Costa Rica, Denmark, France, Greece, Iceland, India, Israel, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Peru, Sweden, Turkey, United Kingdom, United States, Venezuela.

Abstaining: Honduras, Thailand.

The fifth paragraph was adopted by a roll-call vote of 29 to 23, with 3 abstentions, as follows:

In favour: Afghanistan, Bolivia, Burma, Byelorussian SSR, Chile, China, Colombia, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Guatemala, Haiti, Indonesia, Iran, Lebanon, Liberia, Mexico, Pakistan, Philippines, Poland, Saudi Arabia, Syria, Ukrainian SSR, USSR, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Australia, Belgium, Brazil, Canada, Costa Rica, Denmark, Greece, Iceland, India, Israel, Luxembourg, Netherlands, New Zeland, Nicaragua, Norway, Paraguay, Peru, Sweden, Turkey, United Kingdom, United States, Venezuela.

Abstaining: France, Honduras, Thailand.

The three paragraphs of the operative part were adopted by 41 votes to 7, with 5 abstentions. The resolution as a whole was adopted by a vote of 30 to 12, with 8 abstentions.

Following the voting, the United Kingdom representative, supported by the representative of Australia, stated that as this was a matter involving recommendations concerning peace and security, decisions on it should be taken by a two-thirds majority. He did not challenge the vote as he agreed that the matter should be discussed at the next session, but he could not regard the two paragraphs which had been adopted by a very narrow vote as representing the views of the Assembly as a whole. The United Kingdom therefore reserved its freedom to debate the question covered by these paragraphs at the next session and held that any definition, if one were arrived at, would unquestionably require a two-thirds majority.

The resolution adopted by the Assembly (599 (VI)) read:

"The General Assembly,

"Considering that, under resolution 378 B (V) of 17 November 1950, it referred the question of defining aggression, raised in the draft resolution of the Union of Soviet Socialist Republics to the International Law Commission for examination in conjunction with matters which were under consideration by that Commission,

"Considering that the International Law Commission did not in its report furnish an express definition of aggression but merely included aggression among the offences defined in its draft Code of Offences against the Peace and Security of Mankind,

"Considering that the General Assembly, on 13 November 1951, decided not to examine the draft Code at its sixth session but to include it in the provisional agenda of its seventh session,

"Considering that, although the existence of the crime of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it,

"Considering further that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as may be called upon to determine the aggressor,

"1. Decides to include in the agenda of its seventh session the question of defining aggression;

"2. Instructs the Secretary-General to submit to the General Assembly at its seventh session a report in which the question of defining aggression shall be thoroughly discussed in the light of the views expressed in the Sixth Committee at the sixth session of the General Assembly and which shall duly take into account the draft resolutions and amendments submitted concerning this question;

"3. Requests States Members, when transmitting their observations on the draft Code to the Secretary-General, to give in particular their views on the problem of defining aggression."

G. REPORT OF THE INTERNATIONAL LAW COMMISSION

The International Law Commission (ILC) held its third session from 16 May-27 July 1951. It elected for a term of one year the following officers: Chairman—James Leslie Brierly; First Vice-Chairman—Shuhsi Hsu; Second Vice-Chairman—J. M. Yepes; Rapporteur—Roberto Cordova.

The Commission completed its study of and submitted its recommendations to the General Assembly (A/1858) concerning: (1) reservations to multilateral conventions, (2) the question of defining aggression, and (3) the preparation of a draft Code of Offences against the Peace and Security of Mankind. It submitted for the Assembly's consideration a report on the first phase of the Commission's review of its Statute, stating that it would pursue this review further at its next session in the light of the Assembly's action on its recommendation. The ILC also submitted for the Assembly's information a report on the progress of its work on the law of treaties and on the regime of the high seas, and gave an account of other decisions it had taken at the third session.

At its sixth session, the General Assembly referred to the Sixth Committee the item "Report of the International Law Commission covering the work of its third session, including: (a) Reservations to multilateral conventions; (b) Question of defining aggression; (c) Review of the Statute of the International Law Commission with the object of recommending revisions thereof to the General Assembly." The Assembly decided to postpone until its seventh session consideration of the draft Code of Offences.

The Sixth Committee dealt with the Commission's recommendations concerning reservations to multilateral conventions together with the Advisory Opinion of the International Court of Justice concerning reservations to the Genocide Convention.[25] With the exception of this question and the question of defining aggression,[26] which are treated in this volume under separate headings, the Commission's recommendations and any Assembly action on them is dealt with in the following pages.

1. Draft Code of Offences against the Peace and Security of Mankind

The Commission was asked by General Assembly resolution 177(II) to prepare a draft Code of Offences against the Peace and Security of Mankind, indicating clearly the place to be accorded to the principles of international law recognized in the Charter and Judgment of the Nürnberg Tribunal which, at the same time, it was asked to formulate. The Commission's formulation of these principles was considered by the Assembly at its fifth session and it was asked (resolution 488(V)) in preparing the draft Code to take account of the observations on this formulation made during the Assembly's discussions and any observations by governments.[27]

Following consideration at its first and second sessions,[28] the Commission, at its third session, considered a second report (A/CN.4/44) prepared by Mr. Spiropoulos, the special rapporteur on the subject. The report contained a revised draft code and a digest of the observations on the Commission's formulation of the Nürnberg principles made by delegations at the Assembly's fifth session. The Commission also had before it observations from governments (A/CN.4/45 and Corr.1 and Add.1 and 2) on this formulation. It adopted a draft Code and submitted it to the Assembly.

In its report, the Commission stated that, in its view, the meaning of the term "offences against the peace and security of mankind" should be limited to offences which contain a political element and which endanger or disturb the maintenance of international peace and security. The draft Code, therefore, did not deal with questions concerning conflicts of legislation and jurisdiction in international criminal matters; nor did it include such matters as piracy, traffic in dangerous drugs, traffic in women and children and slavery. The Commission considered that it was not bound to insert the Nürnberg principles in their entirety in the Code but that it might suggest modifications of the principles for the purpose of their incorporation. It decided to deal with the criminal responsibility of individuals only. Finally, it stated, it did not consider itself called on to propose methods by which a code might be given binding force; as the offences set forth were characterized as international crimes it had envisaged an international criminal court, pending the establishment of which the Code might be applied, as a transitional measure, by national courts.

[25] See pp. 820-32.
[26] See pp. 833-40.
[27] See Y.U.N., 1950, p. 857.
[28] See Y.U.N., 1948-49, p. 949 and Y.U.N., 1950,. pp. 861-62.

The draft Code proposed by the Commission (A/1858) consists of five articles with a commentary on each paragraph. The articles read as follows:

"Article1

"Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punishable.

"Article 2

"The following acts are offences against the peace and security of mankind:

"(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

"(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

"(3) The preparation by the authorities of a State for the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

"(4) The incursion into the territory of a State from the territory of another State by armed bands acting for a political purpose.

"(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.

"(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State.

"(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

"(8) Acts by the authorities of a State resulting in the annexation, contrary to international law, of territory belonging to another State or of territory under an international régime.

"(9) Acts by the authorities of a State or by private individuals, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, including:

"(i) Killing members of the group;

"(ii) Causing serious bodily or mental harm to members of the group;

"(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(iv) Imposing measures intended to prevent births within the group;

"(v) Forcibly transferring children of the group to another group.

"(10) Inhuman acts by the authorities of a State or by private individuals against any civilian population, such as murder, or extermination, or enslavement, or deportation, or persecutions on political, racial, religious or cultural grounds, when such acts are committed in execution of or in connexion with other offences defined in this article.

"(11) Acts in violation of the laws or customs of war.

"(12) Acts which constitute:

"(i) Conspiracy to commit any of the offences defined in the preceding paragraphs of this article; or

"(ii) Direct incitement to commit any of the offences defined in the preceding paragraphs of this article; or

"(iii) Attempts to commit any of the offences defined in the preceding paragraphs of this article; or

"(iv) Complicity in the commission of any of the offences defined in the preceding paragraphs of this article.

"Article 3

"The fact that a person acted as Head of State or as responsible government official does not relieve him from responsibility for committing any of the offences defined in this Code.

"Article 4

"The fact that a person charged with an offence defined in this Code acted pursuant to order of his government or of a superior does not relieve him from responsibility, provided a moral choice was in fact possible to him.

"Article 5

"The penalty for any offence defined in this Code shall be determined by the tribunal exercising jurisdiction over the individual accused, taking into account the gravity of the offence."

The Assembly, on the proposal of its General Committee, decided to postpone consideration of the draft Code until its seventh session, as the draft Code had not yet been submitted to governments for comment. In a circular letter of 17 December 1951 the Secretary-General requested Member Governments to transmit to him any comments or observations they wished to make on the draft Code. The Sixth Committee was informed at its 280th meeting on 8 January that the draft had been submitted to Governments.

2. Review by the International Law Commission of its Statute

In resolution 484(V),[29] the General Assembly asked the International Law Commission to review its Statute with the object of making recommendations to the Assembly at its sixth session concerning revisions of the Statute which might appear desirable, in the light of experience, for the promotion of the Commission's work. In its resolution, the Assembly referred to the importance of the Commission's work being carried out in the

[29] See Y.U.N., 1950, p. 847.

conditions most likely to enable it to achieve rapid and positive results, and stated that certain doubts had been expressed as to whether such conditions currently existed.

In its report (A/1858), the ILC pointed out that, with regard to some of the matters falling within its competence, in particular some of the topics selected for codification, quick and positive results might be difficult, since these subjects required extensive research and consideration. All the members of the Commission, it explained, were men engaged in professional activities. They had devoted about three months each year to the Commission's work. In addition, between sessions, members of the Commission serving as rapporteurs were asked to devote a considerable part of their time to the work of the Commission, for which they received a modest honorarium. In some cases, the amount of time which they might be able to give to such work might be so limited as to restrict the scope of their researches. Further, during each of its sessions, the Commission had spent: more than half the time on special assignments from the Assembly, which might have retarded the progress of its work on topics selected for codification.

The Commission therefore suggested that its members should be placed on a full-time basis and that its Statute should be amended to provide that its members might not exercise any political or administrative function or engage in any other occupation of a professional nature. To. assist recruitment, it suggested that a longer term of office should be envisaged.

The ILC stated that it would refrain from submitting detailed suggestions of desirable amendments to its Statute until it learned of the General Assembly's attitude towards its fundamenal recommendation as to a full-time Commission.

The question of the review of the Commission's Statute was considered by the General Assembly at the 295th and 296th meetings of the Sixth Committee on 23 January 1952.

The Committee had before it a Venezuelan draft resolution (A/C.6/L.218/Rev.1), which had been altered by the sponsor following suggestions by Egypt and France. The Committee later adopted the draft resolution without any change of substance (see below).

The representative of the Netherlands, in particular, supported the Commission's recommendation that it should be established on a full-time basis, on the ground that this would promote the progress of international law, which was one of the most important fields of activity of the United Nations and particularly important in view of the deadlock on various political issues.

The majority of representatives, however, considered that the time had not yet come for such a fundamental change in the Commission's structure.

Various of these representatives, including those of Belgium, Israel and the United States, considered that the prevailing political situation was unpropitious to rapid progress in international law. The representative of China, however, thought that, while it was necessary for codification to proceed in a period of calm, this was not true in the case of the development of international law. He considered that if the United Nations failed in its task of developing and codifying international law it would do so, not because of the international situation, but because it was frequently lacking in faith, will and courage. The representative of Greece considered that it was possible to proceed with the work of codification since international law had altered very little in the past few years; the difficulties, as had always been the case, lay in securing agreement.

A number of representatives considered that the question hinged on the use to which the General Assembly put the work of the International Law Commission. The representatives of Israel and the United Kingdom expressed the opinion that while government representatives, as had appeared on various occasions in the Sixth Committee, did not accept the scientific work of the experts in the ILC, there was little use in extending the Commission's work. The representative of Egypt thought that the Sixth Committee had gone further than the Commission which, as a body of experts, was not, he considered, in touch with political realities in the same way as government representatives. The representative of Yugoslavia was in favour of placing the members of the ILC on a full-time basis provided the Commission's work was used by the Assembly. The representatives of Belgium and Greece considered that it was inevitable that a political body such as the Assembly should differ from a legal body such as the Commission.

The representative of the United States feared that a large increase in the output of the Commission would impose an excessive burden on governments asked to comment on draft texts; he, as well as the representatives of Lebanon and Venezuela, also feared that such an increased output could not be dealt with by the Sixth Committee.

A number of representatives, including those of Canada, Lebanon, Pakistan, the USSR, the United Kingdom and the United States, thought that it would not be desirable to place the members of the Commission on a full-time basis, on the grounds that they might thereby lose contact with the legal systems of their own countries and become a body of officials rather than a body of independent experts. The representatives of Belgium, Canada and the United States considered it essential to preserve a clear distinction between the Commission and the Legal Department of the Secretariat. The representative of the Netherlands, however, stated that if the ILC were placed on a full-time basis, its members would be no more staff members than the judges of the International Court of Justice.

The representatives of Brazil, Canada and Greece stated that one of the chief difficulties was that the Commission was overburdened with special tasks by the General Assembly and was therefore prevented from making sufficient progress with the codification of international law. The representative of Canada suggested that tasks should not be assigned to the Commission by the Assembly when the problems had been reduced to political issues.

The representative of the United States, pointing out that if the Commission were placed on a full-time basis it could not continue its experiment of delegating much of its work to rapporteurs, suggested that the Commission might use a full-time rapporteur attached to the Secretariat. The representative of Sweden suggested that a rapporteur assigned an important task by the Commission might be given an allowance to enable him to spend his full time on the Commission's work. The representatives of Canada, Egypt and the United States suggested that more use might be made of the Legal Department of the Secretariat. The representative of Lebanon suggested that the Commission's membership might be extended to twenty. The representatives of Canada and the United Kingdom stated that they were prepared to consider any other suggestion for facilitating the Commission's work. The representatives of Brazil and Greece emphasized, however, that it was only a question of time which prevented the Commission from accomplishing more work. It would not help, the representative of Greece stated, to increase the amount of work done by rapporteurs since the Commission had already more reports from rapporteurs than it had had time to examine.

The Venezuelan draft resolution (A/C.6/L.218/Rev.1) was first adopted in parts, in votes ranging from 39 votes to none, with 2 abstentions, to 25 votes to 5, with 11 abstentions. It was adopted, as a whole, by 34 votes to none, with 8 abstentions.

The Sixth Committee's report (A/2088) was considered by the General Assembly at its 368th plenary meeting on 31 January. The United Kingdom representative expressed regret that the Secretariat services available to the ILC had been reduced in the current budget, stating that certain members of the Sixth Committee had been influenced in supporing the draft resolution adopted by the suggestion that greater assistance should be given to the Commission by the Secretariat. He emphasized the importance of these services to the Commission's work, and expressed the hope that it would be possible to restore the assistance which the Secretariat had previously rendered and increase it, as far as financially possible.

The draft resolution proposed by the Sixth Committee was adopted by the Assembly by 41 votes to none, with 5 abstentions, as resolution 600(VI). It read:

"The General Assembly,

"Referring to its resolution 484(V) of 12 December 1950 in which it asked the International Law Commission for "recommendations . . . concerning revisions of the Statute which may appear desirable, in the light of experience, for the promotion of the Commission's work",

"Considering that, according to the report covering the work of its third session, the said Commission, in pursuance of the General Assembly's resolution, recommended that, at the time of the next election of its members, the Commission should be placed on a full-time basis,

"1. Notes the observations and recommendations contained in chapter V of the report of the International Law Commission;

"2. Expresses appreciation for the work done by the Commission pursuant to the terms of its Statute;

"3. Decides, for the time being, not to take any action in respect of the revision of the said Statute until it has acquired further experience of the functioning of the Commission."

3. Other Questions Dealt with by the International Law Commission

a. LAW OF TREATIES

The Commission reported that, at its third session, the special rapporteur on this subject, Mr. Brierly, presented a second report (A/CN.4/43) in which he submitted a number of draft articles

intended to replace certain articles proposed in the draft convention (A/CN.4/23) he had presented to the second session. After considering these and certain draft articles submitted by the special rapporteur to its second session, and after adopting various amendments, the Commission provisionally agreed upon tentative texts (A/CN.4/L.28). These were referred to the rapporteur, who was asked to submit a final draft, with a commentary, to the Commission at its fourth session and to report on the topic of the law of treaties as a whole.

b. REGIME OF THE HIGH SEAS

At its third session, the Commission considered a second report (A/CN.4/42) from the special rapporteur on this subject, Mr. François, which, as requested by the Commission, formulated concrete proposals on various subjects coming under this heading.

With regard to the chapters dealing with the continental shelf and the related subjects of conservation of the resources of the sea, sedentary fisheries and contiguous zones, it decided to communicate them to governments so that they could submit their comments, in accordance with the ILC's Statute. Accordingly, it annexed the draft articles and commentaries on these subjects to its report. Among the Commission's other decisions on the regime of the high seas were the following:

(1) It approved the principle that States must observe certain general rules of international law governing the nationality of ships.

(2) It considered that a rule should be laid down with regard to penal jurisdiction in matters of collision on the high seas.

(3) It approved the proposal to include rules relating to the safety of life at sea.

(4) It considered that the right of warships to approach foreign merchant vessels on the high seas suspected of engaging in the slave trade should be the same as in the case of vessels suspected of piracy, i.e., that it should be permissible without regard to zone or tonnage.

c. OTHER DECISIONS OF THE INTERNATIONAL LAW COMMISSION

The Commission decided to initiate work on the topic of "nationality, including statelessness," on which it appointed Mr. Hudson special rapporteur and on the topic of "regime of territorial waters", on which it appointed Mr. François special rapporteur.

The Commission took note of the Assembly's resolution 486(V) extending the term of office of its present members and of the Assembly resolution 494(V) concerning the Twenty-Year Peace Programme. It paid a tribute to the assistance given the ILC in its work by international and national organizations specially interested in international law. It decided that its fourth session should be held in Geneva beginning about 1 June 1952.

d. CONSIDERATION BY THE GENERAL ASSEMBLY

At its 296th and 297th meetings on 23 and 24 January, the Sixth Committee considered what action it should take in regard to chapters VI, VII and VIII of the Commission's report. Iran proposed a draft resolution (A/C.6/L.207) to have the Assembly note these chapters. The draft resolution was supported by the representatives of the Netherlands, the United Kingdom, the United States and Yugoslavia. The representative of the USSR, however, considered that these chapters of the report had not been placed on the Assembly's agenda and that the Committee should not deal with them in any way. Other representatives believed that the word "including" in the agenda item meant that the whole report of the ILC, except for chapter IV dealing with the draft Code of Offences, consideration of which had been postponed, was included in the agenda.

The USSR representative also considered that the word "notes" would imply that the Assembly had considered these chapters, but other members of the Committee thought that this word did not imply either approval or disapproval and that it was merely a question of taking note of the parts of the report submitted for the Assembly's information. To meet doubts expressed in this connexion by the representative of Belgium, the representative of Iran accepted an oral French amendment to have the Assembly note the progress of the Commission's work "pending its consideration" of the questions dealt with.

During the discussions, the Netherlands representative suggested that it might be more fruitful if the Committee were in future to discuss the ILC's work at an earlier stage and give the Commission directions for its guidance so that the Commission's completed work should not be altered by the General Assembly, but merely adopted, rejected or referred back. This procedure, he felt, might lessen the likelihood of disagreements between the ILC and the General Assembly. This suggestion was supported by the representative of Greece, who considered that in matters of codification the Assembly could make no altera-

tions of detail. The representative of Belgium considered that the Assembly could alter the final texts, but agreed that it would be useful if advice were given to the Commission at an earlier stage. The representative of Iran, however, did not think that it was advisable to change the Commission's Statute in this respect, since it would not be practicable for the Sixth Committee to examine all the questions dealt with in the Commission's report.

The Committee adopted the revised Iranian draft resolution by 34 votes to none, with 5 abstentions.

The resolution proposed by the Committee (A/2088) was adopted by the General Assembly at its 368th plenary meeting on 31 January by 45 votes to none, with 5 abstentions, as resolution 601(VI). It read:

"The General Assembly,

"Pending its consideration of the questions dealt with in chapters VI, VII and VIII of the report of the International Law Commission covering the work of its third session,

"Notes the progress of the Commission's work on those questions."

H. DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES

At its fourth session, in resolution 375(IV), the General Assembly decided to transmit the draft Declaration on Rights and Duties of States, prepared by the International Law Commission, to Member States for consideration and to ask them for their comments, in particular on whether the Assembly should take any further action on the Draft Declaration and, if so, on the nature of the document to be aimed at and the procedure to be adopted regarding it.[30]

1. Views of Governments on the Draft Declaration

By the Assembly's fifth session, eleven replies had been received (A/1338 and Add.1) and the Assembly postponed consideration of the question until its sixth session, by which time one further reply, from Australia (A/1850), had been received. The previous replies had been from Argentina, Brazil, Canada, Egypt, France, India, Israel, Luxembourg, the Netherlands, Syria and the United Kingdom.

Argentina, Brazil, Egypt and Syria considered that the final text should be adopted by the Assembly as a declaration. Egypt and Syria proposed amendments to the text of the draft Declaration.

Canada stated that it was prepared to regard as existing international law most of the provisions of the draft and that, subject to certain specific points, it would favour the adoption of a general convention on the basis of the draft Declaration, if this were the wish of the great majority of the Members of the United Nations; Canada could not, however, recommend its adoption as a mere standard of conduct. France considered, the draft a useful prelude to the work of codification of the International Law Commission to which, it thought, this work should be left.

The Netherlands considered that the Declaration should be formulated as a body of underlying principles of general international law, but that it should be made clear that not all the consequences of these principles could be called positive international law. The drafting of these underlying principles, it was suggested, should be undertaken by the International Law Commission and the resulting Declaration should be acknowledged by the Assembly without further discussion of substance. Amendments were suggested to the text of the draft Declaration.

Israel considered that no further action should be taken on the draft Declaration at present but that it should be placed on the agenda of the first General Conference called to review the Charter in accordance with Article 109. The Conference, it was proposed, should decide the exact nature of the document to be arrived at and its place in relation to the Charter, and the International Law Commission should undertake preparatory work on the problem of the juridical characteristics to be given to the proposed Declaration.

India and Australia considered that no further action was required on the draft Declaration. India stated that its terms were generally acceptable. Australia considered that it did not fit appropriately into either of the categories of the development or of the codification of international law, and that it would not serve a useful purpose to proclaim it as a standard of conduct. The United Kingdom referred to the views it had expressed at the Assembly's fourth session, and Luxembourg stated that it had no observations to present.

[30] See Y.U.N., 1948-49, pp. 946-49.

2. Consideration by the General Assembly of Further Action

The question was considered by the General Assembly at its sixth session at the 253rd to 257th meetings of the Sixth Committee from 17-23 November and at the 352nd plenary meeting on 7 December 1951.

The Committee's discussion was confined to the preliminary question of what further action should be taken regarding the draft Declaration. Opinion was divided between those who thought that the Committee should immediately open a debate on the substance of the question, and those who thought that further consideration of the question should be postponed, at any rate until more governments had sent in replies to the questions asked in resolution 375(IV).

The representatives of Afghanistan, Argentina, Bolivia, Chile, China, Cuba, Egypt, El Salvador, Ethiopia, Iraq, Mexico, Nicaragua, Syria and Yugoslavia were in favour of an immediate debate on the substance of the question. They argued that a formulation of the rights and duties of States would be of the greatest use in current world conditions, particularly for the protection of the interests of small and medium-sized States. In their view, the General Assembly had a legal or moral duty to do its utmost toward the completion of a Declaration at the current session. The fact that only twelve States had replied to the Assembly's request for comments and suggestions should not, in their view, prevent the Assembly's considering the matter; many other States had commented on other occasions and would further define their positions during the debate on the substance of the draft. The representative of the Philippines considered that the replies already received from governments should be studied. The representative of Iran, while stressing the importance of the Declaration for small and medium-sized Powers, warned that the production of a new instrument would not provide a further guarantee of security.

The representatives of Australia, Belgium, Brazil, Burma, Canada, Czechoslovakia, the Dominican Republic, Ecuador, Luxembourg, the Netherlands, Paraguay, Peru, Sweden, the Ukrainian SSR, the USSR, the United Kingdom, the United States, Uruguay and Venezuela were opposed to holding a discussion of the substance of the draft Declaration at the current session. Most of these representatives shared the view that it was desirable to formulate such a declaration and that it would be of the highest importance, but they did not think that it was opportune for the Sixth Committee to undertake a definitive formulation of the text at the current session. It was stated that the very importance of a declaration and the complexity of its preparation made it necessary to proceed slowly and cautiously, with the assistance of fully considered written opinions from governments on the contents of the draft and on the questions asked in resolution 375(IV). The Assembly, these representatives considered, should wait until a larger number of governments had furnished such opinions.

Some of these representatives, including those of Burma, Ecuador, the Netherlands and Paraguay, thought that present world conditions were unpropitious to a formulation of the draft Declaration at the current session. Some, including the representatives of Australia, Burma, the United Kingdom and the United States, feared that a discussion of the substance of the draft would destroy what value it had by a revelation of profound differences of opinion, which would make it impossible to arrive at any concrete result.

The representatives of Czechoslovakia, the Ukrainian SSR and the USSR considered that the draft Declaration, together with any comments of governments, should be referred to the International Law Commission before being considered by General Assembly, on the grounds that such a procedure was required by the Commission's Statute and that the Commission's consideration of these comments would be of practical advantage.

Three draft resolutions were submitted to the Committee.

(1) A Ukrainian SSR draft resolution (A/C.6/L. 170) proposed that the Assembly postpone consideration of the draft Declaration and transmit any comments already received, as well as those subsequently submitted on it, to the International Law Commission for consideration and for the submission, in accordance with the ILC's Statute, of recommendations to a subsequent Assembly session.

This draft resolution was rejected by the Committee, at its 256th meeting by 30 votes to 7, with 13 abstentions.

(2) A draft resolution by Yugoslavia (A/C.6/L.171) would have the Sixth Committee decide to open a general discussion on the matter. In its preamble, this draft resolution would refer to the postponement of the question at the fifth session, note that the item was on the agenda of the current session and state that, in order to carry out its task in accordance with the rules of procedure, each Main Committee must open a general discussion on all the matters referred to it and that this was the only way that representatives of States could make statements of substance on the agenda item concerned.

The Yugoslav representative agreed to withdraw this last provision after various representatives had questioned this interpretation of the rules of procedure.

(a) An Egyptian amendment (A/C.6/L.174) was proposed to the Yugoslav draft resolution. The first part of the amendment would add a paragraph to the preamble stating that, in spite of the small number of States which had responded to the Assembly's invitation, a general discussion on the matter in the Committee would enable the other States to make known their points of view.

This part of the amendment was rejected by the Committee by 21 votes to 19, with 10 abstentions.

The second part of the Egyptian amendment proposed to replace the operative part of the Yugoslav draft resolution by a clause stating that the Committee would decide to open a general discussion on the draft Declaration with a view to making such recommendation to the General Assembly as appeared necessary, including, if appropriate, the communication of the discussion to the International Law Commission.

This part of the amendment was rejected by the Committee in a roll-call vote, by 20 votes to 18, with 13 abstentions.

The Yugoslav draft resolution was then rejected by a roll-call vote of 26 to 19, with 6 abstentions, at the Committee's 255th meeting.

(3) A joint draft resolution by Belgium, Luxembourg and the Netherlands (A/C.6/L.172 and Corr. 1) proposed that the Assembly: (1) decide to postpone consideration of the draft Declaration until a sufficient number of States had transmitted their comments and suggestions, and (2) request the Secretary-General to publish the suggestions and comments for such use as the Assembly might find desirable at a later stage.

The sponsors of the joint draft accepted a French amendment (A/C.6/L.173) to add a paragraph to the operative part of the resolution urging States Members which had not yet done so to reply as soon as possible to the questions put by the Assembly in resolution 375(IV).

Certain representatives, in particular the representative of the United States, opposed this paragraph, stating that it was undignified for the United Nations to make constant appeals to Member States.

Certain representatives felt that the joint draft would be more acceptable if it provided more definitely for reconsideration of the question. The representative of Iran proposed orally that the question should be postponed until a "majority" rather than a "sufficient number" of States had sent in replies to the Assembly's questions. The sponsors of the joint draft resolution, however, stated that they wished to retain some flexibility, pointing out that the Assembly might decide to discuss the question before a majority of States had replied. The Iranian oral amendment was withdrawn in favour of an Egyptian oral amendment to state that the Assembly would in any case consider the draft Declaration as soon as a majority of Member States had replied. This was accepted by the sponsors of the joint draft resolution.

The joint draft resolution, as thus amended, and with drafting changes by Australia and Turkey, was adopted by the Committee in separate votes and as a whole. The first five paragraphs were adopted by 40 votes to 4, with 8 abstentions, the sixth paragraph (that proposed by France) by 34 votes to none, with 17 abstentions, and the last paragraph by 48 votes to none, with 4 abstentions. The draft resolution was adopted, as a whole, by 39 votes to 4, with 9 abstentions.

The draft resolution proposed by the Committee (A/1982) was adopted by the General Assembly at its 352nd plenary meeting on 7 December 1951, by 49 votes to 7, with 4 abstentions.

The representatives of Bolivia, Chile, Egypt and Yugoslavia, in explaining their votes, stressed the need for adopting such a declaration and argued against postponement of its consideration. The representatives of Iran and Iraq stated that they were in favour of considering the draft at the current session but, failing that, wished it to be considered at the next session. The representatives of El Salvador and Peru stated that the very importance of the draft Declaration meant that it should be given careful consideration which should await further considered replies from governments.

The resolution adopted by the General Assembly (596(VI)) read:

"The General Assembly,

"Bearing in mind

"That the General Assembly by resolution 375 (IV) of 6 December 1949 took note of the draft Declaration on Rights and Duties of States prepared by the International Law Commission, and expressed to the Commission its appreciation for its work on the draft Declaration,

"That by the same resolution the General Assembly resolved to transmit to Member States, for consideration, the draft Declaration together with the documentation relating thereto, and to request them to furnish their comments and suggestions,

"That, furthermore, Member States were requested to furnish at the same time comments on the questions whether any further action should be taken by the General Assembly on the draft Declaration, and if so, what should be the nature of the document to be aimed at, and what procedure should be adopted in relation to it,

"Considering that the number of States which in pursuance of the said resolution have given their comments and suggestions is too small to base thereon any definite decision,

"1. Decides to postpone for the time being consideration of the draft Declaration on Rights and Duties of

States until a sufficient number of States have transmitted their comments and suggestions, and in any case to undertake consideration as soon as a majority of the Member States have transmitted such replies;

"2. Urges the Member States which have not yet done so to reply as soon as possible to the questions put by the General Assembly in paragraph 4 of resolution 375 (IV);

"3. Requests the Secretary-General to publish the comments and suggestions which will be furnished by Member States, for such use as the General Assembly may find desirable at any later stage."

I. WAYS AND MEANS OF MAKING THE EVIDENCE OF CUSTOMARY INTERNATIONAL LAW MORE READILY AVAILABLE

1. Report by the Secretary-General

In accordance with Assembly resolution 487 (V), the Secretary-General presented to the sixth session of the General Assembly a report (A/1934) on the recommendations contained in paragraphs 90, 91 and 93 of part II of the report of the International Law Commission on its second session (A/1316) in the light of the discussions held in the Sixth Committee at the Assembly's fifth session.[31]

The Secretary-General's report dealt with: (1) making United Nations publications and treaty texts more readily available; (2) preparation of new publications relating to international law; (3) publication of digest of diplomatic correspondence and of other materials relating to international law. Annexed to the report was a note from the Government of Israel containing its views on the different subjects under consideration.

Under the first heading, the Secretary-General reviewed existing United Nations distribution of these publications, and concluded that further reductions in prices would be incompatible with budgetary limitations and that a wider distribution could only be secured through an increase in free dissemination which, in view of recommendations by the Fifth Committee and the Advisory Committee on Administrative and Budgetary Questions, would appear to require General Assembly authorization.

A special question which had been raised by Israel at the Assembly's fifth session was the provision to Members which had not been members of the League of Nations of free sets of the publications of the League and of the Permanent Court of International Justice. The Secretary-General pointed out that only a limited number of such documents had been received and suggested that their distribution could best be solved by arrangements between himself and the individual governments concerned.

With respect to the second point, the report reviewed the International Law Commission's recommendations for the following publications:

(1) Juridical Yearbook—This publication had been postponed in view of the need for a policy decision regarding its content and form and the necessary budgetary appropriations for printing.

(2) Legislative Series—Volumes were already being prepared containing: national legislation on the continental shelf and contiguous zones; provisions on national jurisdiction over crimes committed on the high seas; provisions in national constitutions governing the conclusion and ratification of treaties; and national legislation on nationality of ships. As the main difficulty was the lack of legislative material, it was suggested that Members should be asked to send to the Secretary-General a set of national legislation and current issues of official journals and other publications containing current legislation, governmental decrees and administrative orders.

(3) Collection of national constitutions—A collection was being prepared of constitutional provisions on the conclusion and ratification of treaties. As new private collections in this field were available, it was felt that there was no urgent need to prepare a collection.

(4) List of collections of treaty texts—It was suggested that the preparation of such a list should be authorized, since no up-to-date list was available.

(5) Consolidated index of the League of Nations Treaty Series—A special appropriation would be necessary for this.

(6) Index volumes of the United Nations Treaty Series—These were already in hand.

(7) Répertoire of United Nations practice—Funds and personnel were inadequate to undertake this, but a project was under way involving material relating to the interpretation of the Charter. Some of the relevant preparatory material was not, however, available.

(8) Additional series of the Reports of International Arbitral Awards—A second series, dealing with the Mixed Claims Commissions constituted after 1918 was in hand.

As regards the publication of digests of diplomatic correspondence, it was suggested that the Assembly might encourage the publication by States of their diplomatic correspondence.

2. Consideration by the General Assembly at its Sixth Session

The Secretary-General's report was considered at the Assembly's sixth session at the 297th to 301st meetings of the Sixth Committee from 24-28

[31] See Y.U.N., 7950. pp. 850-52.

January 1952, and at the 369th plenary meeting on 1 February 1952.

In the general discussion, representatives commented on the various proposals for new publications. The following were some of the points made.

The representatives of Israel and the United Kingdom, in particular, considered that the United Nations should issue a Juridical Yearbook. The representative of France thought that this publication was unnecessary in view of similar existing publications, and the representative of Yugoslavia thought that the United Nations should have its own Juridical Yearbook only if there were a need for it. The representative of Pakistan considered that national laws could be usefully included in the Yearbook only if there was also a sufficiently scholarly study of the growth of the legislation in the various countries, but that it would be useful to have in easily accessible form reports of arbitral tribunals and relevant court decisions.

The representatives of France, Israel and Pakistan pointed to the difficulties involved in compiling an exhaustive legislative series. The representative of Israel suggested in this connexion that use might be made of institutes of comparative law.

The representative of Israel questioned the practical usefulness of a répertoire of United Nations practice with regard to questions of general international law. The proposal to issue a répertoire of United Nations practice was supported by the representatives of France, the United Kingdom and Yugoslavia. The representative of the United Kingdom thought that a répertoire on the practice of the Security Council would be particularly useful.

The representative of France pointed out that there already existed collections of national constitutions, but the Yugoslav representative considered that private collections consisted mainly of commentary and that a further collection might be useful. The representative of Pakistan considered that, to be useful, such a collection would need to include not only texts, but notes on their practical application.

A draft resolution was submitted jointly by Israel and the United Kingdom (A/C.6/L.220). It would:

(1) recommend the Secretary-General to undertake the necessary preparatory work in order to inaugurate the publication of a United Nations Juridical Yearbook in 1953, taking into account the suggestions made in the Sixth Committee;

(2) authorize the Secretary-General to undertake the initial steps for the preparation of a list of treaty collections supplementary to those already existing;

(3) request Members to make available national lists of treaty texts;

(4) invite the Secretary-General to submit to the Assembly's next session detailed plans for the publication of a consolidated index to the League of Nations Treaty Series;

(5) note with satisfaction the progress accomplished in the Legislative Series, and request the Secretary-General to continue his studies relating to the best methods for securing for the United Nations the required national legislation material;

(6) note with satisfaction that a répertoire involving material relating to the interpretation of the Charter was already under way;

(7) recommend the Secretary-General to give priority to a volume dealing with the function and operation of the Security Council; and

(8) note with satisfaction that further progress was being made in the publication of the Reports of International Arbitral Awards.

France proposed an amendment (A/C.6/L.224) to substitute for the paragraph referring to the répertoire on the Security Council a request to the Secretary-General to make the necessary arrangements, in conjunction with the competent learned institutions, for the publication of a répertoire of the practice of the United Nations with regard to questions of international law and to proceed actively with the preparation of the répertoire of the practice of the United Nations with regard to the interpretation of the Charter.

This amendment was subsequently withdrawn on the understanding that the Committee's report would include a statement of the French delegation's wish that the Secretary-General should consult with the competent national or international learned institutions in connexion with the preparatory work concerning a United Nations Juridical Yearbook, a consolidated index of the League of Nations Treaty Series, a list of treaty collections, and a volume containing a répertoire of the practice of the Security Council, especially the first, and the last in so far as there were unsettled points about its form.

The representatives of Belgium, Egypt and the USSR opposed the draft resolution, stating that it involved unforeseeable commitments. Even if no extra cost were involved in the current year, the Committee, in voting for the resolution, would be authorising work which would inevitably involve extra costs in the future. Reference was also made to the difficulties and magnitude of the tasks suggested. Some of the projects, it was felt, were unnecessary and others could more suitably be undertaken outside the United Nations. The USSR representative considered that if the proposals were adopted there would be a danger of the Legal

Department being assigned tasks which lay far outside its proper functions.

It was pointed out by the Assistant Secretary-General for Legal Affairs that no extra expenditure for 1952 was involved, but that the publication of the Juridical Yearbook would involve additional expenditure in future years.

The representative of Egypt proposed a draft resolution (A/C.6/L.226) to have the Assembly request the Secretary-General:

(1) to submit a report containing detailed plans which might serve as a basis for the preparation of the works referred to in his report, and

(2) to submit at the same time an estimate of the expenditure involved in publishing these works.

This draft resolution was subsequently withdrawn on the acceptance of an oral Egyptian amendment (see below).

The representatives of Israel and the United Kingdom submitted a revised version of their joint draft resolution (A/C.6/L.220/Rev.1). It provided that the General Assembly should:

(1) note with satisfaction the progress accomplished in the Legislative Series, that a répertoire involving material relating to the interpretation of the Charter was already under way, and that further progress was being made in the publication of the reports of International Arbitral Awards;

(2) authorize the Secretary-General to undertake the initial steps for the preparation and publication of a list of treaty collections supplementary to those already existing;

(3) request Member States to make available to the Secretary-General national lists of treaty texts; and

(4) request the Secretary-General to: (a) undertake the necessary preparatory work and to present to the General Assembly a detailed plan, together with financial estimates, with a view to publishing a United Nations Juridical Yearbook in 1953, taking into account the suggestions made in the Sixth Committee; (b) submit to the next session of the General Assembly detailed plans for the publication of a consolidated index to the League of Nations Treaty Series; (c) continue his studies relating to the best methods for securing for the United Nations the required national legislation material; and (d) give priority to a volume of the répertoire dealing with the function and operation of the Security Council.

The representatives of Belgium, Saudi Arabia, Syria and the USSR considered that the Committee should not adopt the revised joint proposal without having before it details of the financial implications involved.

The representatives of Australia and India felt that the proposal had the merit of giving precise instructions to the Secretary-General. The representative of India stated that since no further costs were involved during 1952 the work should be put in hand forthwith.

The representatives of Israel and the United Kingdom accepted a French oral amendment to their joint draft resolution (A/C.6/L.220/Rev.1). This involved deleting the words "involving material" in the first operative paragraph.

They also accepted a joint amendment by Canada and India (A/C.6/L.228) as revised. Canada and India had accepted an Egyptian oral amendment to ask the Secretary-General for "a report containing detailed plans", rather than simply for "detailed plans". They had also withdrawn, in response to a suggestion by various delegations, a reference to 1953 in the provision referring to the possible publication of the Yearbook.

The joint amendment:

(1) deleted from the first operative paragraph of the draft resolution the references to the Legislative Series and the Reports of International Arbitral Awards;

(2) substituted a new second paragraph;

(3) deleted the third paragraph; and

(4) redrafted the fourth paragraph (see below for text of resolution as adopted).

The joint draft resolution as amended was adopted by the Committee at its 301st meeting on 28 January in paragraph-by-paragraph votes, ranging from 30 to none, with 7 abstentions to 30 to 5, with 3 abstentions. It was adopted, as a whole, by 31 votes to 5, with 2 abstentions.

On the Committee's recommendation (A/-2089), it was adopted by the General Assembly at its 369th plenary meeting on 1 February without further discussion, by 34 votes to 5, with 1 abstention.

The resolution (602 (VI)) read:

"The General Assembly,

"Having considered the report of the Secretary-General on ways and means for making the evidence of customary international law more readily available,

"1. Notes with satisfaction that a répertoire relating to the interpretation of the Charter is already under way;

"2. Instructs the Secretary-General to continue his studies relating to the best methods for securing for the United Nations the required national legislative material;

"3. Requests the Secretary-General to submit to the General Assembly at its seventh session a report containing detailed plans as to the form, contents and budgetary implications in regard to the possible publication of:

"(a) A United Nations juridical yearbook, taking into account the suggestions made during the debates in the Sixth Committee;

"(b) A consolidated index to the League of Nations Treaty Series;

"(c) A list of treaty collections supplementary to those already existing;

"(d) A volume containing a répertoire of the practice of the Security Council."

J. INTERNATIONAL CRIMINAL JURISDICTION

The Committee established in accordance with General Assembly resolution 489(V)[32] to prepare "one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court" met at Geneva from 1-31 August 1951. It prepared a draft Statute for an International Criminal Court which it presented in its report (A/2136).

The Committee had before it a memorandum (A/AC.48/1), submitted by the Secretary-General in accordance with the Assembly's resolution 489(V). Questions examined in the memorandum included the modes of creation of an international criminal court, its jurisdiction and functions, its character and organization, its procedure and the law it might apply. Three alternative preliminary drafts for a statute were annexed to the memorandum based on the assumptions (1) that the court would be established by General Assembly resolution; (2) that it would be established by international convention; and (3) that it would be an ad hoc body.

In the Committee's discussions, some members felt that at the present stage in the development of international organization any attempt to establish an international criminal court would meet with insurmountable obstacles. The majority of the Committee, however, considered that it was the Committee's task to elaborate concrete proposals on which the General Assembly could base its decisions rather than to express an opinion as to the advisability of creating an international criminal court. It was understood that no member of the Committee by taking part in its work would commit his government to any of the Committee's decisions.

In its report, the Committee pointed out that a number of new and important problems had emerged in the course of its discussions. Some of these problems related to the role of a criminal court in the current state of international organization, in particular the need for bringing a judicial punishment of illegal acts into harmony with the principal purpose of the United Nations, i.e., the maintenance of peace. Another group of problems arose out of the difficulties inherent in any arrangement under which individuals are made directly responsible before an international organ, while the traditional principles of state sovereignty are maintained. A further group of problems arose out of the difficulties due to the wide differences between national systems for the prevention and punishment of crime, in particular regarding the rules of procedure under which a criminal tribunal would operate.

The following are some of the decisions taken by the Committee. It decided to recommend that the court be established by a convention, and agreed that it should be a permanent rather than an ad hoc body, but that it should only be called into session when cases were submitted to it.

As regards the purpose of the court, there was general agreement that it should be competent to judge crimes under international law, but opinion in the Committee was divided as to whether the court should be called upon to deal only with such crimes as might be provided for in conventions or special agreements between States parties to its statute. Some members of the Committee thought that this would leave outside the scope of the court a vast field of international crimes, which could then only be tried by special international tribunals; others considered that, as there were different opinions as to what crimes were crimes under international law, in fairness to an accused, the charges must be specified exactly. The Committee decided to retain the reference to special conventions and agreements. It decided that the court should apply international law, including international criminal law, and, where appropriate, national law.

The Committee to a large extent based its provisions for the organization of the court on the corresponding provisions of the Statute of the International Court of Justice, with certain alterations due to the different functions of the two courts and their different mode of establishment. Thus, for example, it proposed that candidates should be nominated and members of the court elected only by the States parties to the statute, not by all States Members of the United Nations and by the General Assembly, respectively; it inserted provisions for challenging the sitting of any judge in a particular case; it agreed that judges should not be precluded from having other professional occupations; and it proposed that judges should receive a yearly allowance of a symbolic nature, in addition to a daily allowance when they participated in a session of the court. The Committee recommended that the court should appoint its own registrar, and left open the question of where the seat of the court would be situated. It considered that the court should be financed by a fund created by the States parties to its statute.

[32] See Y.U.N., 1950, p. 861.

As regards the jurisdiction of the court, the Committee considered that jurisdiction should not be conferred by the statute or by a special protocol, but, principally, through the conclusion of particular conventions conferring jurisdiction on the court. The conventions would not relate to any specific case but to future cases which might arise with respect to one or more groups of crimes. The Committee also accepted the principle that jurisdiction might be conferred on the court by special agreement or by unilateral declaration in respect of a specific criminal act which had already been committed. It proposed that conventions, agreements and declarations conferring jurisdiction on the court should be limited to States parties to its statute. Jurisdiction of the court in regard to nationals of a certain State, the Committee proposed, should be based on the consent of that State; similarly, the court's jurisdiction would have to be accepted by the State in which the crime was alleged to have been committed. In the case of double nationality and in the case of a crime committed in more than one State, the consent of all States concerned would be necessary.

To ensure that the court should not be called upon to try as a crime acts which in the general world opinion were not of a criminal character, the Committee proposed that any instrument conferring jurisdiction upon the court should be subject to the approval of the General Assembly, although, it was envisaged, the Assembly might express its approval in advance of agreements or declarations concerning certain types of crimes.

It was proposed that both individuals and States should have the right to challenge the jurisdiction of the court, and that the court should have the right to decide any issue with respect to its jurisdiction.

The Committee considered that the court should be competent to pass judgment on the penal responsibility of individuals only, and not of legal entities; it agreed that no person should be exempt from the court's jurisdiction merely because of his position as a responsible ruler or public official. The Committee decided against giving the court the competence to decide upon the responsibility of States for damage caused by crimes within the court's jurisdiction or to decide upon the civil responsibility of the accused.

It was proposed that the General Assembly, regional organizations and States parties to the court's statute should have the right to bring a case before the court. In the case of States, only those States should be able to bring matters before the court which themselves had recognized the court's jurisdiction with respect to offences in the same category as the offence charged in the particular case.

It was agreed that the court should have the power to issue warrants of arrest and also to request assistance from national authorities in the performance of its duties. It was provided, however, that a State should be obliged to render such assistance only in conformity with any instrument in which it had accepted an obligation.

It was proposed that the court should determine the nature and severity of the penalties which it imposed, subject to any limitation laid down in the instrument conferring jurisdiction on it.

The Committee proposed that a Committing Authority should be established to examine the evidence and decide whether there was a prima facie case against the accused. This, it considered, would protect individuals against frivolous prosecution and the court against considering frivolous cases. It was proposed that the Authority should be elected at the same time and in the same manner as the members of the court; that it should have powers similar to those of the court to summon witnesses and require evidence to be produced; and that the accused should have a right to be heard before it.

The Committee proposed that the Prosecuting Authority should be established on an ad hoc basis rather than be a permanent official. After considering alternative methods of appointment, the Committee proposed that the prosecuting attorney would be appointed in each particular case by a panel of ten persons, elected in the same manner as the judges of the court. He should possess the same qualifications as a member of the court.

In discussing the court's procedure, the Committee stated that it had encountered a general difficulty due to the fact that the national systems of procedure in criminal cases were widely different. It limited its provisions on procedure to the most essential rules and tried to avoid terminology the specific meaning of which varied in different countries. The court, it was proposed, should have the right to lay down its rules, including general principles governing the admission of evidence.

The rules proposed by the Committee dealt, among other things, with the rights of the accused. It was proposed that the accused should be presumed innocent until proved guilty, and should have a fair trial. In particular, he should have the right to be present at all stages of the proceedings,

to be defended by counsel of his own choice, and to be able to obtain free assistance of counsel if he was unable to bear the expenses himself. The accused would also have the right to interrogate any witnesses and to examine any document or other evidence introduced by the prosecution and to adduce oral or other evidence in his defence. It was proposed that he should also have the right to the court's assistance in obtaining material which the court was satisfied might be relevant to the issues. He should have the right to be heard by the court but should not be compelled to speak; his refusal to speak should not be relevant to the determination of his guilt, but if he chose to speak he would be liable to questioning by the court and by the counsels for prosecution and defence.

It was proposed to state that trials before the court would be without jury. Hearings, it was proposed, would be public unless the court decided that public sittings might prejudice the interests of justice; the deliberations of the court would be held in private. It was generally agreed that the court should have the powers necessary to perform its functions, specific provisions being laid down in the court's rules. It was proposed specifically that the court would have the power to dismiss a case if it came to the conclusion that it would not result in a fair trial.

The decisions of the court, it was proposed, should be by majority vote. If the votes were equally divided on final judgments and sentences, no decision would be taken; on other decisions, the presiding judge would have a casting vote. A provision was adopted allowing for separate opinions from dissenting judges.

It was proposed that there should be no appeal from a judgment of the court, but a revision of the judgment might be requested in the event that newly discovered facts warranted reconsideration of the issue. The Committee adopted the provision that no person who had been tried, and acquitted or convicted, by the court should be subsequently tried for the same offence in a national court in a State which had recognized the jurisdiction of the court with respect to such offence.

As regards the execution of sentences, it was proposed that an obligation to execute the court's sentence should only rest upon States which had assumed this obligation by special convention. If no such obligation had been accepted, the court might request the Secretary-General to make the necessary arrangements with any State as he thought fit.

To provide for the possibility of pardon or parole, it was proposed that a Board of Clemency should be established by the States parties to the statute.

The Committee gave particular consideration to the possibility of conferring jurisdiction upon the international criminal court in respect of genocide. It adopted a resolution stating the opinion that along with the instrument establishing the international criminal court a protocol should be drawn up conferring jurisdiction on that court in respect of genocide.

The Committee's report was not considered by the General Assembly at its sixth session, as, according to resolution 489(V) of 12 December 1950, the matter was not to be brought before the Assembly until the seventh session.

K. REGULATIONS TO GIVE EFFECT TO ARTICLE III, SECTION 8, OF THE HEADQUARTERS AGREEMENT

Under section 8 of article III of the Headquarters Agreement, the United Nations is empowered to make regulations operative within the Headquarters District, and it is provided that federal, state or local laws inconsistent with United Nations regulations will not, in so far as they are inconsistent, be applicable in the District.

In accordance with General Assembly resolution 481(V),[33] the Secretary-General presented three regulations to the Assembly's sixth session (A/1914). This resolution had requested the Secretary-General to present to the Assembly for approval any draft regulations he considered necessary for the full execution of the functions of the United Nations, and had at the same time authorized him to give immediate effect to a regulation, when he considered this necessary, and to report on such action to the Assembly as soon as possible.

Of the three regulations presented, one had already been promulgated on 26 February 1951. Its purpose was to limit the liability of the United Nations with respect to risks already covered by its own social security system.

The other two regulations were presented for approval. One provided that the Secretary-General could determine the qualifications for the performance of professional or other special occupational services within the District, it being understood

[33] See Y.U.N., 1950, pp. 179-80.

that doctors and nurses would only be authorized if qualified in their own or another country. It was pointed out that this would allow a wider geographical selection. The other regulation would allow the Secretary-General to fix the times and hours of operation of services and facilities of retail establishments within the Headquarters District.

The question was considered by the Assembly at its sixth session at the 301st meeting of the Sixth Committee on 28 January and the 369th plenary meeting on 1 February 1952.

The representative of Iran proposed a draft resolution (A/C.6/L.222) to take note of the regulation already promulgated and to approve the other two regulations.

Some difference of opinion was expressed as to whether the Assembly should "approve" rather than merely take note of the regulation already promulgated. The representative of Syria, supported by the representatives of the USSR and Yugoslavia, considered that Assembly approval was necessary for an emergency regulation to remain in force. The representative of the United Kingdom thought that formal approval was not necessary and that an administrative regulation should remain in force unless disapproved by the Assembly. The representative of Belgium, while agreeing with this view, considered that since the Secretary-General was required to submit all regulations to the Assembly, its approval was required. He expressed the hope that the Secretary-General should be free to interpret the regulation referring to professional services broadly and be able to require that the professionals concerned should not only be licensed but also permitted to practise in the countries where the licences were issued. It was explained, on behalf of the Secretary-General, that it was his intention to provide the best medical and nursing attention possible.

An oral amendment by Syria to replace the words "takes note of" by "confirms" was accepted by the sponsor of the draft resolution. The draft resolution, thus amended, was adopted by the Committee by 38 votes to none, with 1 abstention.

On the Committee's recommendation (A/2091), it was adopted without further discussion by the General Assembly at its 369th plenary meeting by 42 votes to none, as resolution 604 (VI). It read:

"The General Assembly,

"Considering the provisions of article III, section 8, of the Headquarters Agreement between the United Nations and the United States of America, which came into force on 21 November 1947,

"Recalling General Assembly resolution 481 (V) of 12 December 1950, which prescribed the method for giving effect to article III, section 8, of the Headquarters Agreement,

"Having considered the report of the Secretary-General containing Headquarters regulation No. 1, which was promulgated with immediate effect by the Secretary-General on 26 February 1951, and presenting draft Headquarters regulations Nos. 2 and 3 for approval by the General Assembly,

"1. Confirms Headquarters regulation No. 1 of 26 February 1951, on the United Nations social security system, annexed to the present resolution;

"2. Approves Headquarters regulation No. 2 on qualifications for professional or other special occupational services with the United Nations, and Headquarters regulation No. 3 on the operation of services within the Headquarters District, as annexed to the present resolution."

ANNEX

HEADQUARTERS REGULATIONS

For the purpose of establishing in the Headquarters District conditions in all respects necessary for the full execution of the functions of the United Nations, and in particular for the purposes specified in each regulation, the following regulations are in effect:

REGULATION No. 1

HEADQUARTERS REGULATIONS

For the purpose, in the field of staff social security, of giving immediate effect to measures necessary for avoiding multiple obligations arising from the possible application of overlapping laws and regulations:

1. A comprehensive United Nations social security system having been established for the purpose of affording protection against all reasonable risks arising out of or incurred during service with the United Nations, the provisions of the United Nations social security system shall constitute the only obligations of the United Nations in respect of such risks.

2. The provisions of the United Nations social security system shall constitute the sole provisions under which persons in the service of the United Nations shall be entitled to claim against the United Nations in respect of any risks within the purview of the United Nations social security system, and any payments made under the United Nations social security system shall constitute the sole payments which any such person shall be entitled to receive from the United Nations in respect of any such risks.

3. This regulation shall take effect on the date of its promulgation, without prejudice, however, to any elements of the United Nations social security system, or any rights or obligations thereunder, already existing at the date of this regulation.

PROMULGATED by the Secretary-General on 26 February 1951, with immediate effect, in pursuance of the authority conferred on him by resolution 481 (V) of the General Assembly and CONFIRMED by the General Assembly in resolution 604 (VI) of 1 February 1952.

REGULATION No. 2

Qualifications for professional or other special occupational services with the United Nations

For the purpose of availing the United Nations of the professional or special occupational services of persons recruited on as wide a geographical basis as possible:

The qualifications and requirements necessary for the performance of professional or other special occupational services within the Headquarters Distria shall be determined by the Secretary-General; provided that, prior to authorizing medical or nursing services by any person, the Secretary-General shall ascertain that such person has been duly qualified to perform such services in his own or another country.

APPROVED by General Assembly resolution 604 (VI) of 1 February 1952.

REGULATION No. 3

Operation of services within the Headquarters District

For the purpose of ensuring uninterrupted services necessary to the proper functioning of the principal and subsidiary organs of the United Nations:

The times and hours of operation of any services and facilities or retail establishments authorized within the Headquarters District shall be in compliance with schedules fixed by the Secretary-General; no regulations, requirements or prohibitions beyond those so prescribed shall be imposed without his approval.

APPROVED by General Assembly resolution 604 (VI) of 1 February 1952.

L. PRIVILEGES AND IMMUNITIES

There was no change in 1951 in the state of accessions to the Convention on the Privileges and Immunities of the United Nations.

With respect to the Convention on the Privileges and Immunities of the Specialized Agencies, the following action was taken during the year.

On 16 January 1951, the International Telecommunication Union transmitted to the Secretary-General the final text of annex IX to the Convention on the Privileges and Immunities of the Specialized Agencies. Except that the ITU does not claim communications privileges under the Convention, this action now permits the application to that organization of the standard clauses without modification.

The Secretary-General received on 29 December 1951 from the World Meteorological Organization the final text of its approved annex XI to the Convention on the Privileges and Immunities of the Specialized Agencies,[34] and its notice of acceptance of the standard clauses without modification.

During 1951 the instruments of accession of six States to the Convention on the Privilegs and Immunities of the Specialized Agencies were received by the Secretary-General.

As regards special agreements relating to privileges and immunities, the following action was taken during 1951.

On 30 January, the Secretary-General concluded an agreement with Chile with regard to the holding of the twelfth session of the Economic and Social Council in Santiago.

The Secretary-General concluded an agreement with Mexico, effective 20 May 1951, with regard to the holding of the fourth session of the Economic Commission for Latin America in Mexico City.

On 17 August, the Secretary-General concluded with the Government of France, by means of an exchange of letters, an agreement relating to the facilities to be made available to the United Nations, enabling the sixth session of the General Assembly to be held in Paris.

On 20 August, the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWAPRNE) concluded an agreement with the Government of Jordan relating, inter alia, to the privileges and immunities to be enjoyed by the Agency and its staff in that country.

On 21 September, an exchange of letters constituting an agreement concerning the privileges and immunities to be accorded to the United Nations in Korea was effected between the personal representative of the Secretary-General and the President of the Republic of Korea.

On 30 June, special arrangements were made by the United Kingdom Government to grant to the Secretariat staff of the United Nations Commission in Eritrea certain privileges additional to those conferred upon them by the Convention on the Privileges and Immunities of the United Nations, on account of the particular circumstances and geographical location of the Commission.

[34] See also p. 589.

M. DESIGNATION OF NON-MEMBER STATES TO WHICH COPIES OF THE REVISED GENERAL ACT FOR THE PACIFIC SETTLEMENT OF DISPUTES SHOULD BE COMMUNICATED

By its resolution 480 (V),[35] of 12 December 1950, the General Assembly postponed until its sixth session the consideration of the designation of non-member States to which a certified copy of the Revised General Act for the Pacific Settlement of International Disputes should be communicated for the purpose of accession to this Act.

The Revised Act had come into force on 20 September 1950, following the accession to it of Belgium and Sweden. The Act provides that it is to be open to non-member States which are parties to the Statute of the International Court of Justice, or which have been designated by the Assembly to receive copies.

The question was considered at the Assembly's sixth session at the 298th and 299th meetings of the Sixth Committee on 25 January and the 369th plenary meeting on 1 February 1952.

The Secretary-General, in a report to the Assembly (A/1878), pointed out that since its discussions in 1950, one further State, Norway, had acceded to the Act, on 16 July 1951.

Two draft resolutions were submitted to the Sixth Committee. One, by Belgium (A/C.6/L. 221) would request the Secretary-General to transmit copies of the Act to each non-member State which is, or hereafter becomes, an active member of one or more of the specialized agencies of the United Nations.

The other, by the United Kingdom (A./C.6/L. 223), would defer consideration of the question until at least one third of the Members of the United Nations had become parties to the Act.

The representatives of Australia, Belgium, the Dominican Republic, Egypt, Iraq and Lebanon spoke in favour of the communication of the Revised General Act to non-member States for ac-accession when only two United Nations Members this matter should not be postponed from year to year; he pointed out that the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others had been communicated to non-member States for their accession which only two United Nations Members had become parties to it.

The representatives of Belgium, the Dominican Republic, Egypt, Iraq and Lebanon considered it important to extend to non-member States the procedures for pacific settlement described in the Act. The representative of Australia said that the communication of the text would merely open the instrument for accession by non-member States in accordance with its terms.

The representatives of the USSR and the United Kingdom, on the other hand, argued that it was inappropriate to invite non-member States to become parties to the Act when only three United Nations Members had acceded to it. The United Kingdom representative pointed out that there was nothing to prevent non-member States from agreeing otherwise than by the General Act to arbitral or judicial proceedings for settling their international disputes.

The representative of Israel felt that those Member States which had already acceded to the Act had a right to take the position that it should be communicated to non-members, but those which had not acceded were not in the same moral position. The representative of the Philippines considered that various Members, like the Philippines, had not yet acceded to the Act, purely on account of a delay in their constitutional processes, and there was nothing to prevent an invitation being sent to non-member States. He would, however, abstain from voting on the Belgian draft resolution as it covered certain non-member States which his country did not think should be allowed to participate in any agreement concluded under United Nations auspices.

There was some discussion on the criterion of membership in specialized agencies, used in the Belgian draft. The Belgian representative pointed out that this had been the criterion adopted in the case of the Genocide Convention. The United Kingdom representative said that countries not fully sovereign could become members of a specialized agency provided they possessed sufficient domestic autonomy in the field covered by that agency. The Genocide Convention contained obligations which could be fulfilled by such countries, but the General Act imposed international obligations which could only be undertaken by a fully sovereign State. The representative of Belgium replied that his draft resolution applied to States, not to territories.

The representative of Egypt proposed an oral amendment to the Belgian draft to have the text transmitted to "a member" rather than "an active

[35] See Y.U.N., 1950, p. 880.

member" of an agency. This was accepted by the Belgian representative. The Egyptian amendment also proposed to substitute the words "peut devenir" for "deviendra" in the French text of the Belgian draft. After some differences of opinion had been expressed as to whether this should be interpreted as applying to States which actually became members of agencies or also to States which had the possibility of becoming members, this part of the amendment was not accepted by Belgium.

The Committee, by 19 votes to 11, with 9 abstentions, decided to vote first on the United Kingdom proposal.

The United Kingdom representative accepted an oral Egyptian amendment to substitute "ten" Members of the United Nations for "one third of the" Members. The draft resolution, as amended, was adopted by 24 votes to 13, with 5 abstentions, at the Committee's 299th meeting.

It was adopted on the Committee's recommendation (A/2090) without further discussion by the General Assembly at its 369th plenary meeting on 1 February 1952, by 32 votes to 6, with 1 abstention, as resolution 603(VI). It read:

"The General Assembly,

"Considering that only three Members of the United Nations have become parties to the Revised General Act for the Pacific Settlement of International Disputes, and that in the circumstances its communication to non-member States under article 43, paragraph 1, of the Act would be premature,

"Decides to defer further consideration of the matter until at least ten Members of the United Nations have become parties to the Act."

N. QUESTION OF THE REVISION OF THE CHINESE TEXT OF THE GENOCIDE CONVENTION

In depositing on 19 July 1951 China's instrument of ratification of the Genocide Convention, the permanent representative of China to the United Nations asked the Secretary-General to take steps to revise the official Chinese text of the Convention. He submitted a new Chinese text incorporating the amendments which were proposed by his Government with a view to bringing the Chinese text into greater uniformity with the other official texts of the Convention.

The Secretary-General stated that, since the Convention had already entered into force and, in accordance with its terms, the Chinese, English, French, Russian and Spanish texts were all equally authentic, he was without authority to undertake their revision.

The permanent representative of China to the United Nations then confirmed that China's request should be deemed an official request for revision of the Convention under its article XVI.[36] The Secretary-General accordingly placed the request on the provisional agenda of the Assembly's sixth session and prepared a memorandum on the subject (A/1880).

The question was considered by the General Assembly at the 268th and 303rd meetings of the Sixth Committee on 11 December and 29 January 1952, and at its 369th plenary meeting on 1 February 1952.

At its 268th meeting, the Sixth Committee, on the proposal of the Chairman, agreed without objection that, to speed the Committee's work, the Secretariat should be authorized to ascertain the correct Chinese text of the Convention.

At the Committee's 303rd meeting, the representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR stated that they would not take part in the discussion or in the vote, since, in their view, the request for revision had not come from the lawful Government of China.

The representative of China asked that the question should be deferred until the Assembly's next session. Following the Committee's earlier authorization, his delegation had gone over the revised text with the Secretariat. It had, however, taken longer than expected to arrive at a definitive text, and there had not been time to submit this to his Government.

To meet the wishes of the representative of China, the representative of Iran submitted a draft resolution (A/C.6/L.230) which would have the Assembly take note of the desire of the Government of China to defer consideration of the item, and decide to include it in the provisional agenda of the seventh session.

The representative of Burma proposed orally that the paragraph referring to the desire for post-

[36] This article states that a request for revision of the Convention may be made at any time by a contracting party by means of a notification in writing addressed to the Secretary-General. The General Assembly is to decide on the steps to be taken in respect of the request.

ponement should be replaced by a paragraph in which the Assembly would express its desire "to defer the consideration of this question until the Government of China is able to decide on the matter." This amendment was not acceptable to the representative of China, who said that it implied censure of his Government. A compromise amendment was suggested by the representative of Egypt, and was accepted by the representatives of Burma and China, as well as by the sponsor of the draft resolution, and became the second paragraph of the resolution.

The Committee adopted the revised draft resolution by 29 votes to none, with 5 abstentions.

On the Committee's recommendation (A/-2092) it was adopted by the General Assembly, without further discussion, at its 369th plenary meeting by 34 votes to none, with 5 abstentions, as resolution 605 (VI). It read:

"The General Assembly,

"Having included in the agenda of its sixth session the question entitled "Request of the Government of China for revision of the Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide",

"Considering that the elements necessary for the discussion of this question are not yet at the disposal of the General Assembly,

"Decides to include this question in the provisional agenda of its seventh session."

O. MULTILATERAL CONVENTIONS

1. New Conventions Concluded under the Auspices of the United Nations during 1951

The following conventions, protocols, agreements or other instruments of which the Secretary-General is the depositary, have been drawn up under the auspices of the United Nations during 1951:

The Final Act authenticating the results of the Tariff Negotiations held at Torquay from 28 September 1950-21 April 1951, together with Decisions by the Contracting Parties agreeing to the accession to the General Agreement on Tariffs and Trade of the Republic of Austria, the Federal Republic of Germany, the Republic of Korea, Peru, the Republic of the Philippines, and the Republic of Turkey; as well as the Torquay Protocol to the General Agreement on Tariffs and Trade, and the Declaration on the Continued Application of the Schedules to the General Agreement. All of these instruments were done at Torquay on 21 April 1951;

Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, annexed to the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2—25 July 1951;

First Protocol of Rectifications and Modifications to the Texts of the Schedules to the General Agreement on Tariffs and Trade, signed at Geneva on 27 October 1951; and

First Protocol of Supplementary Concessions to the General Agreement on Tariffs and Trade (Union of South Africa and Germany) done at Geneva on 27 October 1951;[37]

2. Status of Signatures, Ratifications and Accessions; Entry into Force

During 1951, a total of 105 signatures were affixed to international agreements for which the Secretary-General exercises depositary functions, and 98 instruments of ratification, accession or notification were transmitted to the Secretary-General.

During 1951 seventeen (17) of the agreements entered into force, principal among which were the Convention on the Prevention and Punishment of the Crime of Genocide; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; and a number of instruments relating to the General Agreement on Tariffs and Trade.

3. Handbook of Final Clauses in Multilateral Conventions

A "Handbook of final clauses" in multilateral conventions was issued in provisional form on 28 August 1951.

[37] This entered into force on 25 May 1952.

P. REGISTRATION AND PUBLICATION OF TREATIES AND INTERNATIONAL AGREEMENTS

During 1951, a total of 799 treaties and agreements were registered with the Secretariat—47 ex officio, 586 by twenty governments, and 166 by three specialized agencies. A total of 165 treaties and agreements were filed and recorded—three by the United Nations, 142 at the request of four governments, and twenty at the request of two specialized agencies.[38]

This brought to 2,390 the total of treaties and agreements registered or filed and recorded by the end of 1951.

The texts of treaties and agreements registered or filed and recorded are published by the Secretariat in the United Nations Treaty Series in the original languages, followed by a translation in English and French. Twenty-one volumes (41 to 61) of the Treaty Series were published in the course of 1951.

[38] For further information regarding these treaties and agreements, i.e., titles, parties, date of entry into force, date and number of registration, registering parties, see monthly Statements of Treaties and International Agreements Registered or Filed and Recorded with the Secretariat (ST/LEG/Series A/47-58).