V. Legal Questions

A. THE ANGLO-IRANIAN OIL COMPANY CASE

On 26 May 1951 the United Kingdom addressed an Application[1] to the International Court of Justice instituting proceedings against Iran in the Anglo-Iranian Oil Company Case. The Application was communicated to Iran as well as to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

The Memorial of the United Kingdom was filed within the time-limit fixed by Order[2] of 5 July 1951, and subsequently extended at the request of that Government by Order[3] of 22 August 1951. Iran, within the time-limit fixed for the presentation of its Counter-Memorial as finally extended to 11 February 1952 by Order[4] of 20 December 1951, at the request of that Government, filed a document entitled "Preliminary Observations: Refusal of the Imperial Government to recognize the jurisdiction of the Court."

The filing of the Objection having suspended the proceedings on the merits, an Order[5] dated 11 February 1952, fixed 27 March as the time-limit within which the United Kingdom might submit a written statement of its observations and submissions in regard to the Objection. The States entitled to appear before the Court were informed of the filing of the Objection. The Members of the United Nations were informed that, in its Objection, Iran relied, inter alia, upon its interpretation of Article 2, paragraph 7, of the Charter of the United Nations, which precludes the United Nations from intervening in matters which are essentially within the domestic jurisdiction of any State.

The Observations of the United Kingdom in regard to the Objection were deposited within the specified time-limit and the case, as far as the Preliminary Objection was concerned, was ready for hearing.

As the Court included upon the Bench a Judge of the nationality of one of the parties, the other party—Iran—by virtue of the Court's Statute, appointed Dr. Karim SandJabi, Professor and former dean of the Law Faculty of Teheran, Member of Parliament and former Minister, to sit as a Judge ad hoc.

As the President of the Court was a national of one of the parties, he transferred the Presidency for the case to the Vice-President, in accordance with the Rules of the Court.

Public hearings were held on 9 to 11, 13 to 14, 16 to 19, 21 and 23 June 1952. The Court heard on behalf of Iran: Hossein Navab, Envoy Extraordinary and Minister Plenipotentiary of Iran to the Netherlands, as Agent; Dr. Mossadegh, Prime Minister; and Henri Rolin, Professor of International Law at Brussels University, former President of the Belgian Senate, as Advocate. On behalf of the United Kingdom, the Court heard Sir Lionel Heald, Attorney-General and Sir Eric Beckett, Legal Adviser of the Foreign Office, as Agents.

The Court delivered its Judgment on the Preliminary Objection on 22 July 1952.[6]

1. Judgment of the Court

The Court's Judgment began by recapitulating the facts. On 29 April 1933, an agreement (the Concession Contract) was concluded between the Government of Iran and the Anglo-Iranian Oil Company, a company incorporated in the United Kingdom. This agreement was ratified by the Iranian Majlis on 28 May 1933, and came into force on the following day.

On 15 and 20 March 1951, the Iranian Majlis and Senate, respectively, passed a law enunciating the principle of nationalization of the oil industry in Iran. On 28 and 30 April 1951, they passed another law concerning the procedure for enforcement of this principle. These two laws received the Imperial assent on 1 May 1951.

As a consequence of these laws, a dispute arose between the Government of Iran and the Anglo-Iranian Oil Company. The Government of the United Kingdom adopted the cause of the latter and, by virtue of its right of diplomatic protection,

[1] See Y.U.N., 1951, p. 806.
[2] I.C.J. Reports 1951, p. 89.
[3] I.C.J. Reports 1951, p. 106.
[4] I.C.J. Reports 1951, p. 208.
[5] I.C.J. Reports 1952, p. 13.
[6] I.C.J. Reports 1952, p. 93.

instituted proceedings before the Court. Iran disputed the Court's jurisdiction.

On 22 June 1951 the United Kingdom submitted a request that the Court should indicate provisional measures in order to preserve its rights. In view of the urgent nature of the request, the Court, by Order of 5 July 1951,[7] indicated certain provisional measures. It stated expressly that "the indication of such measures in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction."

In its Judgment of 22 July 1952, the Court stated that, while it derived its power to indicate these provisional measures from the special provisions contained in its Statute, it must derive its jurisdiction to deal with the merits of the case from the general rules laid down in Article 36[8] of the Statute. These general rules, it explained, are based on the principle that the Court's jurisdiction to deal with and decide a case on the merits depends on the will of the parties. Unless the parties had conferred jurisdiction on the Court in accordance with Article 36, the Court lacked such jurisdiction.

In the present case, observed the Court, its jurisdiction depended on the Declarations made by the parties under Article 36, paragraph 2, on condition of reciprocity, which were, in the case of the United Kingdom, signed on 28 February 1940, and, in the case of Iran, signed on 2 October 1930 and ratified on 19 September 1932. By these Declarations jurisdiction was conferred on the Court only to the extent to which the two Declarations coincided in conferring it. As the Iranian Declaration was more limited in scope than that of the United Kingdom, it was the former on which the Court must base itself.[9]

According to the Iranian Declaration, the Court had jurisdiction only when a dispute related to the application of a treaty or convention accepted by Iran. Both parties, said the Court, were in agreement on this point. But they disagreed on the question as to whether this jurisdiction was limited to the application of treaties or conventions accepted by Iran after the ratification of the Declaration, or whether it comprised the application of treaties or conventions accepted by Iran at any time. Iran contended that, according to the actual wording of the text, the jurisdiction was limited to treaties subsequent to the Declaration. The United Kingdom maintained, on the contrary, that it might also be applied to earlier treaties.

In the view of the Court, if the Declaration were considered from a purely grammatical point of view, both contentions might be regarded as compatible with the text, but the Court could not base itself on a purely grammatical interpretation of the text. It must seek the interpretation which was in harmony with a natural and reasonable way of reading the text, having due regard to the intention of Iran at the time when it accepted the Court's compulsory jurisdiction. Such a way of reading the text led to the conclusion that it applied only to treaties subsequent to the ratification of the Iranian Declaration. The Court stated that in order to reach an opposite conclusion special and clearly established reasons would be required, but the United Kingdom had not been able to produce them. On the contrary, it was apparent that Iran had special reasons for drafting its Declaration in a very restrictive manner and for excluding the earlier treaties.

On 10 May 1927, the Court recalled, Iran denounced all treaties with other States relating to the regime of capitulations, the denunciation to take effect one year thereafter, and it commenced negotiations with these States with a view to replacing the denounced treaties by new treaties based on the principle of equality. At the time when the Declaration was signed in October 1930, these negotiations had been concluded with some States but not with all. Iran considered all capitulatory treaties as no longer binding, but was uncertain as to the legal effect of its unilateral denunciations. It was unlikely, asserted the Court, that Iran, in such circumstances, should have been willing on its own initiative to agree that disputes relating to such treaties might be submitted for adjudication to an international court of justice

[7] See Y.U.N., 1951, pp. 807-809.

[8] This Article provides for declarations accepting **in** advance the Court's jurisdiction in relation to certain classes of disputes and under certain conditions.

[9] The conditions of the Iranian Declaration 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 1946-47, p. 211.

by virtue of a general clause in its Declaration. Moreover, the Iranian law by which the Majlis approved the Declaration, before it was ratified, provided a decisive confirmation of Iran's intention, for it stated that the treaties and conventions which came into consideration were those which "the Government will have accepted after the ratification of the Declaration". The Court therefore concluded that the Iranian Declaration was limited to disputes relating to the application of treaties or conventions accepted by Iran after the ratification of the Declaration.

The United Kingdom, the Court observed, contended, however, that, even if the Court were to hold that the Declaration applied only to disputes relating to the application of treaties or conventions accepted by Iran after the ratification of the Declaration, it would still have jurisdiction in the present case. The contention of the United Kingdom was that the acts of which it complained constituted a violation by Iran of certain of its obligations to the United Kingdom resulting from treaties or conventions accepted by Iran after the ratification of the Declaration. The treaties and conventions relied upon in this connexion were: the Treaty of Friendship, Establishment and Commerce concluded between Iran and Denmark on 20 February 1934; the Establishment Convention concluded between Iran and Switzerland on 25 April 1934; and the Establishment Convention concluded between Iran and Turkey on 14 March 1937. By these treaties, Iran undertook to treat nationals of those Powers in accordance with the principles and practice of ordinary international law. The United Kingdom claimed that the Anglo-Iranian Oil Company had not been treated in accordance with those principles and that practice. In order to rely on the above-mentioned Treaties, though concluded with third parties, the United Kingdom relied on the most-favoured-nation clause contained in two instruments which it concluded with Iran: the Treaty of 4 March 1857 and the Commercial Convention of 9 February 1903.

The Court found, however, that the United Kingdom was not entitled, for the purpose of bringing its present dispute with Iran under the terms of the Iranian Declaration, to invoke its Treaties of 1857 and 1903 with Iran, since those Treaties were concluded before the ratification of the Declaration. It further found that the most-favoured-nation clause contained in those Treaties could not thus be brought into operation on the question of jurisdiction, and that, consequently, no treaty concluded by Iran with any third party could be relied upon by the United Kingdom in the case.

The Court then considered whether the settlement in 1933 of the dispute between Iran and the United Kingdom relating to the D'Arcy Concession, through the mediation of the Council of the League of Nations, resulted, as was claimed by the United Kingdom, in an agreement between the two Governments which might be regarded as a treaty or convention within the meaning of this expression as contained in the Iranian Declaration.

In November 1932, the Court recalled, Iran decided to cancel the D'Arcy Concession. On 19 December 1932 the United Kingdom, having protested to Iran without avail, submitted the case to the Council of the League of Nations. The Council placed the question on the agenda and appointed a Rapporteur. On 3 February 1933 the Rapporteur informed the Council that Iran and the United Kingdom had agreed: to suspend all proceeding before the Council; that the Company should immediately enter into negotiations with Iran, the respective legal points of view being entirely reserved; and that, in the event that the negotiations should fail, the question should go back to the Council. After prolonged discussion between the representatives of Iran and the representatives of the Company, an agreement—the Concession Contract—was signed by them at Teheran on 29 April. It was subsequently ratified by Iran. On 12 October the Rapporteur submitted his report together with the text of the new concession to the Council, declaring that "the dispute between His Majesty's Government in the United Kingdom and the Imperial Government of Persia [Iran] is now finally settled". The representatives of Iran and the United Kingdom at the Council each expressed his satisfaction at the settlement thus reached and the question was removed from the Council's agenda.

The United Kingdom maintained that, as a result of these proceedings, Iran undertook certain treaty obligations towards the United Kingdom. It contended that the agreement signed by Iran with the Company on 29 April 1933 had a double character, being at once a concessionary contract between Iran and the Company and a treaty between the two Governments.

The Court could not accept this view; it held that the contract was purely a concessionary contract between a government and a foreign corporation. The United Kingdom, it said, was not a party to the contract, which did not constitute a link between the two Governments or in any way regulate the relations between them. Under the contract, Iran could not claim from the United Kingdom any rights which it might claim from the

Anglo-Iranian Oil Company, nor could it be called upon to perform towards the United Kingdom any obligations which it was bound to perform towards that Company.

The Juridicial situation, the Court went on to state, was not altered by the fact that the concessionary contract was negotiated and entered into through the good offices of the Council of the League of Nations, acting through its Rapporteur. The United Kingdom, in submitting its dispute with Iran to the League Council, was only exercising its right of diplomatic protection in favour of one of its nationals. It was seeking redress for what it believed to be a wrong which Iran had committed against a juristic person of British nationality. The final report by the Rapporteur to the Council on the successful conclusion of a new concessionary contract between Iran and the Anglo-Iranian Oil Company gave satisfaction to the United Kingdom. The efforts of the United Kingdom to give diplomatic protection to a British national had thus borne fruit, and the matter came to an end with its removal from the agenda.

The conclusion of the new concessionary contract, said the Court, removed the cause of a complaint by the United Kingdom against Iran. It did not regulate any public matters directly concerning the two Governments. It could not possibly be considered to lay down the law between the two States. It was thus clear to the Court that the proceedings before the Council of the League of Nations which led up to the settlement in 1933 of the dispute between the United Kingdom and Iran relating to the D'Arcy Concession did not result in the conclusion of any treaty or convention between the two countries.

The Court thus found that the United Kingdom was not entitled to invoke any of the treaties concluded by Iran with Denmark and Switzerland in 1934 and with Turkey in 1937, and that no treaty or convention was concluded in 1933 between Iran and the United Kingdom. No other treaties having been relied upon by the United Kingdom as treaties or conventions subsequent to the ratification of the Iranian Declaration, the Court concluded that the dispute brought before it by the United Kingdom was not one of those disputes arising "in 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". Consequently, the Court, by 9 votes to 5, found that it had no jurisdiction in the case. In its Judgment, the Court declared that its Order of 5 July 1951 ceased to be operative and that the provisional measures indicated therein lapsed at the same time.[10]

The Court's Judgment was followed by a separate opinion by Sir Arnold McNair, President of the Court, who, while concurring in the conclusion reached in the Judgment, for which he had voted, added some reasons of his own which had led him to that conclusion. The Judgment was also followed by four dissenting opinions by Judges Alvarez, Hackworth, Read and Levi Carneiro.

2. Individual Opinion of President McNair

The principal question before the Court, in the opinion of President McNair, was the meaning of the reference in the Iranian Declaration of 2 October 1930, ratified on 19 September 1932, to treaties or conventions. President McNair asked whether this reference denoted treaties or conventions accepted by Iran regardless of the date of their acceptance, as the United Kingdom contended, or only treaties or conventions acccepted by Iran after the date of the ratification of the Declaration, as Iran contended. The importance of this matter, he emphasized, lay in the fact that the United Kingdom relied, at any rate as a basis for the Court's jurisdiction, upon certain treaties accepted by Iran before 19 September 1932.

President McNair agreed that both interpretations were grammatically possible, and both were possible as a matter of substance. In short, there was a real ambiguity in the text, and, for that reason, it was both justifiable and necessary to go outside the text and see whether any light was shed by the circumstances.

After the Assembly of the League of Nations launched a campaign in 1928 for securing more acceptances of the compulsory jurisdiction of the Permanent Court, Iran deposited with the Court its Declaration accepting, but in a limited manner, the Court's compulsory jurisdiction. This limitation of Iran's acceptance to situations and facts relating directly or indirectly to treaties or conventions, declared President McNair, was unique, and led one to inquire whether there was any reason for this unusually restrictive attitude, and whether there was anything that indicated which

[10] On 19 August 1952 the Secretary-General communicated to the members of the Security Council for their information a copy (S/2746) of the Court's judgment. It was noted that the Court's Order of 5 July 1951 indicating Provisional Measures of Protection in the Anglo-Iranian Oil Company case (S/2239) ceased to be operative upon delivery of this Judgment and that the Provisional Measures lapsed at the same time.

of the two possible interpretations was the correct one.

Iran on 10 May 1927 formally notified all States holding capitulatory privileges in Iran (believed to number at least thirteen) that those privileges would be abolished on 10 May 1928. As a sequel to this denunciation it became necessary for Iran to overhaul its treaty system, to revise its treaties and to replace the former capitulatory system by a series of treaties of commerce and establishment befitting the new status of legal equality which it had asserted and acquired. In consequence, the years 1928 to 1932 were marked by intense activity on the part of Iran in the negotiation of new treaties of friendship or commerce or establishment.

From the point of view of a State which had been subject to a system of capitulations for at least a century and had only recently denounced them and emerged into a new status, it would be surprising, said President McNair, if the most-favoured-nation principle was not regarded as an obnoxious concomitant of that system. Such a State, while still engaged in negotiating a new treaty regime restricting the most-favoured-nation principle to normal commercial intercourse, would naturally be shy of accepting any compulsory jurisdiction in terms wide enough to expose itself to the invocation of any part of its old treaty system that might still survive.

These historical considerations made it easier to understand why the Iranian Government should desire to start with a clean slate in regard to the compulsory jurisdiction of the Court and to limit its obligations in that regard to treaties and conventions accepted by it after 19 September 1932.

President McNair concluded that Iran's interpretation of its Declaration was preferable to that of the United Kingdom and that the Declaration referred only to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Iran after 19 September 1932 (and then only subject to the reservations contained in the Declaration, which were not then in question). In reaching this conclusion President McNair did not rely on the Iranian law of 1931 authorizing ratification of the Declaration; he would have preferred that this law should be excluded from the consideration of the Court.

Turning to the question as to whether there were any treaties ratified by Iran after 19 September 1932 upon which the United Kingdom could rely in order to establish the jurisdiction of the Court, President McNair said that the United Kingdom's first claim to be able to do this rested on what was described as "the international engagement between Persia (Iran) and the United Kingdom to observe the terms of the Concession Convention of 1933." On this point he accepted the finding of the Court and the reasoning which supported it.

The United Kingdom's second claim rested upon treaties concluded by Iran with Denmark (1934), Switzerland (1934) and Turkey (1937), upon the provisions of which the United Kingdom contended it was entitled to rely by virtue of most-favoured-nation clauses in the treaties of 1857 and 1903 between the United Kingdom and Iran. In this connexion, President McNair considered the Iranian-Danish Treaty of 1934 and the Anglo-Persian Treaty of 1857, pointing out two obstacles to the United Kingdom contention: (1) that the United Kingdom could rely on no treaty between itself and Iran ratified after 19 September 1932, the date of the Iranian Declaration; and (2) that the United Kingdom, before it could base its claim on the Iranian-Danish Treaty, must establish a connexion with it, and this it had attempted to do by invoking article 9 of the Anglo-Persian Treaty of 1857—a treaty which antedated the Iranian Declaration. In order to accept this contention of the United Kingdom, it would be necessary for the Court to hold that the United Kingdom could: (a) not only invoke a treaty of 1934 between Iran and a third State; but also (b) telescope together that treaty and a treaty between Iran and itself of 1857 by invoking a most-favoured-nation clause contained in the last-mentioned treaty.

President McNair did not believe that either treaty alone, or both of them together, could be called a treaty or convention accepted by Iran after 19 September 1932, within the meaning of the Declaration. Nor did he consider that the words "directly or indirectly" helped the United Kingdom, because those words, in his opinion, qualified the relation between the situations or facts and the application of the treaty, and were not apt to cover the indirect operation of a most-favoured-nation clause in connecting a treaty of 1857 with a treaty of 1934 for the purpose of satisfying the formula contained in the Iranian Declaration. He was thus unable to accept the United Kingdom's claim to base the jurisdiction of the Court upon the treaties with Denmark, Switzerland and Turkey accepted by Iran after 19 September 1932. Accordingly, he concluded the Court had no jurisdiction in this case.

3. Dissenting Opinions

a. DISSENTING OPINION OF JUDGE ALVAREZ

Judge Alvarez considered that there were four important questions which had to be taken into account by the Court, namely:

(1) What is the scope of the Declaration by which Iran accepted the provisions of Article 36,[11] paragraph 2, of the Statute of the Court, or rather, how is this Declaration to be construed?

(2) Is the nationalization by Iran of the oil industry, which directly affected the Anglo-Iranian Oil Company, a measure solely within the reserved domain of Iran, and thus outside the jurisdiction of the Court?

(3) What is the nature of the United Kingdom Government's intervention in this case?

(4) What is the scope of Article 36, paragraph 2, of the Statute of the Court? Is the Court competent to deal with questions other than those expressly specified in the said Article?

As a result of recent profound and sudden transformations in the life of peoples, it was necessary, said Judge Alvarez, to consider in respect of the above questions, first the way they had been settled until recent times, that is to say, in accordance with classical international law, and secondly, how they are settled today, that is to say, in accordance with the new international law.

There was a fundamental difference between the two, he considered. Classical international law was static, because the life of peoples had in the past been subject to few changes; moreover, this law was based on the individualistic regime. The new international law, on the other hand, was dynamic; it was subject to constant and rapid transformations in accordance with the new conditions of international life which it had to reflect. This law was constantly being created; moreover, it was based upon the regime of interdependence which had brought into being the law of social interdependence.

The Iranian Declaration, Judge Alvarez stated, should not be construed by the methods hitherto employed for the interpretation of unilateral instruments, conventions and legal texts, but by methods more in accordance with the new conditions of international life. A legal institution, a convention, once established, acquired a life of its own and evolved not in accordance with the ideas or the will of those who drafted its provisions, but in accordance with the changing conditions of the life of peoples. Iran's Declaration should therefore be interpreted as giving the Court jurisdiction to deal with the present case; its scope should not be restricted by giving too great an importance to certain grammatical or secondary considerations.

Iran, Judge Alvarez noted, had expressly asserted that the nationalization of its oil industry was a measure exclusively within its reserved domain and that the Court therefore had no jurisdiction' to deal with this case. Examining the nature of the reserved domain, its origin and its current state, he noted that it had been established by classical international law as a natural consequence of the individualistic regime and of the absolute sovereignty of States upon which this law was founded. The reserved domain had covered a wide field.

As a result of the new regime of interdependence and various other factors, the reserved domain of States, he argued, had, however, been modified and considerably reduced; in many cases it was now possible to present a claim against a state relating to matters which it alleged to be within its reserved domain.

The United Kingdom Government was not appearing in this case in defence of its own interests, but to protect the interests of its nationals, which was a very different matter. Diplomatic protection, according to the new international law, might assume three different forms which depended upon the organ before which that protection was exercised: (a) direct protection or claim against a state; (b) protection before the Security Council of the United Nations; (c) protection before the International Court of Justice.

In the view of Judge Alvarez, the crucial point of the case was whether the Court was competent to deal with matters other than those specifically indicated in Article 36, paragraph 2, of its Statute.

Article 36, he explained, referred to disputes which might arise between States; these related to rights flowing from agreements concluded between these States or from rules established by international law with regard to given questions (land domain, maritime domain, etc.). But in addition to such rights there were others, directly established by international law, which did not result from the will of States or from other Juridicial acts, but from the conscience of the people. These rights did not create direct obligations between States; their existence might not be disputed but had to be protected in the event of their violation. Among these rights, it was necessary to mention in particular those which were said to be fundamental rights of States (the right to independence, to sovereignty, to equality, etc.), as well as certain other rights conferred by the law

[11] For text of this Article, see p. 23.

of nations, such as that of the protection of nationals, the right to be indemnified for injuries, and so forth.

Article 36 of the Court's Statute, he continued, did not refer to the rights falling within this second category, for they did not give rise to disputes; but this Article did not exclude them from the Court's jurisdiction. If such had been the intention, it would have been stated expressly. In accordance with the new international law, and in particular with the spirit of the Charter, all disputes between States, argued Judge Alvarez, must be resolved by peaceful means, and all the rights recognized by the law of nations must be respected and must have a sanction. If the Court should hold that it lacked jurisdiction whenever rights of the second category were concerned, very important cases might occur in which such a decision would cause disappointment and would considerably damage the Court's prestige.

Judge Alvarez drew the following conclusions:

(1) The Court had jurisdiction to deal with the claim presented against Iran by the United Kingdom by reason of the Iranian Declaration.

(2) The Court had jurisdiction, in particular, because the United Kingdom was not acting in the present case in defence of its own interests, but to protect the interests of one of its nationals, the Anglo-Iranian Oil Company. Therefore its contention could not be met with arguments as to the scope of the Iranian Declaration, because what was involved was not a dispute between these two countries, but the exercise of a right recognized by the law of nations.

(3) In view of the nature of the reserved domain at the present day, the Court's jurisdiction could not be limited by the Iranian contentions with regard to this domain.

(4) The Court had a very wide jurisdiction for the protection of rights directly conferred upon states by international law (those relating to the protection of nationals, to repatriation for injury unjustly suffered, to denials of justice, to abus du droit, etc.). Its jurisdiction in this connexion could not be limited by the non-adherence of the State against which the claim was made to the provisions of Article 36, paragraph 2, of the Statute of the Court.

The exercise of some of these rights might, however, constitute a dispute, and thus come within the jurisdiction of the Court.

b. DISSENTING OPINION OF JUDGE HACKWORTH

In his dissenting opinion, Judge Hackworth declared that he agreed with the Court's conclusion that the Iranian Declaration applied only to treaties and conventions accepted by Iran subsequent to its ratification. In reaching such a conclusion, the International Court, he argued, must look to the public declarations by States made for international purposes, and must not resort to municipal legislative enactments such as an Iranian Parliamentary Act to explain ambiguities in international acts.

Judge Hackworth also agreed with the Court that the Concession Agreement of 1933 between Iran and the Anglo-Iranian Oil Company could not be regarded as a treaty or convention in the international law sense, and consequently could not be regarded as coming within the purview of the Iranian Declaration.

He could not, however, agree with the conclusion of the Court that the United Kingdom was not entitled for jurisdictional purposes to invoke, by virtue of the most-favoured-nation clauses in earlier treaties between that country and Iran, provisions of treaties concluded by Iran with other countries subsequent to the ratification of its Declaration.

The provisions with respect to the application of the principles of international law, he said, were not to be found in the most-favoured-nation clause of the earlier treaties of 1857 and 1903 between Iran and the United Kingdom, but were embodied in the later treaties between Iran and Denmark of 1934, between Iran and Switzerland of that same year, and between Iran and Turkey of 1937. It was to these treaties and not to the most-favoured-nation clause that the International Court must look in determining the rights of British nationals in Iran.

It was apparent to Judge Hackworth, using the Danish Treaty as the criterion, that Danish nationals in the territory of Iran and their property were entitled by article IV of the Treaty of 1934 to be treated "in accordance with the principles and practice of ordinary international law". Similar provisions, he said, were contained in Treaties between Iran and Switzerland (1934) and between Iran and Turkey (1937). The United Kingdom was therefore entitled, by virtue of the most-favoured-nation provisions, to claim for British nationals in Iran no less favourable treatment than that promised by Iran to Danish nationals. The United Kingdom contended that the treatment accorded by Iran to the Anglo-Iranian Oil Company was not in keeping with the requirements of international law, and had invoked the Danish Treaty.

The Court, he declared, was not called upon to say whether this contention was or was not warranted. It needed only to say, for present purposes, whether these treaty provisions to which Iran had subscribed brought the case within the purview of the Iranian Declaration accepting compulsory jurisdiction of the Court.

Judge Hackworth found nothing in the Iranian Declaration to suggest that it was necessary that action under it should be premised exclusively on a single treaty. He found nothing to suggest that it was necessary that such an action should be based on a treaty between the plaintiff State and the defendant State. The Declaration, though drafted with meticulous safeguards, he said, did not specify any such condition, nor did it specify that, in considering a dispute as to the application of a treaty or convention accepted by Iran subsequent to the ratification of the Declaration, an earlier treaty might not be drawn upon. All that the Declaration required, in order that the dispute should fall within the competence of the Court, was that it should relate to the application of treaties or conventions accepted by Iran subsequent to the ratification of the Declaration.

In the opinion of Judge Hackworth, the Danish Treaty answered this description. It was in that Treaty and not in the most-favoured-nation clause that the substantive rights of British nationals were to be found. Until that Treaty was concluded, the most-favoured-nation clauses in the British-Persian Treaties were but promises of non-discrimination. But when Iran conferred upon Danish nationals by the Treaty of 1934 the right to claim treatment "in accordance with the principles and practice of ordinary international law," the right thereupon ipso facto became available to British nationals.

In summarizing, Judge Hackworth stated that the United Kingdom had a right to claim the benefits of the Danish Treaty of 1934. It did not matter that that right was acquired through the operation of a most-favoured-nation clause of a treaty anterior to the ratification of the Iranian Declaration. The important thing was that it was a right acquired subsequent to ratification of that Declaration. A conclusion that jurisdiction did not lie, amounted, in his judgment, to giving to the restrictive features of the Iranian Declaration a more far-reaching scope than was warranted by the language there used.

c. DISSENTING OPINION OF JUDGE READ

Judge Read stated that he was unable to concur in the Judgment of the Court in this case, and he concluded that Iran's objections to the Court's jurisdiction should be overruled.

Judge Read rejected the idea of restrictive construction to the provisions of the Iranian Declaration accepting the compulsory jurisdiction of the Court. He stated that the making of a declaration was an exercise of State sovereignty, and not, in any sense, a limitation thereof. It should therefore be construed in such a manner as to give effect to the intention of the State, as indicated by the words used and not be a restrictive interpretation, designed to frustrate the intention of the State in exercising this sovereign power. He also stated that he had been unable to find any case in which either the Permanent Court of International Justice or the present International Court relied upon a restrictive interpretation to a jurisdictional clause as a basis for its Judgment. Indeed, both Courts, he said, had given to jurisdictional clauses liberal interpretations designed to give full effect to the intentions of the parties concerned.

Judge Read next considered whether Iran by virtue of its Declaration, had consented to the exercise of jurisdiction by the Court in the sort of case which had been brought by the United Kingdom.

The United Kingdom, he said, had invoked the provisions of the most-favoured-nation clause of the Treaty of 1857. It based its case on the provisions of three treaties concluded by Iran, with Denmark and Switzerland in 1934 and by Iran with Turkey in 1937. Dealing with the treaty with Denmark, he declared that there could be no doubt that legally, by virtue of the invocation of the provisions of this treaty, Iran was under a treaty obligation to treat British nationals "in accordance with the principles and practice of ordinary international law."

There were two considerations, stated Judge Read, that strongly supported the interpretation which was based on what he termed the natural and ordinary meaning of the words used. The first was that Iran was certainly aware, at the time of the Declaration, of the existence of the most-favoured-nation clause referred to above. There could be no doubt that Iran envisaged a system of compulsory jurisdiction which would be broad enough to include disputes arising which would relate directly to the application of such clauses and indirectly to the application of subsequent treaties or conventions.

The second consideration was that the arguments which had been advanced as leading Iran to exclude the older treaties from the compulsory jurisdiction of the International Court could have no conceivable application to those modern treaty provisions which had nothing to do with the regime of capitulations indirectly applicable through the medium of most-favoured-nation clauses. It must be borne in mind, he emphasized, that, at the date of the Declaration, article IX of the Treaty of 1857 (relating to the most-favoured-

nation clause) no longer had the character of a provision of an old treaty of the regime of capitulations. Originally, it possessed that character; but in 1928 the United Kingdom concurred in a denunciation of the objectionable provisions of the Treaty. The two States agreed, by an exchange of notes, to maintain the most-favoured-nation clause, article IX, pending the negotiation and conclusion of a new treaty of commerce and navigation. In reality, the most-favoured-nation clause relied upon by the United Kingdom was founded, Judge Read said, upon a new agreement, accepted by Iran before the ratification but after the disappearance of the regime of capitulations.

Further, the most-favoured-nation clauses were reciprocal in character and entirely consistent with the new and independent status resulting from the denunciation of capitulations.

In view of those considerations, he reached the conclusion that the United Kingdom was entitled to invoke the provisions of the Danish Treaty as a basis for the jurisdiction of the International Court. He wished it understood, however, that, in reaching this conclusion, he did not want to prejudge the merits of the case. He could not consider, in a preliminary proceeding, whether the subject-matter of the dispute came within the scope of these provisions, because this question had not been discussed by counsel and because it was essentially a part of the merits. Accordingly and subject to this reservation, he concluded that the present claim was one which was based indirectly on the application of the Danish Treaty, which was accepted by Iran after the date of the Declaration. The Iranian Objection to the Court's jurisdiction as regards this part of the case, should accordingly be overruled, or at most joined to the merits.

In view of the foregoing conclusion, he declared that it was unnecessary for him to discuss that part of the Judgment of the Court which upheld the Iranian Objection on the ground that the Declaration limited the jurisdiction of the Court to disputes relating to treaties or conventions accepted by Iran after the date of the Declaration.

Judge Read then discussed the part of the Court's Judgment which related to the 1933 Agreement—the Concession Convention concluded by Iran with the Anglo-Iranian Oil Company in 1933, through the mediation of the Council of the League of Nations. The United Kingdom had contended that this Concession embodied an implied agreement between it and Iran to the effect that Iran undertook to observe the provisions of its concessionary convention with the Anglo-Iranian Oil Company. It was clear to Judge Read that the question as to whether such an implied agreement arose between the two Governments in 1933, one fully operative as creating an obligation in international law, was an essential element of. the United Kingdom claim on the merits.

It was impossible to overlook the grave injustice which would be done to an applicant State by a Judgment upholding an objection to the jurisdiction and refusing to permit adjudication on the merits, and which, at the same time, decided an important issue of fact or law, forming part of the merits, against the applicant State said Judge Read. The effect of refusal to permit adjudication would be to remit the applicant and respondent States to other measures, legal or political, for the settlement of the dispute. Neither the applicant nor the respondent should be prejudiced, in seeking an alternative solution of the dispute, by the decision of any issue of fact or law that pertained to the merits of the case.

Judge Read therefore concluded that the Court was not competent, in preliminary proceedings and under its Statute and Rules, to decide whether or not an international agreement arose between the two Governments in 1933, one fully operative as creating an obligation in international law. He concluded that the aspect of the Objection relating to the existence and scope of the alleged international agreement should be joined to the merits.

d. DISSENTING OPINION OF JUDGE LEVI CARNEIRO

In his dissenting opinion, Judge Levi Carneiro stated that it was necessary, in determining the jurisdiction of the International Court in the present case, to examine certain questions, or certain facts which might be related to the merits and which were not disputed.

He stated that, as the Concession Agreement of 1933 was not a treaty, it followed that the dispute in regard to its execution did not constitute a ground for the Court's jurisdiction. He hoped, however, that the Court's jurisdiction would evolve in the direction of considering such a contract as the Concession Agreement as a convention of an international scope, even though it was not itself international; the dispute would then fall within the Court's jurisdiction.

Judge Levi Carneiro admitted that the Iranian Declaration accepting compulsory jurisdiction of the Court only accepted the Court's jurisdiction as to disputes arising from treaties subsequent to

19 September 1932. It was therefore necessary to consider whether the treaties with Denmark complied with that condition and were applicable to British nationals, and also whether the United Kingdom Government had reasonable grounds for complaining of a breach of Iran's obligation in regard to the treatment of British nationals.

In the course of the oral arguments, two objections had been put forward. It was contended that the duty of conforming to general international law in the treatment of British nationals did not arise from the Treaties of 1934 and 1937, but from much earlier treaties—the Treaties of 1857 and 1903—which contained the most-favoured-nation clause; the latter Treaties were said to be the principals, the others only accessories. It was further contended that the Act nationalizing the exploitation of oil did not contravene any rule of general international law; in other words, that the Government of Iran, though bound to accord the guarantees of general international law to British nationals, was not debarred from nationalizing the exploitation of oil, in regard to which it had concluded a contract in 1933 with a British company. Judge Levi Carneiro said he was unable to accept either of these two objections.

The manner in which a most-favoured-nation clause operated, said Judge Levi Carneiro, was well known. It did not take effect by itself alone; it operated in due course upon the later treaty which granted some advantage to another nation, and it immediately extended the same advantage to the favoured nation. It could be seen, he said, that it was Iran's treaties with Denmark, Turkey and Switzerland, in 1934 and 1937, and not the treaties of 1857 and 1903 with the United Kingdom, which gave British nationals, in respect of their persons and their property, the guarantee of the general principles of international law. The present dispute related to the violation of these guarantees, that is to say it had direct reference to the application of treaties subsequent to the ratification of Iran's Declaration. For this reason, he argued, even accepting the Iranian construction of this Declaration, the present case was within the Court's jurisdiction.

There had been a breach of the provisions of a treaty in reliance upon which British nationals had invested large sums of money in the territory of Iran, sums which had indeed brought them immense profits, of which they were now dispossessed without any immediate compensation. This, declared Judge Levi Carneiro, was a breach of the fundamental principles of modern international law, of principles recognized by the legal systems, the decisions and the jurisprudence of civilized countries.

The first duty of the International Court, Judge Levi Carneiro stated, was to ensure the observance of international law and to further its development. Upon an initial examination of the present case, he could not exclude at least the possibility that Iran had violated "the principles and practice of ordinary international law" which it had undertaken to observe in relation to British nationals, and indeed he considered that there were strong indications of such a violation.

He agreed that it was necessary, in order to establish the jurisdiction of the Court, to ascertain whether it was advisable to invoke the "principles of international law" guaranteed by the treaties to which reference had been made. Judge Levi Carneiro deemed it essential to note the violation or, at least, the apparent violation, of the general principles of ordinary international law, by a denial of justice, consisting in the failure to honour the indisputable guarantees granted to British nationals in Iran.

The Iranian Government, he said, had stated expressly that it refused to appoint an arbitrator and to accept the procedure laid down in article 22 of the 1933 Concession. It had justified this decision by the contention that the concession granted to the Anglo-Iranian Oil Company was null and void. This contention, Judge Levi Carneiro, argued, appeared to be ill-founded because neither the Iranian laws of 15 and 20 March 1951, nor that of 1 May of the same year (concerning nationalization), provided for the dissolution of the Anglo-Iranian Oil Company or the annulment of its contract, nor could they, in fact, do so. Even if the annulment of the contract could have been decreed, for the purpose of nationalizing the oil industry, by the unilateral act of one of the parties to the contract—the Iranian Government—it would not follow that this act would exclude the jurisdiction of the arbitral tribunal provided for in article 26 of this contract. The refusal to set up this tribunal, he declared, constituted a denial of justice on the part of the Iranian Government.

In spite of certain proposals and attempts to find a solution, Judge Levi Carneiro declared, the Anglo-Iranian Oil Company had been dispossessed of its concession and of all its property. The Iranian Government considered that, by its own arbitrary authority, the Company had been dissolved and the concession had ceased to exist, without any money having been paid by way of compensation. Provision had merely been made in

the law, on paper, for the establishment of a fund for compensation—nobody knew whether any money at all had yet been paid into this fund; it was impossible to foresee how long it would take for this fund to reach the amount, as yet undetermined, required for compensation; the amount of compensation had not yet been fixed, nor had any adequate procedure been laid down to provide for a just assessment of this amount. The arbitration tribunal provided for in the contract had been ignored and a Parliamentary commission had been substituted for it. All this, he said, gave the impression of disguised confiscation. He considered that the most advanced tendencies of public law had not yet reached the stage where such treatment of a foreign concession and such provisions directed against the rights and property of foreign nationals could be accepted.

To sum up, he was of the opinion that, even if nationalization itself was considered not to be the concern of international law, the circumstances surrounding the action of Iran in the present case were such that they appeared to indicate a very grave violation of the principles of international law. His first impression was that there had been very serious violations of principles, the observance of which had been guaranteed to British nationals in Iran by three treaties subsequent to the ratification of the Iranian Declaration accepting the jurisdiction of the International Court. He therefore considered that the objection to the jurisdiction should be overruled and held that the Court had jurisdiction to decide as to the submission of the dispute to the arbitration tribunal in accordance with the submission of the United Kingdom.

B. THE AMBATIELOS CASE

This case was brought before the Court by Greece by an Application of 9 April 1951,[12] instituting proceedings against the United Kingdom regarding the claim of one of its nationals, the shipowner Nicolas Ambatielos, against the United Kingdom. Mr. Ambatielos was alleged to have suffered considerable loss as a result of a contract which he concluded in 1919 with the British Government (represented by the Ministry of Shipping) for the purchase of nine steamships which were then under construction, and in consequence of certain adverse judicial decisions in the English courts in connexion therewith.

In its Application and its Memorial, filed within the time-limits fixed by the Court's Orders of 18 May and 30 July 1951, Greece asked the Court to declare that it had jurisdiction; that the claim of Mr. Ambatielos against the United Kingdom Government must be submitted to arbitration, either by the procedure instituted by a Protocol of a Greco-British Treaty of Commerce and Navigation of 1886 or, alternatively, by that of a Treaty of Commerce of 1926; and that Greece was entitled to seize the Court of the merits of the dispute.

The United Kingdom, in its Counter-Memorial, filed on 9 February 1952, within the time-limits fixed by the Court's Orders of 30 July and 9 November 1951 and 16 January 1952,[13] while setting out its arguments and submissions on the merits of the case, contended that the Court lacked jurisdiction in the case and expressly presented this contention as a Preliminary Objection under the Rules of the Court.

The filing of the Preliminary Objection suspended the proceedings on the merits of the case, and the Observations and Submissions of Greece on the Objection were filed on 4 April, the time-limit fixed by the Court by its Order of 14 February.[14]

Public hearings on the Preliminary Objection were held on 15 to 17 May 1952. As the Court included on the Bench a judge of the nationality of one of the parties, the other party, Greece, availing itself of its right under the Court's Statute, appointed Jean Spiropoulos to sit as judge ad hoc. The United Kingdom was represented by V. J. Evans, Agent, and Sir Eric Beckett, D.H.N. Johnson and J.E.S. Fawcett, Counsel. Greece was represented by N. G. Lély, Agent, and Sir Hartley Shawcross, C. J. Colombos, Henri Rolin and Jason Stavropoulos, Counsel.

1. Judgment of the Court

The Court delivered its Judgment on the Preliminary Objection on 1 July 1952.[15]

In its Judgment the Court referred to the treaty provisions relied on by both parties. These were, in particular:

(1) the Protocol annexed to the Treaty of 1886 which provided that controversies concerning the interpretation or execution of the Treaty or the consequences of viola-

[12] See Y.U.N., 1951. p. 818.
[13] I.C.J. Reports 1952, p. 7.
[14] I.C.J. Reports 1952, p. 16.
[15] I.C.J. Reports 1952, p. 28.

tions of it were to be submitted to the decisions of commissions of arbitration to be established in accordance with a procedure outlined in the Protocol;

(2) Article 29 of the 1926 Treaty which provided that any dispute concerning the interpretation or application of that Treaty was to be referred for arbitration to the Permanent Court of International Justice unless in any particular case the contracting parties agreed otherwise; and

(3) the Declaration accompanying the 1926 Treaty which stated that this Treaty did not prejudice claims based on the 1886 Treaty and that differences in respect of such claims were to be submitted to arbitration in accordance with the Protocol of 1886.

The Court noted that the commercial relations between Greece and the United Kingdom had been regulated in accordance with the 1886 Treaty until the 1926 Treaty came into force. Although the 1886 Treaty had been denounced by Greece in 1919 and 1924, it was continued in force by successive agreements and exchanges of notes and it was finally agreed that it would lapse on the date the 1926 Treaty came into force.

The Court reviewed the submissions of the parties as they were developed during the proceedings. It stated that it was evident that both parties asked the Court to decide as to its jurisdiction to declare whether there was an obligation to submit the difference to arbitration. It was also evident that both parties envisaged that the Court itself might undertake the function of arbitration, but there appeared to be some doubt as to the conditions upon which the United Kingdom would be prepared to agree to this. In the absence of a clear agreement between the parties on the matter, the Court held that it had no jurisdiction to go into all the merits of the case as a commission of arbitration could do. It held that the question raised in the United Kingdom Counter-Memorial as to whether Greece was precluded by lapse of time from submitting the claim was a point to be considered with the merits and not at the current stage of proceedings.

The Court then examined the seven main arguments advanced by the United Kingdom in support of its Preliminary Objection and those put forward by Greece in reply.

The United Kingdom submitted:

(1) that the jurisdiction of the Court, if it existed at all, must be derived from article 29 of the Treaty of 1926; and

(2) that this Treaty only conferred jurisdiction on the Court to deal with disputes relating to the interpretation or application of the provisions of this Treaty itself.

The Court noted that since Greece had not accepted the Court's compulsory jurisdiction it could only invoke the Court's jurisdiction by virtue of a special agreement or the provisions of a treaty. Article 29 of the 1926 Treaty, on which Greece relied, provided for reference of disputes concerning its interpretation or application to the Permanent Court of International Justice and Article 37 of the Statute of the International Court of Justice provided that references in treaties to the Permanent Court should be construed as references to the International Court. Thus, any dispute as to the interpretation or application of any of the provisions of the 1926 Treaty were referable by either party to the International Court.

The third and fourth points raised by the United Kingdom related to the question of the retroactive operation of the Treaty of 1926. In this connexion, Greece advanced a "similar clauses theory", to the effect that where in the 1926 Treaty there were substantive provisions similar to substantive provisions of the 1886 Treaty, then under article 29 of the 1926 Treaty the International Court could adjudicate upon the validity of a claim based on an alleged breach of any of the similar provisions, even if the breach took place before the new Treaty came into force. The United Kingdom maintained that the 1926 Treaty came into force only in July 1926 and its provisions were not applicable to events prior to that date, whether or not the 1886 Treaty and the 1926 Treaty contained similar provisions. The acts on which the Greek Government's claim was based took place in 1922 and 1923 and therefore the 1926 Treaty did not apply to them.

The Court held that the 1926 Treaty had no retroactive effect. Article 32 of that Treaty stated that the Treaty would come into effect upon ratification and there was no special clause or special object necessitating retroactive interpretation. Moreover, the Declaration accompanying the Treaty of 1926 made no distinction between claims based on one class of provisions of the 1886 Treaty and those based on another class; there was no justification for concluding that differences concerning claims based on provisions of the 1886 Treaty which were similar to provisions of the 1926 Treaty should be arbitrated according to the procedure provided in the latter Treaty, while differences relating to other claims under the 1886 Treaty should be arbitrated according to the Protocol of the earlier Treaty.

The fifth point raised by the United Kingdom was that the Declaration which was signed at the same time as the 1926 Treaty was not a part of that Treaty, and that the provisions of

the Declaration were not provisions of the Treaty within the meaning of article 29. Both parties, the Court observed, agreed that this was the most important issue in the case.

The Court observed that the United Kingdom, in support of its contention, argued that the Declaration was signed separately from the Treaty proper, though by the same signatories and on the same day. The Declaration referred not to "this Treaty" or "the present Treaty" but to "the Treaty ... of to-day's date", thereby indicating that the Treaty had already been completed and signed. Moreover, the Declaration did not state that it was to be regarded as a part of the Treaty, in contrast to a similar Declaration annexed to a Greco-Italian Commercial Treaty of 24 November 1926.

The Court, however, did not share the United Kingdom view. It noted that the Treaty, the Customs Schedule annexed to it (which was undoubtedly part of the Treaty) and the Declaration were included in a single document, published in the same way in the British Treaty Series and registered under a single number with the League of Nations. Further, the instruments of ratification cited the three texts without making any distinction between them. The text of the United Kingdom ratification even declared that the "Treaty is, word for word, as follows"; after which it cited the three texts in their entirety.

The Court held also that the nature of the Declaration pointed to its being a part of the 1926 Treaty. It recorded an understanding arrived at by the parties before the 1926 Treaty was signed as to what that Treaty—or the replacement of the Treaty of 1886 by that of 1926—would not prejudice. The intention of the Declaration was to prevent the new Treaty from being interpreted as wiping out all the provisions of the 1886 Treaty and thus prejudicing claims based on the older Treaty and the remedies provided for them. Thus the Declaration was in the nature of an interpretation clause and, as such, should be regarded as an integral part of the Treaty even if this was not specifically stated.

The Court, therefore, held that the provisions of the Declaration were provisions of the Treaty within the meaning of article 29, and that it had therefore jurisdiction to decide any dispute as to the interpretation or application of the Declaration and, in a proper case, to judge that there should be a reference to a commission of arbitration. Any differences as to the validity of the claims involved would, however, have to be arbitrated, as provided in the Declaration itself, by the commission. The Court considered that there would be no possibility of a conflict between a decision of the Court and an eventual decision by a commission of arbitration. The Court would decide as to whether there was a difference between the parties within the meaning of the Declaration of 1926 and therefore an obligation to submit the difference to a commission of arbitration; the commission would decide on the merits of the difference. The Declaration, in laying down a special arbitral procedure, merely excluded the Court from functioning as the commission of arbitration.

The sixth United Kingdom argument was that the Declaration only covered claims formulated before it was signed, and the Greek Government had not formulated any legal claim in respect of Mr. Ambatielos until 1933, nor any legal claim under the 1886 Treaty until 1939.

The Declaration, however, the Court observed, contained no reference to the date of formulation of the claims; its only requirement was that they should be based on the 1886 Treaty. Moreover, if the United Kingdom interpretation were accepted, claims based on the 1886 Treaty but brought after the conclusion of the 1926 Treaty would be left without solution. They could not be arbitrated under either Treaty, although the provision on whose breach the claim was based might appear in both Treaties. The Court stated that it could not accept an interpretation which would have a result obviously contrary to the language of the Declaration and the continuous will of the parties to submit all differences to arbitration.

The final United Kingdom argument was to the effect that the 1886 Treaty contained no provisions incorporating the general principles of international law regarding the treatment of foreigners, and therefore it could not be said that an alleged denial of justice, considered merely as a breach of the general principles of international law, was a breach of that Treaty. The Court stated that as this point had not been fully argued by the parties it could not be decided at that stage.

For these reasons, the Court found, by 13 votes to 2, that it was without jurisdiction to decide on the merits of the Ambatielos claim; and by 10 votes to 5, that it had jurisdiction "to decide whether the United Kingdom is under an obligation to submit to arbitration, in accordance with the Declaration of 1926, the difference as to the validity of the Ambatielos claim, in so far as this claim is based on the Treaty of 1886."

The Court decided that the time-limits for the filing of a Reply and a Rejoinder should be fixed by subsequent Order.[16]

Judge Levi Carneiro and Mr. Spiropoulos, Judge ad hoc, appended their individual opinions to the Judgment. President Sir Arnold McNair, and Judges Basdevant, Zoricic, Klaestad and Hsu Mo appended to the Judgment statements of their individual dissenting opinions.

Judge Alvarez declared that there were in the case sufficient grounds for holding that the Court had jurisdiction to deal with the merits of the Ambatielos claim.

2. Individual Opinions

Judge Carneiro in his individual opinion stated that he accepted the conclusions of the Judgment, but drew attention to some secondary differences of view and referred to certain considerations influencing him which had not been dealt with in the Judgment.

He considered that in order to establish the Court's jurisdiction it should have been decided that the Ambatielos claim was "based" on the 1886 Treaty. This, he held, could be inferred from the declarations of the parties. It meant that the dispute was within the framework of the Declaration of 1926 and the Court's jurisdiction resulted from this fact.

He had been in favour of affirming or denying at the current stage of the proceedings the obligation to submit the claim to arbitration, but recognized that the Judgment dealt solely with the Preliminary Objection. He agreed that the Court was not invested with jurisdiction to decide on the merits by the declarations of the Agents or Counsel of the parties. It should, he considered, be expressly stated that the Court could assume the function of the arbitral commission as a result of a special agreement between the two Governments.

One of the points which would have to be decided at the second stage of the proceedings concerned the United Kingdom's final argument that the alleged denial of justice committed in violation of the general principles of international law did not constitute a violation of the 1886 Treaty because that Treaty did not incorporate those principles. The reason for deferring a decision on this argument was not that it had not been sufficiently argued, but that it belonged to the merits of the case.

Judge Carneiro emphasized the juridical nature of the 1926 Declaration as being of an interpretative nature and therefore an integral part of the 1926 Treaty. Unless this interpretation were adopted there would be no pre-established procedure for the settlement of disputes concerning the interpretation and application of the Declaration, a situation all the more unacceptable because international law was above all directed to the pacific settlement of disputes and the interpretation and application of treaties was the special domain of arbitration.

Finally, as regards the retroactive application of provisions relating to jurisdiction, Judge Carneiro held, such an application could only be allowed when expressly provided for. In the 1926 Treaty it had been expressly excluded.

Mr. Spiropoulos, in his individual opinion, confined himself to the points on which he disagreed with the wording of the paragraph of the Judgment in which the Court established its jurisdiction to adjudicate on the merits of the case.

This paragraph, he stated, appeared to impose on the applicant State the duty of establishing that the Ambatielos claim was based on the 1886 Treaty. But it was well recognized that an arbitral tribunal decides on its own jurisdiction. In this case, if the United Kingdom had accepted recourse to arbitration, it would have been for the commission of arbitration to decide whether the Ambatielos claim was, or was not, based on a provision of the Treaty of 1886; the obligation of the United Kingdom to accept arbitration was independent of whether the claim was so based, and would exist even if the claim was not based on that Treaty.

Moreover, since the Court was at this time only deciding on the objection to its jurisdiction, it could not, for procedural reasons, now pass on the validity of the Greek claim that the United Kingdom was obliged to arbitrate; such a decision would require a preliminary finding that the Court had jurisdiction.

When a State bound itself by a compulsory arbitration clause, such as that contained in the 1886 Protocol, it could not, unless in very exceptional circumstances, have any ground for refusing an offer to arbitrate, Mr. Spiropoulos stated.

The Court, therefore, in his opinion should have limited itself to a finding that it had jurisdiction to decide whether the United Kingdom

[16] In an Order of 18 July 1952, the Court fixed 3 October as the date of expiry of the time-limit for the filing of the Greek Reply and 6 January 1953 as the date of expiry for the filing of the United Kingdom Rejoinder. (I.C.J. Reports 1952, p. 90.)

had an obligation to submit the difference concerning the Ambatielos claim to arbitration in accordance with the Declaration of 1926 and should not have referred to the Treaty of 1886.

3. Dissenting Opinions

President McNair, in his dissenting opinion, maintained that the Court had no jurisdiction in the case, either on the merits of the claim or on the obligation to arbitrate. In particular, he held that the 1926 Declaration was not an integral part of the 1926 Treaty within the meaning of article 29 of that Treaty on which the Court's jurisdiction was based.

Both in the British Treaty Series and in the League of Nations Treaty Series, he pointed out, the 1926 Treaty was followed by the Schedule and afterwards by the Declaration. The Schedule was specifically incorporated in the Treaty; the Declaration was not. The United Kingdom instrument of ratification embodied all three documents, therefore it was necessary to hold that the Declaration, although it did not require ratification, had been ratified at the same time as the Treaty with its Schedule. But this did not make all the documents comprised in the ratification parts of the same Treaty unless so incorporated by virtue of the intention of the parties. This was often expressly stipulated, or else it was implied from the judicial nature of the document and its relation to the Treaty.

President McNair did not agree that it could be inferred from the expression "which treaty is, word for word, as follows" that all the documents which followed must be regarded as forming one treaty. This was a traditional routine formula which had been in use for at least 600 years, and which was therefore not a guide to the intention of the parties. Moreover, although articles in the Treaty referred to "the present Treaty" or "this Treaty", the Declaration referred to "the Treaty of Commerce and Navigation between Great Britain and Greece of to-day's date". It might thereby be inferred that the signatories of the Declaration did not regard it as part of the 1926 Treaty; had they done so they would have been unlikely to have used the expression "Our two Governments", more appropriate to an exchange of assurances than to a treaty.

As regards the juridical nature of the Declaration and its relation to the Treaty, President McNair stated that the reason for the 1926 Declaration was that claims under the 1886 Treaty should not be adversely affected through the lapse of the arbitral procedure provided for in the Protocol of 1886 upon the expiry of the 1886 Treaty by reason of its denunciation by the Greek Government. The Declaration did not, therefore, concern anything contained in the 1926 Treaty but related to something external and collateral to it.

The other factors, he held, supported the conclusion that the Declaration was not part of the 1926 Treaty:

(1) that there was a difference in the periods of duration of the Treaty and the Declaration; and

(2) that the Declaration contained its own machinery for the settlement of disputes concerning claims based on the 1886 Treaty independent of the machinery provided in article 29 of the 1926 Treaty.

Even if the provisions of the Declaration were among the provisions of the 1926 Treaty, President McNair considered, the existence of special machinery for dealing with disputes contained in the Declaration excluded the application of the general provisions of article 29.

Judge Basdevant, in his dissenting opinion, considered the Greek submissions: (1) that the Court should deal with the merits of the Ambatielos claim; and (2) that it should decide as to the obligation to refer this claim to the arbitration provided for by the 1886 Protocol. He also dealt with the United Kingdom objection to these submissions.

As regards the merits of the case, he stated that the facts on which Greece based its complaint occurred before the conclusion of the 1926 Treaty and therefore article 29 of that Treaty, which gave the Court jurisdiction over disputes "as to the proper interpretation or application of the present Treaty", was not applicable to them. The fact that there were similar provisions in the 1886 and 1926 Treaties could not make the latter Treaty applicable to facts occurring before it came into force. This was clear from the 1926 Declaration which provided that differences regarding claims based on the 1886 Treaty should be settled by the arbitral procedure created by the 1886 Protocol; it did not substitute for that procedure judicial proceedings before the court. Judge Basdevant therefore held that the Court had no jurisdiction to deal with the merits of the Ambatielos claim.

As regards the Court's jurisdiction to decide on the obligation to refer the claim to arbitration, Judge Basdevant held that the 1926 Declaration was distinct from the 1926 Treaty and not a clause or provision of that Treaty. The drafting and signature of a treaty, he observed, were the acts by which the will of the contracting States were expressed; the will so expressed was confirm-

ed by ratification. The details of recording these acts in instruments, which usually followed a form derived from tradition, were not a determining influence in determining the true meaning of the agreement. Those responsible had chosen to give the agreement concerning the 1886 Treaty the form of a provision separate from the 1926 Treaty; they had given it the title of a Declaration, not that of an additional article, had signed it separately from the Treaty, and had made no reference to it in the Treaty, in contrast to the Schedule. The ratifications merely confirmed the agreements reached by the respective plenipotentiaries. The independent character of the Declaration, he considered, was also shown by its substance. It did not explain any clause of the Treaty of 1926, but was an agreement relating to one of the effects of the lapsing of the 1886 Treaty through its denunciation. Therefore, he held, article 29 of the 1926 Treaty was not applicable to the Declaration.

The Declaration was designed to preserve the regime of the Protocol of 1886 as it stood; under that regime arbitration could be frustrated by the refusal of a party to appoint an arbitrator. If the framers of the Declaration had intended to remedy this defect they could have substituted the Court's jurisdiction for the arbitral procedure provided for in 1886. Moreover, the obligation to arbitrate, if it existed, rested on the Treaty and Protocol of 1886, and the dispute concerning the existence of such an obligation was a dispute concerning the interpretation and application of that Treaty and Protocol. Article 29 of the 1926 Treaty did not confer on the Court jurisdiction to adjudicate such a dispute.

Judge Basdevant concluded that the Court had not been given jurisdiction to decide whether there was an obligation to submit the claim to arbitration.

Judge Zoricic in his dissenting opinion considered that the contents of the Declaration were chiefly important in deciding if it was a part of the 1926 Treaty. The Declaration had been drawn up and signed as a separate instrument with a title of its own and neither the Treaty nor the Declaration mentioned the Declaration as part of the Treaty, although specific mention was made in the Treaty of the Customs Schedule. Ratification of the documents meant that they were part of a simultaneous agreement, but this did not prove that the Declaration was a part of the Treaty. It was drawn up subsequently to and independently of the Treaty. But the point of real importance was the terms of the text, the intentions of the parties and the purposes which the text was to serve. The purpose of the Declaration was to safeguard rights founded on the 1886 Treaty not to interpret the 1926 Treaty or form a reservation to it; it did not explain anything in the 1926 Treaty. The Declaration was a partial prolongation of the 1886 Treaty; the only relation between it and the 1926 Treaty was a coincidence of dates resulting from a special agreement. The Declaration was, therefore, not a provision of the 1926 Treaty within the meaning of article 29. When drawing up the Treaty the parties could not have had in mind the Declaration which was prepared subsequently to the Treaty and relating to a subject foreign to it.

Further, the 1886 arbitration system was the only one applicable to disputes mentioned in the Declaration. The parties would not have intended to introduce a system of dual jurisdiction which could only lead to complications, since it would be impossible to draw a demarcation line between the jurisdiction of the Court and that of the commission of arbitration. Both article 29 and the Declaration conferred jurisdiction without qualification. Either the Court had jurisdiction to interpret and apply the Declaration or it had not, and if it had jurisdiction it would have to decide at least whether the claim satisfied the conditions of the Declaration, a question pertaining to the merits of the case. But, according to the Declaration, the commissions of arbitration were to decide not only on the validity of the claims but also on the applicability of the conditions of the Declaration. This would lead to much overlapping and confusion between the Court's jurisdiction and that of the commissions of arbitration clearly not intended by the parties. Judge Zoricic therefore held that the Declaration could not be regarded as a provision of the 1926 Treaty within the meaning of article 29 and that in consequence the Court was without jurisdiction in the case.

Judge Klaestad in his dissenting opinion stated that the facts invoked by Greece related to the period 1919-23 and could not be held to be a breach of the 1926 Treaty which did not at that time exist. It made no difference in this regard that the 1886 Treaty and the 1926 Treaty contained similar provisions; the two Treaties were independent legal instruments, governed by different arbitration clauses.

As regards the contention that the Declaration was a provision of the 1926 Treaty, Judge Klaestad considered that, in regard to form, the two documents were separate instruments drafted and issued as separate documents and signed separately. Although both documents were signed at the same time by the same signatories and the Declaration was ratified by both Governments together with the Treaty, this did not mean that they were necessarily part of the same document. As to substance, nothing in the Treaty or in the Declaration indicated that the Declaration was to be regarded as part of the Treaty. The Declaration was not an interpretation or application of the provisions of the Treaty, nor did it modify the Treaty. It only kept alive claims under the 1886 Treaty when that Treaty disappeared. He concluded that the Declaration did not form part of the Treaty.

The Declaration provided that particular claims based on the 1886 Treaty were to be referred to arbitration in accordance with the 1886 Protocol —this special arbitration clause prevailed over the general arbitration clause contained in article 29 of the 1926 Treaty. In fact, the two methods of arbitration were preserved side by side, and article 29 did not cover disputes mentioned in the Declaration.

If the Declaration formed part of the 1926 Treaty and the Court had jurisdiction to interpret and apply it, it followed that the Court would have to determine the conditions under which the dispute would have to be submitted to arbitration and to ascertain whether they were fulfilled. But the merits of the dispute could not be referred to the Court since it was expressely provided in the Declaration that claims based on the 1886 Treaty should be referred to the arbitral commission. Thus there would be established a dual arbitration procedure for two parts of the same dispute so time-wasting and unusual that it could hardly have been contemplated. The Declaration had in fact only provided that disputes based on the 1886 Treaty would be referred to arbitration in accordance with the 1866 Protocol. Moreover, it was for an international tribunal to determine its own competence, failing provisions to the contrary, so it would be for the arbitral commission, not for the Court, to determine the competence of that commission. Such a function could hardly have been given to both bodies since they might arrive at different results.

Judge Klaestad therefore held that the Court lacked jurisdiction in the case. This, he considered, was borne out by the note from Greece to the United Kingdom of 6 August 1940 in which it was stated that the "Arbitral Committee provided for by the final Protocol of the Greco-British Commercial Treaty of 1886 is the only competent authority in the matter . . ."

Judge Hsu Mo in his dissenting opinion considered that the dispute was, in effect, one concerning the interpretation and application of the Declaration. The fact that the Declaration appeared at the end of the 1926 Treaty and was signed on the same day, and that the different instruments might be considered to have been ratified together merely meant that the documents had an equal importance in law and not that the Declaration was an integral part of the 1926 Treaty, within the meaning of article 29. The function of the Declaration was to keep alive provisions of the 1886 Treaty in order to deal with claims based on that Treaty. It did not affect the operation of the 1926 Treaty; both were separate agreements with their own field of operation. The independent nature of the Declaration was confirmed by the fact that the Declaration and article 29 of the 1926 Treaty provided distinctive methods of arbitration, the one to apply to disputes concerning the 1886 Treaty, the other to disputes concerning the new Treaty, It was difficult to believe that the parties wished to divide the process of settling claims under the 1886 Treaty into two stages, under which (1) disputes concerning the obligation to submit differences to arbitration would first be decided by the Permanent Court of International Justice which would therefore have to decide the existence or non-existence of a claim and whether it was based on the 1886 Treaty, etc. and (2) the commission of arbitration would then have to decide on the validity of a claim. Had the parties so wished they could have stipulated that the procedure set out in article 29 of the 1926 Treaty should be substituted for that of the Protocol of 1886.

Even were the Declaration an integral part of the 1926 Treaty, it contained a specific arbitration clause which would, in accordance with established practice, have to prevail over the general arbitration provision contained in article 29 of that Treaty.

Judge Hsu Mo therefore held that the Court lacked jurisdiction in the case.

C. CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES IN MOROCCO (FRANCE vs. UNITED STATES)

On 28 October 1950 France filed in the Registry of the International Court of Justice an Application instituting proceedings before the Court against the United States, concerning the rights of nationals of the United States in Morocco.

The Application was communicated to the United States as well as to the States entitled to appear before the Court; it was also transmitted to the Secretary-General of the United Nations.

France in its Memorial of March 1951 quoted several provisions of the General Act of the International Conference of Algeciras of 7 April 1906 and drew conclusions from it as to the rights of the United States. As the construction of a convention to which States other than those concerned in the case were parties was in question, the Court's Registrar, in conformity with the Statute of the Court, on 6 April 1951 notified the following States: Belgium, Spain, Italy, the Netherlands, Portugal, the United Kingdom and Sweden.

On 25 June 1951 the United States filed a Preliminary Objection. The proceedings on the merits were thereby suspended. The proceedings instituted by the Preliminary Objection were, however, terminated following a declaration by the United States that it was prepared to withdraw its objection because of the explanations given by France. France had explained[17] that it 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. As France did not oppose this withdrawal, the Court, in an Order of 31 October 1951, placed on record the discontinuance, recorded that the proceedings on the merits were resumed, and fixed new time-limits for the filing of the Counter-Memorial, Reply and Rejoinder.

The Counter-Memorial and Reply were filed within the time-limits fixed. The time-limit for the Rejoinder, at the request of the United States, was extended; it was filed on 18 April 1952. Public hearings were held on 15 to 17, 21 to 24 and 26 July 1952, during which the Court heard Andre Gros and Paul Reuter on behalf of France, and Adrian S. Fisher and Joseph M. Sweeney on behalf of the United States.

At the conclusion of the argument before the Court, the parties presented their submissions. These related to the following principal points:

(1) The application to nationals of the United States of a Residential Decree of 30 December 1948, issued by the Resident General of the French Republic in Morocco, by which imports without official allocation of currency (including such imports from the United States) were, in the French Zone of Morocco, subjected to a system of licensing control, while imports from France or the French Union were exempt from such control.

(2) The extent of the consular jurisdiction which the United States may exercise in the French Zone of Morocco.

(3) The right to levy taxes on nationals of the United States in Morocco (the question of fiscal immunity); with particular reference to the consumption taxes provided for by a Shereefian Dahir (Decree of the Sultan of Morocco) of 28 February 1948.

(4) The method of assessing the value, under Article 95 of the General Act of Algeciras of 1906, of goods imported into Morocco.

1. Judgment of the Court

On 27 August 1952 the Court delivered its Judgment.[18]

The Court first dealt with the dispute relating to the Decree of 30 December 1948 issued by the Resident General of the French Republic in Morocco, concerning the regulation of imports not involving an allocation of currency into the French Zone of Morocco. The effect of this Decree was to subject imports without official allocations of currency to a system of licensing control; however, imports from France and other parts of the French Union were not subject to the regulations, but remained free.

France submitted that this Decree was in conformity with the treaty provisions which were applicable to Morocco and binding on France and the United States.

The United States disputed the French submissions. It submitted that its treaty rights in Morocco forbade Morocco to impose prohibitions on American imports, save those specified by the treaties, and that these rights were still in full force and effect. The Decree of 30 December 1948 was therefore, it submitted, in direct contravention of the treaty rights of the United States which forbade prohibitions on American imports. American nationals could not legally be submitted to this Decree, without the prior consent of the United States, it contended.

In its Judgment the Court stated that it was common ground beween the parties that the

[17] See Y.U.N., 1951, pp. 817-18.
[18] I.C.J. Reports 1952, p. 176.

characteristic of the status of Morocco, as resulting from the General Act of Algeciras, was respect for the three principles stated in the Preamble of the Act, namely: "the sovereignty and independence of His Majesty the Sultan, the integrity of his domains, and economic liberty without any inequality."

By the Treaty of Commerce with Great Britain of 9 December 1856, as well as by treaties of 20 November 1861 with Spain and of 1 June 1890 with Germany, the Sultan of Morocco, the Court noted, guaranteed certain rights in matters of trade, including imports into Morocco. These States, together with a number of other States, including the United States, were guaranteed equality of treatment by virtue of most-favoured-nation clauses in their treaties with Morocco. On the eve of the Algeciras Conference, the three principles mentioned above, including the principle of "economic liberty without any inequality", were expressly accepted by France and Germany in an exchange of letters of 8 July 1905 concerning their attitude with regard to Morocco. This principle, in its application to Morocco, the Court emphasized, was thus already well established when it was reaffirmed by that Conference and inserted in the Preamble of the Act of 1906. Considered in the light of these circumstances, it seemed clear to the Court that the principle was intended to be of a binding character and not merely an empty phrase.

The establishment of the French protectorate over Morocco by the Treaty of 30 March 1912, between France and Morocco, the Court said, did not involve any modification in this respect. Commercial or economic equality in Morocco was assured to the United States, not only by Morocco, but also by France as the Protecting State. The rights of France in Morocco, the Court asserted, were defined by the Protectorate Treaty of 1912. In economic matters France was accorded no privileged position in Morocco. Such a privileged position, in the opinion of the Court, would not be compatible with the principle of economic liberty without any inequality, on which the Act of Algeciras was based.

It followed from these considerations, the Court declared, that the provisions of the Decree of 30 December 1948 contravened the rights which the United States had acquired under the Act of Algeciras, because they discriminated between imports from France and other parts of the French Union, on the one hand, and imports from the United States on the other. France was exempted from control of imports without allocation of currency, while the United States was subjected to such control. This differential treatment, the Court said, was not compatible with the Act of Algeciras, by virtue of which the United States could claim to be treated as favourably as France as far as economic matters in Morocco were concerned.

This conclusion, the Court indicated, could also be derived from the Treaty between the United States and Morocco of 16 September 1836, article 24, where it was "declared that whatever indulgence, in trade or otherwise, shall be granted to any of the Christian Powers, the citizens of the United States shall be equally entitled to them". Having regard to the conclusion already arrived at on the basis of the Act of Algeciras, the Court limited itself to stating as its opinion that the United States, by virtue of this most-favoured-nation clause, had the right to object to any discrimination in favour of France in the matter of imports into the French Zone of Morocco.

The Court stated that it did not consider it necessary to pronounce upon the French contentions purporting to demonstrate the legality of exchange control. Even assuming this legality, the fact nevertheless remained that the measures applied by virtue of the Decree of 30 December 1948 involved a discrimination in favour of imports from France and other parts of the French Union. This discrimination could not be justified by considerations relating to exchange control.

For these reasons, the Court in its Judgment unanimously rejected the French submission that the Decree of 30 December 1948 was in conformity with the economic system which was applicable to Morocco. The Court said that it was not called upon to consider and decide the general question of the extent of the control over importation that might be exercised by the Moroccan authorities.

The Court next considered the extent of the consular jurisdiction of the United States in the French Zone of Morocco. The French submission in this regard read as follows:

"That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that since the most-favoured-nation clause contained in Article 24 of the said Treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties."[19]

The United States submission concerning consular jurisdiction read as follows:

[19] I.C.J. Reports 1952, p. 186.

"3. The jurisdiction conferred upon the United States by the Treaties of 1787 and 1836 was jurisdiction, civil and criminal, in all cases arising between American citizens.

"In addition, the United States acquired in Morocco jurisdiction in all cases in which an American citizen or protege was defendant through the effect of the most-favoured-nation clause and through custom and usage.

"Such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French Zone of Morocco.

"Such jurisdiction has never been renouncecd, expressly or impliedly, by the United States."[20]

The Court stated that it was common ground between the parties that the present dispute was limited to the French Zone of Morocco. The Court could not, therefore, pronounce upon the legal situation in other parts of Morocco.

In order to consider the extent of the rights of the United States relating to consular jurisdiction, the Court said that it was necessary to examine three groups of treaties. The first group included the bilateral treaties of Morocco with France, the Netherlands, Great Britain, Denmark, Spain, the United States, Sardinia, Austria, Belgium and Germany, which covered the period from 1631 to 1892. These treaties, which were largely concerned with commerce, including the rights and privileges of foreign traders in Morocco, dealt with the question of consular jurisdiction. Under this group, the most extensive privileges of consular jurisdiction were granted by Morocco in treaties with Great Britain in 1856 and Spain in 1861, which ensured the rights of nationals of those countries, even when defendants, to be judged by their own consular courts. The Court stated that when these privileges were granted to Great Britain and to Spain, they were applied automatically and immediately to the benefit of the other Powers by virtue of the operation of the most-favoured-nation clauses in treaties between those Powers and Morocco.

The second group, which consisted of multilateral treaties such as the Madrid Convention of 1880 and the Act of Algeciras of 1906, imposed an element of restraint upon the interested Powers. Accordingly, the rights of protection were restricted, and some of the limitations on the powers of the Sultan of Morocco as regards foreigners, which had resulted from the provisions of the earlier bilateral treaties, were abated.

The third group of treaties concerned the establishment of the protectorate by France over Morocco. It included the agreements which preceded the assumption by France of a protectorate over Morocco, and the Treaty of Fez of 1912. Under this Treaty, Morocco remained a sovereign States but it made an arrangement whereby France undertook to exercise certain sovereign powers in the name and on behalf of Morocco, and, in principle, all of the international relations of Morocco. France, the Court said, in the exercise of this function, was bound not only by the provisions of the Treaty of Fez, but also by all treaty obligations to which Morocco had been subject before the protectorate and which had not since been terminated or suspended by arrangement with the interested States.

The establishment of the protectorate, and the organization of the tribunals of the protectorate which guaranteed judicial equality to foreigners, brought about a situation essentially different from that which had led to the establishment of consular jurisdiction under the earlier treaties. Accordingly, the Court explained, France initiated negotiations designed to bring about the renunciation of the regime of capitulations by the Powers exercising consular jurisdiction in the French Zone. In the case of all the Powers except the United States, these negotiations led to a renunciation of capitulatory rights (rights of sovereignty capitulated by one country to another) and privileges which, in the case of Great Britain, was embodied in the Convention of 29 July 1937. The United States, however, reserved its treaty rights in all negotiations.

The French submission, the Court noted, was based upon the Treaty between the United States and Morocco of 16 September 1836, and it was common ground between the parties that the United States was entitled to exercise consular jurisdiction in the case of disputes arising between its citizens or proteges. There was therefore no doubt as to the existence of consular jurisdiction in this case, the Court stated. The only question to be decided was the extent of that jurisdiction in 1950, when the Application was filed.

The first point raised by the submissions, the Court stated, related to the scope of the jurisdictional clauses (20 and 21) of the Treaty of 1836, which provided, inter alia, that "If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other, the Consul shall decide between the parties . . ." The United States argued that these clauses should be construed as giving consular jurisdiction over all disputes, civil and criminal, between United States citizens and proteges. France, on the other hand, contended that the word "dispute" was limited to civil cases. The Court construed the word "dispute" as referring

[20] I.C.J. Reports 1952, p. 186.

both to civil disputes and to criminal disputes, in so far as they related to breaches of the criminal law committed by a United States citizen or protege upon another United States citizen or protege.

The second point arose out of the United States submission that consular jurisdiction was acquired "in all cases in which an American citizen or protege was defendant through the effect of the most-favoured-nation clause and through custom and usage" and that such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French Zone and had never been renounced expressly or impliedly by the United States.

As a result of the treaty of Morocco with Great Britain of 1856 and of Morocco with Spain in 1861, the Court explained, the United States, by virtue of the most-favoured-nation clauses, acquired civil and criminal consular jurisdiction in all cases in which United States nationals were defendants. The controversy between the parties with regard to consular jurisdiction resulted from the renunciation of capitulatory rights and privileges by Spain in 1914 and by Great Britain in 1937. The renunciation by Spain in 1914 had no immediate effect upon the United States position because it was still possible to invoke the provisions of the Treaty of 1856 with Great Britain. After 1937, however, no Power other than the United States had exercised or been entitled to exercise consular jurisdiction in the French Zone of Morocco.

France contended that, from the date of the renunciation of the right of consular jurisdiction by Great Britain, the United States was not entitled, either through the operation of the most-favoured-nation clauses of the Treaty of 1836 or by virtue of the provisions of any other treaty, to exercise consular jurisdiction beyond those cases covered by the jurisdictional clauses (articles 20 and 21) of the Treaty of 1836.

The Court dealt individually with a series of six contentions, upon which the United States submission was based.

The first contention was based upon article 17 of the Madrid Convention of 1880, which stated that the "right to the treatment of the most-favoured-nations is recognized by Morocco as belonging to all the Powers represented at the Madrid Conference".

The Court declared that even if it could be assumed that this article operated as a general grant of most-favoured-nation rights to the United States and was not confined to the matters dealt with in the Madrid Convention, it would not follow that the United States was entitled to continue to invoke the provisions of the British and Spanish Treaties, after they had ceased to be operative as between Morocco and the two countries in question.

The provisions of article 17 of the Madrid Convention, in the view of the Court, were clearly based on the maintenance of equality. The United States contention, said the Court, would run contrary to the principle of equality and it would perpetuate discrimination. The Court could not support such a contention.

The second United States contention was based upon the geographically limited character of the renunciation of consular jurisdiction by Great Britain. This was restricted in its scope to the French Zone.

The United States argued that Great Britain retained its jurisdictional rights in the Spanish Zone and it further argued that "the United States, which still treats Morocco as a single country, is entitled under the most-favoured-nation clause in article 24 of its treaty to the same jurisdictional rights which Great Britain today exercises in a part of Morocco by virtue of the Treaty of 1856."

The Court declared that it was not called upon to determine the existence or extent of the jurisdictional rights of Great Britain in the Spanish Zone. It was sufficient to reject this argument on the ground that it would lead to a position in which the United States was entitled to exercise consular jurisdiction in the French Zone notwithstanding the loss of this right by Great Britain. This result would be contrary to the intention of the most-favoured-nation clauses to establish and maintain at all times fundamental equality without discrimination as between the countries concerned. The Court could not, therefore, accept this second contention.

The third contention was based upon the nature of the arrangements which led to the termination of Spanish consular jurisdiction in the French Zone. The United States contended that it was entitled, by virtue of the most-favoured-nation clauses, to invoke in respect of the French Zone those provisions of the Spanish Treaty of 1861 which concerned consular jurisdiction.

By a Convention between France and Spain of 27 November 1912, the Court recalled, provision was made for the exercise by Spain of special rights and privileges in the Spanish Zone. By a bilateral Declaration between France and Spain of 7 March 1914, Spain surrendered its jurisdictional and other extra-territorial rights in the French Zone, and provision was made for the

subsequent surrender by France of similar rights in the Spanish Zone. This was accomplished by a bilateral Declaration between France and Spain of 17 November 1914.

The United States contended that, as both the Convention of 1912 and the two Declarations of 1914 were agreements between France and Spain, and as Morocco was not named as a party to either agreement, the rights of Spain under the earlier 1861 Spanish Treaty still existed de jure, notwithstanding that there might be a de facto situation which temporarily prevented their exercise.

Even if this contention were accepted, the Court stated, the position was one in which Spain had been unable to insist on the right to exercise consular jurisdiction in the French Zone since 1914. The rights which the United States would be entitled to invoke by virtue of the most-favoured-nation clauses would therefore not include the right to exercise consular jurisdiction in 1950.

The Court concluded that the Spanish Declaration of 7 March 1914 brought about the surrender or renunciation of all Spanish jurisdictional or other extra-territorial rights in the French Zone, and an abrogation of those provisions of the Spanish Treaty of 1861 which concerned the rights and privileges arising out of the regime of capitulations. The Court could therefore not accept the third United States contention.

The fourth contention of the United States was that the extensive consular jurisdiction as it existed in Morocco in 1880 was recognized and confirmed by the provisions of the Madrid Convention, and that the United States, as a party to that Convention, thereby acquired an autonomous right to the exercise of such jurisdiction independently of the operation of the most-favoured-nation clauses.

The Court stated that there could be no doubt that the exercise of consular jurisdiction in Morocco in 1880 was general, or that the Convention presupposed the existence of such jurisdiction. It dealt with the special position of proteges and contained provisions for the exercise of jurisdiction with regard to them. On the other hand, it was equally clear that there were no provisions of the Convention which expressly brought about a confirmation of the then existing system of consular jurisdiction, or its establishment as an independent and autonomous right. The Court declared that it could not adopt a construction by implication of the provisions of the Madrid Convention which would go beyond the scope of its declared purposes and objects. Further, the United States contention would involve radical changes and additions to the provisions of the Convention. The Court emphasized that it was its duty "to interpret the Treaties, not to revise them". It therefore rejected the United States contention.

The fifth United States contention was that the consular jurisdiction in Morocco was recognized and confirmed by various provisions of the Act of Algeciras, and that the United States acquired an autonomous right to exercise such jurisdiction independently of the operation of the most-favoured-nation clauses.

The Court explained that in 1906 the interested Powers at Algeciras all exercised capitulatory rights and privileges to the extent that they were prescribed either by the General Treaty with Great Britain of 1856 or by the Spanish Treaty of 1861. They did so by virtue of a direct treaty grant, as in the case of Great Britain or Spain; or by virtue of most-favoured-nation clauses, as in the case of the United States; or without treaty rights, but with the consent or acquiescence of Morocco, as in the case of certain other States. Accordingly, the Act of Algeciras presupposed the existence of the regime of capitulations, including the rights of consular jurisdiction, and many of its provisions assigned particular functions to the then existing consular tribunals.

Since 1937, the Court said, the position had been that eleven of the interested Powers had abandoned their capitulatory privileges and their consular jurisdiction had ceased to exist. Accordingly, Morocco had been able to make laws and to provide for the trial and punishment of offenders who were nationals of these eleven countries. The position of the United States, however, was different.

Taking into account the various articles of the Act of Algeciras referring to consular tribunals and the purposes of that Act, the Court found that neither its express provisions nor the intention of the parties offered any basis for the contention that the Act established consular jurisdiction or confirmed the rights and privileges of the regime of capitulations which were then in existence.

The Court declared that the consular jurisdiction of the United States continued to exist to the extent that might be necessary to render effective those provisions of the Act of Algeciras which depend on the existence of consular jurisdiction. The Court held that this interpretation in some instances led to results which might not appear to be entirely satisfactory, but that was an unavoidable consequence of the manner in which the

Algeciras Conference had dealt with the question of consular jurisdiction. The Court could not, by way of interpretation, derive from the Act a general rule as to full consular Jurisdiction not contained therein; on the other hand, it could not disregard particular provisions involving a limited resort to consular jurisdiction, which were in fact contained in the Act and which were still in force as far as relations between the United States and Morocco were concerned.

The sixth contention of the United States was that its consular jurisdiction and other capitulatory rights in Morocco were founded upon "custom and usage". The Court, however, rejected this contention on two considerations. The first was that from 1787 to 1937 the United States consular jurisdiction was in fact based, "not on custom or usage, but on treaty rights". The second was that there was not sufficient evidence that a right to exercise consular jurisdiction founded upon custom or usage had been established in such a manner that it had become binding on Morocco.

In its decision on the extent of the consular jurisdiction of the United States in the French Zone of Morocco, the Court unanimously found that the United States was entitled, by virtue of the provisions of its Treaty with Morocco of 16 September 1836, to exercise in the French Zone of Morocco consular jurisdiction in all disputes, civil or criminal, between citizens or proteges of the United States.

By 10 votes to 1, the Court found that the United States was also entitled, by virtue of the General Act of Algeciras of 7 April 1906, to exercise in the French Zone of Morocco consular jurisdiction in all cases, civil or criminal, brought against citizens or proteges of the United States, to the extent required by the provisions of the Act relating to consular jurisdiction.

By 6 votes to 5, the Court rejected the other submissions of the United States relating to consular jurisdiction. The United States, the Court declared, was not entitled to exercise consular jurisdiction in other cases in the French Zone of Morocco. Its rights in this connexion, which were acquired solely by the effect of the most-favoured-nation clause, came to an end, the Court declared, with the termination of "all rights and privileges of a capitulatory character in the French Zone of the Shereefian Empire" by Great Britain, in pursuance of the provisions of the Franco-British Convention of 1937.

The Court next considered the claim that United States nationals were not subject, in principle, to the application of Moroccan laws, unless they had first received the assent of the United States Government. The Decree of 30 December 1948, not having been submitted to the prior assent of the United States Government, could not, the United States argued, be made applicable to United States citizens.

In this regard France submitted that the United States was not entitled to claim that the application of all laws and regulations to its nationals in Morocco required its express consent. The nationals of the United States, France argued, were subject to the laws and regulations in force in the Shereefian Empire and in particular to the regulation of 30 December 1948, without the prior consent of the United States Government.

The claim that Moroccan laws were not binding on United States nationals, unless assented to by the Government of the United States, the Court declared, was linked with the regime of capitulations. The Court stated that there was no provision in any of the treaties under consideration in this case conferring upon the United States any such right. The so-called "right of assent" was merely a corollary of the system of consular jurisdiction. The consular courts applied their own law and they were not bound in any way by Moroccan law or Moroccan legislation. Before a consular court could give effect to a Moroccan law it was necessary for the foreign Power concerned to provide for its adoption as a law binding on the consul in his judicial capacity. This was usually done by embodying the law either in the legislation of the foreign State or in ministerial or consular decrees of that State issued in pursuance of delegated powers; the foreign State could do this or could refuse to provide for the enforcement of the law. There was a "right of assent" only to the extent that the intervention of the consular court was necessary to secure the effective enforcement of a Moroccan law as against the foreign nationals.

The Court considered three ways in which the problem of the "right of assent" might arise. The first was in cases where the application of a Moroccan law to United States nationals would be contrary to the treaty rights of the United States. In such cases, said the Court, the application of Moroccan laws directly or indirectly to these nationals, unless assented to by the United States, would be contrary to international law, and the dispute which might arise therefrom would have to be dealt with according to the ordinary methods for the settlement of international disputes. These Considerations applied to the Decree of 30 December 1948, which the Court found to be contrary to treaty rights of the United States.

The second instance was in cases in which the co-operation of the consular courts was required in order to enforce the Moroccan legislation. In such cases, regardless of whether the application of the legislation would contravene treaty rights, the assent of the United States, the Court asserted, would be essential to its enforcement by the consular courts.

Thirdly, the question might arise in cases where the application to United States nationals, otherwise than by enforcement through the consular courts, of Moroccan laws which did not violate any treaty rights of the United States was in question. In such cases, declared the Court, the assent of the United States authorities was not required.

In its Judgment, the Court unanimously found that "the United States of America is not entitled to claim that the application to citizens of the United States of all laws and regulations in the French Zone of Morocco requires the assent of the Government of the United States, but that the consular courts of the United States may refuse to apply to United States citizens laws or regulations which have not been assented to by the Government of the United States."

The Court then took up that part of the Counter-Claim of the United States which related to the question of immunity from Moroccan taxes in general, and particularly from the consumption taxes provided by the Shereefian Dahir (Decree) of 28 February 1948. This Decree provided for the payment of consumption taxes on all goods, whether imported into Morocco or produced there.

The United States contended that its treaty rights in Morocco conferred upon United States nationals an immunity from taxes except those taxes specifically recognized and permitted by the treaties. Such immunity had been conferred on nationals of Great Britain and Spain by treaties between those countries and Morocco and the United States claimed that its nationals had the same immunity by virtue of the most-favoured-nation clauses in its treaties with Morocco.

The Court declared that when provisions granting fiscal immunity in treaties between Morocco and third States had been abrogated or renounced, these provisions could no longer be relied upon by virtue of a most-favoured-nation clause. This, it held, was the case with regard to the provision of the General Treaty between Great Britain and Morocco relating to tax immunity, which had been abrogated with the coming into force of the Franco-British Convention of 29 July 1937 Similarly, the effect of the Declaration made by France and Spain, of 7 March 1914, was an unconditional renunciation by Spain of all the rights and privileges arising out of the regime of capitulations in the French Zone, including the right of its nationals to immunity from taxes under its Treaty with Morocco of 1861. The right to tax immunity under that Treaty could therefore, the Court said, no longer be invoked by the United States by virtue of a most-favoured-nation clause.

The United States further contended that it had an independent claim to tax immunity by virtue of being a party to the Convention of Madrid and the Act of Algeciras. It contended that by these instruments a regime as to taxes was set up, which continued the tax immunity in favour of the nationals of foreign States, thereby confirming and incorporating this pre-existing regime. The United States held that this regime was still in force except for the States which had agreed to give it up.

The Court, however, expressed the opinion that the Madrid Convention did not confirm and incorporate the then existing principle of tax immunity. It merely presupposed the existence of this principle and curtailed it by exceptions in certain articles without modifying its legal basis. It did not provide a new and independent ground for any claim of tax immunity. Similar considerations, said the Court, applied to the Act of Algeciras, which further curtailed the regime of tax immunity by exceptions in certain articles. It did not provide any new and independent legal basis for exemption from taxes.

In its Judgment, the Court, by 6 votes to 5, rejected the submissions of the United States relating to exemption from taxes. It declared that no treaty provided any basis for the claim of the United States to fiscal immunity for its citizens. Nor could such an immunity, capitulatory in origin, be jusitfied by the effect of the most-favoured-nation clause, since no other State enjoyed it for the benefit of its nationals.

The remaining submissions of the United States under its Counter-Claim related to the consumption taxes imposed by the Decree of 28 February 1948, and to the valuation of imported goods. The United States contended that its citizens were exempt from paying consumption taxes. It also contended that it was a violation of the Act of Algeciras for the customs authorities to determine the value of imported merchandise for customs purposes by relying on the value of the imported merchandise on the local Moroccan market.

The Court, in its Judgment, by 7 votes to 4, rejected the United States submissions concerning the consumption taxes imposed by the Decree of 28 February 1948. As those taxes were payable on all goods, whether imported into Morocco or produced there, they were not within the classes of taxes described in a British-Moroccan Treaty of 1856, which was invoked by the United States by virtue of its most-favoured-nation clauses.

The Court, in its Judgment, by 6 votes to 5, found that in applying the Act of Algeciras customs authorities must take into account both the value of the merchandise in the country of origin and its value in the local Moroccan market. That Act laid down no strict rules for valuation of imported goods. A study of the practice since 1906, when the Act came into effect, and of the preparatory work of the Conference of Algeciras, which drew up the Act, led the Court to the view that the relevant article required flexible interpretation. The power of making the valuation, said the Court, rested with the Customs authorities, but "it is a power which must be exercised reasonably and in good faith".

2. Declaration of Judge Hsu Mo

Judge Hsu Mo appended a declaration to the Court's Judgment stating that, in his opinion, the United States was not entitled to exercise consular jurisdiction in cases involving the application to United States citizens of those provisions of the Act of Algeciras which carried certain sanctions for their enforcement. He argued that when consular jurisdiction in its full form ceased to exist in respect of all the signatory States to the Act of Algeciras, the basis for the application by the various consular tribunals of the measures of sanction provided in that Act disappeared, and the ordinary rules of international law came into play. Consequently, such sanctions should thenceforth be applied by the territorial courts, in the case of United States citizens as well as in the case of all other foreign nationals.

3. Joint Dissenting Opinion

A joint dissenting opinion, signed by Judges Hackworth, Badawi, Levi Carneiro and Sir Benegal Rau, was also appended to the Court's Judgment. The four Judges dissented from the Court on the conclusions relating to consular jurisdiction, fiscal immunity and the interpretation of the Act of Algeciras relating to the valuation of imported goods.

So far as the United States was concerned, none of the provisions of the Act of Algeciras, in the opinion of the four Judges, had been abrogated or renounced. They explained that the Act of Algeciras was a great multilateral convention directly binding upon Morocco and the United States as well as the other signatory Powers. Its status in regard to the old bilateral treaties, as an independent and superior Act, was formally expressed in its article 123. The Act of Algeciras adopted the system of full consular jurisdiction which had previously been acquired by all of its signatories, and even extended that jurisdiction. This adoption was not so much by express provision as by necessary implication. To give effect to the bare provisions of the Act, however, and to ignore this basic implication in respect of all other cases of the exercise of consular jurisdiction would result in curious anomalies. If the Act was to be maintained as a logical and coherent structure, the full consular system embedded in it—that is, consular jurisdiction in all cases involving United States nationals—must be recognized.

The Madrid Convention, in their opinion, was likewise still in force so far as the United States was concerned. The provisions of that Convention necessarily implied that any civil suits and prosecutions against the proteges of any signatory of the Convention would normally be tried by the consular courts of that Power; and if such was the position of United States proteges, who were Moroccan subjects, a fortiori it must be the position of United States nationals. At the date of the Madrid Convention, the signatory Powers, the four Judges stated, were entitled independently of the Convention to claim full consular jurisdiction for their nationals and therefore it was not necessary to mention this right separately in the Convention itself. But even where the external sources of the right had ceased, the right continued to flow from the express provisions which had been inserted in the Convention itself in respect of proteges.

The Court had rejected the contention of the United States, basing its claim to consular jurisdiction and other capitulatory rights in Morocco on "custom and usage". The rejection, they said, appeared to proceed on the ground that sufficient evidence had not been produced in support of the claim. The four Judges considered that the evidence available was sufficient. They cited examples to prove their contention, such as the fact that even after 1937 when, according to the French Government, the benefits of the capitulatory provisions of the Treaties of 1856 and 1861

were no longer available to the United States, the French Government had been transmitting Moroccan taxation and other laws to the United States Government in order to have them made applicable to United States nationals in the French Zone.

The four Judges did not consider as "accurate" the statement that the United States was now the only Power that had not renounced its capitulatory rights in Morocco. The renunciation by Great Britain in the Anglo-French Convention of 1937, they explained, was confined to the French Zone; so too was the renunciation by Spain in the Franco-Spanish Declaration of 1914. Neither of these renunciations, in their view, extended to the whole of Morocco which the United States still treated as a single country.

The four Judges concluded that the submission of the United States relating to its jurisdictional privileges must be accepted, even apart from the effect of the most-favoured-nation clauses in its Treaty of 1836 with Morocco.

On the question of fiscal immunity, the four Judges declared that the right to tax implied the right to take coercive measures in case of non-payment. It followed from what they said on the issue of consular jurisdiction, they argued, that no coercive measures could be taken against the person or property of nationals of the United States except with the aid of the consular courts of the United States, which, in the ultimate analysis, meant the assent of the United States.

The four Judges concluded that United States nationals were entitled to a general immunity from taxes save those specifically recognized by the Convention of Madrid, the Act of Algeciras and any other relevant treaty or agreement. They were consequently of the opinion that the consumption taxes provided for in the Decree of 28 February 1948 were wrongly levied on United States nationals.

In the view of the four Judges, in applying article 95 of the Act of Algeciras—relating to the valuation of imported goods—the only value to be taken into account was the value in the country of origin plus expenses incident to transportation to the custom house in Morocco.

D. THE QUESTION OF DEFINING AGGRESSION

At its sixth session, the General Assembly, in resolution 599(VI),[21] among other things, instructed the Secretary-General to submit to it, at its seventh session, a report in which the question of defining aggression would be thoroughly discussed in the light of the views expressed in the Sixth Committee at the sixth session of the Assembly and which would take into account the draft resolutions and amendments submitted concerning this question.

1. Report of the Secretary-General

In compliance with the resolution the Secretary-General submitted a report (A/2211) to the General Assembly. The first part of this report contained a history of the question of defining aggression; the second part consisted of a study of the general question of defining aggression and described the various schools of thought on the matter and the arguments they used.

The report found that despite the changes in the international situation and the replacement of the League of Nations by the United Nations, the problem of defining aggression remained fundamentally unchanged, at least in its theoretical aspect. The terms of the definitions of aggression currently proposed were largely the same as those proposed in the past and there was relatively little change in the arguments advanced in support of one or other school of thought. The report emphasized, however, that it would be wrong to believe that no more was needed than to repeat what had already been said, as international developments since the establishment of the United Nations gave new importance to and increased the complexity of the problem of aggression.

The report pointed out that those in favour of defining aggression emphasized that such a definition was not only possible but desirable. Those opposed to defining aggression maintained that aggression, by its very nature, was incapable of definition; they also felt that to define aggression would serve no useful purpose and above all would be dangerous.

From the point of view of form, the report distinguished between three categories of definitions: enumerative (analytical), general (synthetic) and combinations of the two.

The enumerative definitions gave a list of the acts regarded as acts of aggression. In most cases, the authors of these definitions regarded it as

[21] See Y.U.N., 1951, p. 840.

essential that the enumeration should be exhaustive, that is, that only the acts enumerated constituted acts of aggression. Some authors, however, proposed that the international organs should be empowered to treat as acts of aggression acts other than those enumerated in the definition.

The general definitions, instead of listing the acts of aggression, were couched in general terms which covered the entire class of cases to be included. It was left to the international organs to determine the scope of the terms of the definition when specific cases were brought before them.

The combined definitions contained, first, a definition in general terms and, second, a list, but a list which was not exhaustive but was intended merely to describe the principal forms of aggression.

2. General Discussion in the Sixth Committee

The Sixth Committee discussed the question of defining aggression at its 329th to 346th meetings from 19 November to 10 December 1952.

The main difference of opinion was between the representatives in favour of defining aggression and those opposing such a definition, at least for the present. Some representatives favoured a definition, provided that certain conditions were fulfilled, while others stressed the difficulties to be solved before adopting a definition. The form a definition should take was discussed and also the procedure to be followed for its adoption. Various representatives supported the idea of creating a special committee to study the question further and to present one or more draft definitions to the General Assembly.

The representatives who were, in general, in favour of a definition of aggression included those of Afghanistan, the Byelorussian SSR, Chile, China, Colombia, Cuba, Czechoslovakia, the Dominican Republic, Ecuador, Egypt, France, Indonesia, Iran, Mexico, Poland, Saudia Arabia, Syria, the Ukrainian SSR, the USSR and Yugoslavia. In their opinion such a definition was possible and desirable, as the General Assembly had recognized in resolution 599 (VI). The USSR representative, in particular, pointed out that a definition was already included in some treaties, as for instance in eleven treaties concluded between the USSR and various other States.

It was argued that the adoption of a definition would constitute a declaration to the world of what was meant by aggression, and the very existence of such a definition would be useful. It was essential that crimes condemned by law should be defined. A definition would further help all governments, in particular those which might be called upon to decide whether they were justified in exercising the right of individual or collective self-defence. It would also be of considerable assistance to the organs of the United Nations responsible for the maintenance of peace and the application of collective security. In the view of these representatives, it was necessary to formulate directives for such international organs as might be called upon to determine which party was guilty of aggression.

Although an analytical definition, it was remarked, could not list all cases of direct or indirect aggression, it was better to have a definition than to have none.

A definition, it was felt, was particularly needed in the present tense situation of the world. It would be a factor in discouraging potential aggressors. It would also serve as a guide to public opinion and would constitute a step forward in the development of international law. The fact that a definition had not been agreed upon was not a reason sufficient in itself to discourage further efforts.

Other representatives, in particular those of Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Greece, Haiti, India, Israel, Lebanon, Liberia, the Netherlands, Norway, New Zealand, Pakistan, Panama, Peru, Sweden, the Union of South Africa, the United Kingdom, the United States, Uruguay and Venezuela, on the other hand, considered that in view of the existing political situation of the world, it would be wiser not to attempt to formulate any definition of aggression at this time. There was not enough experience in applying rules concerning aggression to proceed with a codification of the law on the subject. A definition could be interpreted differently by Member States and therefore would not be effective, while at the same time it could be used in such a way as to defeat its purpose.

In any analytical definition, in the view of these representatives, there was always a danger of omitting some type of action which ought to be considered as aggression and, if a definition did not cover all possible acts of aggression, it would in fact constitute a declaration of impunity for the acts not included. A synthetic definition, on the other hand, could only be vague and imprecise or would merely reproduce what was already contained in the Charter.

In any case, it was very doubtful that a definition, if adopted, would prevent aggression. An aggressor could only be determined by the general impression created by its behaviour and policies. Some representatives, in particular the representative of Argentina, thought that the "animus aggressionis" was a subjective element, and therefore the determination that an act of aggression had been committed would have to be made primarily by the State victim of the aggression. This element, it was added, would not be taken into consideration if a definition was to be applied automatically.

Representatives opposing the adoption of a definition also contended that the concept of aggression changed with time; therefore, a rigid definition could serve no useful purpose and would not facilitate the task of the United Nations organs which had the responsibility under the Charter for determining the existence of acts of aggression and for taking measures against them. On the contrary, a definition of aggression would delay the action of such organs. Furthermore, the Charter provided adequate procedures for the determination of the aggressor by the Security Council and by the General Assembly.

The representative of Iraq stated that his delegation, in the belief that no definition would succeed in preventing aggression in the future, would not declare itself for or against definitions that might be proposed.

Other representatives, including, in particular, those of Thailand, Lebanon, Chile, Israel and Mexico, concluded that it was necessary to proceed with further studies on the question and not to show undue haste.

Certain representatives, including, among others, those of Afghanistan, Indonesia, Iran, Cuba, Chile and China, declared that they would favour the adoption of a definition only if it included cases of indirect aggression, and they mentioned the possibility of economic, cultural or ideological aggression. The representatives of Afghanistan, Cuba and Iran, in particular, stressed the importance of economic aggression as a form of indirect aggression. While all States were equal in law, they stated, there was no equality in the economic sphere and economically powerful States were thus able to exercise pressure which in fact amounted to aggression. In such cases there was certainly no direct attack, but the end in view was the same as that of any aggression: to force the victim to yield to the aggressor's will.

Some representatives, for example the representative of China, while in principle favouring the adoption of a definition, stressed the necessity of ensuring that a victim should never be prevented from exercising the right of self-defence in cases of direct aggression, or "reprisal" in cases of indirect aggression.

It was the view of the representatives of France, Sweden and the Union of South Africa, among others, that a definition should be linked with the development of international criminal law, in particular with the draft Code of Offences against the Peace and Security of Mankind and the creation of an international criminal jurisdiction.

The representatives of France, Greece, Israel and the Netherlands, among others, stressed the difficulties which had to be solved before a definition of aggression could be adopted. It would first be necessary, in their opinion, to ascertain whether a definition could be included within the framework of the Organization and to determine what effect it might have on the application of Articles 39 and 51 of the Charter.[22]

It was also stated, in particular by the Netherlands representative, that the new notion of indirect aggression raised a difficult problem as, although it could readily be contrasted with armed aggression, there was no common agreement on what it meant. Economic aggression, the representative of the United Kingdom emphasized, was a vague concept which was bound to involve the question of what measures constituted legitimate economic self-defence. Moreover, the representative of Bolivia pointed out, there was no economic equality between States and it would therefore be difficult to apply such a doctrine.

The representative of Argentina emphasized the relationship between aggression and intervention in the domestic affairs of other States, while other representatives, in particular the representative of Greece, stressed the relationship between aggression, self-defence and collective action by the United Nations.

The representative of the Netherlands cited the following specific questions to be studied in connexion with the definition of aggression: the meaning of aggression as referred to in the United Nations Charter, the Judgment of the Nürnberg Tribunal and the draft Code of Offences against the Peace and Security of Mankind; the purpose of the definition—whether it was to be used by politial or judicial organs; the relationship between aggression, self-defence and collective action by the United Nations; and the possible existence of other forms of ag-

[22] For text of Articles, see pp. 13 & 14.

gression besides those mentioned in the Charter and in the draft Code.

As to the kind of definition to be drafted, some representatives stressed the advantages of an analytical definition. The representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR, in particular, 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. The representative of the USSR explained that it was, of course, impossible for any definition to list every case of direct, indirect or concealed acts of force, just as it was impossible for any criminal code to list all the possible cases of murder, offences against the person and so forth. It was, however, sufficient to indicate the most widespread, typical and important cases. A definition which was otherwise satisfactory should not be rejected merely because it did not contain an exhaustive list of all the possible cases of aggression. It should be remembered, he said, that any a priori scientific definition would necessarily be less precise and less valuable than a definition based on experience.

The representative of Colombia likewise declared that the only definition warranted was an analytical one which, although not claiming to be exhaustive, would give examples and could be amended in the light of experience and in keeping with the development of international law. Such a definition, he said, would be an extension of the principles of the Charter.

The representative of El Salvador did not consider it possible to define aggression, but, he thought, the Sixth Committee could and should explain the "idea" or "concept" of aggression. Once the principle had been laid down, he said, a potential aggressor might not be deterred from his criminal action, but he would be subject to world-wide opprobrium. If, however, an all-embracing and fitting definition of aggression were to become possible in the future, the Salvadorean delegation would support it.

A number of representatives, including those of China, Afghanistan, Iran, Thailand, Egypt, Mexico, Saudi Arabia, Indonesia, Ecuador and Yugoslavia, declared themselves in favour of a combined method which would consist of a general formula followed by a list of the principal acts of aggression. It was suggested that such a list should not be restrictive, and that it should be stated that the Security Council and the General Assembly could determine the existence of aggression in cases other than those listed.

Different views were expressed during the debate concerning the procedure to be followed in adopting a definition. Some contended that it was necessary to amend the Charter for that purpose; others held that it was sufficient for the General Assembly to adopt a resolution defining aggression. A few representatives stressed the necessity of approval by a large majority of Members in order to make a definition legally binding.

The representative of Belgium stated that neither the General Assembly nor the Security Council had the power to adopt a definition of aggression binding either upon itself or upon the other organ, or upon Member States; such a binding effect could be obtained only by amending the Charter. In his opinion, it would be idle to attempt to work out an authoritative definition of aggression by amending the Charter, for such a method required ratification by two-thirds of the Member States, including all the permanent members of the Security Council. The representative of Liberia also felt that for a definition of aggression to be adopted it would be necessary to amend the Charter.

A definition of aggression adopted by the General Assembly, in the view of the representative of Mexico, could serve as a useful guide for the Security Council; if it became part of international law it would naturally be binding on the Security Council.

The representative of the Netherlands felt that the principal purpose of a definition was that it should serve as a guide for the competent organs of the United Nations. In his opinion, however, a General Assembly resolution containing such a definition would not be binding on those organs. A definition of that kind would admittedly contribute to the development of international law, but it would not create new rules of law which could be cited against the Security Council or the General Assembly.

The USSR representative, on the other hand, considered that a definition of aggression, like the definition of any other notion contained in the Charter, was in no way a general interpretation of the Charter. To define aggression was merely to describe its characteristics, to point out its constituent elements. And since the General Assembly was empowered, under the Charter, to consider the general principles of co-operation in the maintenance of international peace and security, it certainly had the power to consider the general principles relating to aggression. An amendment of the Charter was needed to modify the principles it expressed, to incorporate a new

principle or to effect a change in the powers it conferred upon the various organs of the United Nations. But the definition of aggression involved nothing of the sort, he argued.

The representative of France stated that a definition of aggression could not but have a strong repercussion on world public opinion. That was why it was essential for the definition to be acceptable to a large number of States, representing as large a part of world opinion and of effective political power as possible. It was also necessary for such a decision to be taken by a two-thirds majority vote of the General Assembly. The representative of Greece likewise felt that a definition of aggression would need the support of a substantial majority if it was to have any value.

Whatever the definition of aggression, it required acceptance by all the States Members of the United Nations, said the representative of Pakistan. Without such initial acceptance there was little hope of successful action in the face of a real test when the conduct of any nation or group of nations was called into question.

The representative of Iran suggested that a special committee should be created to study further the problems which had been raised and to present draft definitions to the General Assembly at a future session.

3. Draft Resolutions before the Sixth Committee

The following draft resolutions and amendments were submitted to the Sixth Committee.

a. USSR DRAFT RESOLUTION

A draft resolution[23] submitted by the USSR (A/C.6/L.264) in its operative part: (1) provided that the General Assembly should declare that in an international conflict that State should be declared the attacker which first committed one of a list of enumerated acts; (2) listed arguments and circumstances which could not be used as justifications for attack; and (3) described the rights of a State which was threatened by the mobilization or concentration by another State of considerable armed forces near its frontier.

At the 345th meeting of the Sixth Committee on 9 December 1952, the USSR representative stated that, while his delegation considered it necessary and possible at this stage to adopt a definition of aggression based on the generally accepted principles of international law, it was ready to support the proposal to establish a special committee. The USSR would not therefore press for a vote on its draft, bearing in mind also that the special committee would consider the definition of aggression contained in its draft resolution. The Chairman declared that he regarded this as a withdrawal of that draft resolution in conformity with the established procedure.

b. UNITED STATES MOTION

At the 336th meeting of the Committee on 26 November, the representative of the United States stated that he intended to submit at the end of the general debate a motion (A/C.6/L.266/Rev.1) to adjourn the debate on the item under discussion. Later, however, at the 342nd meeting on 5 December, the Chairman stated his understanding that the United States had decided not to submit the motion.

c. JOINT DRAFT RESOLUTION AND AMENDMENTS

A draft resolution (A/C.6/L.265), later revised (A/C.6/L.265/Rev.1) was presented jointly by Afghanistan, Bolivia, Chile, Cuba, the Dominican Republic, El Salvador, Iran, the Netherlands, Peru and Yugoslavia. The revised draft would state in its preamble that the discussions of the General Assembly and the International Law Commission had revealed, inter alia, the need for a detailed study of various problems concerning the question of defining aggression, including the connexion between a definition of aggression and, on the one hand, the maintenance of international peace and security, and on the other, the development of international criminal law. The operative part provided for the establishment of a special committee of fifteen members to meet at Headquarters in 1953, to submit to the General Assembly at its ninth session draft definitions of aggression or draft statements of the notion of aggression, and to study all the problems referred to in the preamble on the assumption of a definition being adopted by a resolution of the General Assembly.

Amendments to the joint draft resolution were submitted by Turkey (A/C.6/L.267), France (A/C.6/L.268 and Corr.), by Colombia, Egypt, Mexico and Syria jointly (A/C.6/L.269/Rev.1 and Rev.1/Corr.1), by Indonesia (A/C.6/L.270), by Poland (A/C.6/L.272) and by Czechoslovakia (A/C.6/L.275/Rev.1). In addition, sub-amendments to the joint amendment were submitted by Poland (A/C.6/273) and Yugoslavia (A/C.6/L274).

[23] The USSR draft resolution was identical to the one submitted in 1951; for text, see Y.U.N., 1951, p. 837.

The amendment by Turkey (A/C.6/L.267) proposed altering the first operative paragraph of the joint draft resolution so that members of the special committee would "be designated by the President of the General Assembly in consultation with the Chairman of the Sixth Committee". By a roll-call vote of 21 to 19, with 16 abstentions, the Committee rejected the words "by the President of the General Assembly in consultation with". As a result of this vote, no further vote was taken on the Turkish amendment.

The amendment by France (A/C.6/L.268 and Corr.1) proposed: (1) the deletion in the preamble of the joint draft of the reference to the need for a study of the connexion between a definition of aggression and the development of international criminal law; (2) the insertion of a new sub-paragraph in the preamble referring to the problems raised by the inclusion of a definition of aggression in the Code of Offences Against the Peace and Security of Mankind and by its application within the framework of international criminal jurisdiction; and (3) the replacement of the second operative paragraph by a request to the special committee to study and report on all the problems raised by the adoption of a definition of aggression under a resolution of the General Assembly. The first part of the amendment was adopted by 20 votes to 15, with 19 abstentions, and the second by 23 votes to 16, with 15 abstentions; the third part was rejected by a roll-call vote of 24 to 23, with 9 abstentions.

The joint amendment of Colombia, Egypt, Mexico and Syria (A/C.6/L.269/Rev.1 and Rev.1/Corr.1) proposed to delete the part of the preamble relating to the problems to be studied. It also proposed to amend the second operative paragraph to instruct the special committee:

(1) to submit to the General Assembly at its eighth session a number of draft definitions of aggression, one of which should include: (a) a synthetic definition, (b) a statement of cases of aggression, and (c) an enumeration of the circumstances which might not be invoked as justification for aggression; and

(2) to instruct the special committee to study in the light of the definitions it had drafted: (a) the connexion between a definition of aggression and, on the one hand, the maintenance of international peace and security, and, on the other, the development of international criminal law; and (b) the effect of a definition on the exercise of the jurisdiction of the various United Nations organs.

Drafting amendments to the joint amendment were proposed orally by the representatives of Syria and Mexico and were accepted by the sponsors.

The Yugoslav sub-amendment (A/C.6/L.274) to the joint amendment proposed to have the special committee furnish a "non-exhaustive enumeration" of cases of aggression instead of "statement" of cases of aggression. It was adopted by 33 votes to 11, with 9 abstentions.

The Polish sub-amendment (A/C.6/L.273) proposed: (1) to have the special committee submit a draft definition rather than a number of draft definitions; (2) to delete the reference to a synthetic definition of aggression; (3) to have the committee furnish "an enumeration" rather than "a statement" of the cases of aggression; and (4) to have it enumerate the circumstances which might not be invoked as justification for "an attack (aggression) of one state against another", rather than simply as "justification for aggression".

The first, second and fourth parts of this sub-amendment were rejected by 35 votes to 5, with 11 abstentions; 35 votes to 6, with 13 abstentions; and 32 votes to 6, with 15 abstentions, respectively; the third part was not voted upon as a consequence of the adoption of the Yugoslav sub-amendment.

The first part of the joint amendment (providing for the deletion of the part of the preamble relating to the problems to be studied) was rejected by 30 votes to 16, with 8 abstentions.

Following the rejection, in a separate vote of 30 to 16, with 5 abstentions, of the word "eighth" (calling for the submission of definitions to the eighth session of the Assembly), the part of the joint amendment calling upon the proposed special committee to submit to the Assembly a number of draft definitions of aggression was adopted by 26 votes to 21, with 7 abstentions. The clause stating that one of the definitions should include a synthetic definition was rejected by 25 votes to 20, with 8 abstentions, and that clause providing for the inclusion of an enumeration of the circumstances which might not be invoked as justification for aggression—as amended orally by the sponsors—was rejected by 30 votes to 15, with 10 abstentions. The part of the amendment referring to the submission of definitions—as amended by the Yugoslav sub-amendment—was rejected, as a whole, by 26 votes to 23, with 5 abstentions. A proposal to take a new vote by roll-call on this sub-paragraph was rejected by 26 votes to 22, with 6 abstentions.

The Committee then decided, by 30 votes to 10, with 10 abstentions, not to take any further votes on the joint amendment.

The Indonesian amendment (A/C.6/L.270) proposed to add to the preamble of the joint draft resolution a paragraph stating that continued and joint efforts should be made to formulate a generally acceptable definition of aggression with a view to promoting international peace and security and to developing international law. The word "generally", which was separately voted upon, was adopted by 24 votes to 16, with 14 abstentions. The amendment as a whole was adopted by 22 votes to 15, with 18 abstentions.

The Polish amendment (A/C.6/L.272) to the joint draft proposed: (1) to have the special committee submit definitions to the eighth rather than to the ninth session of the Assembly; (2) to have it submit a draft definition rather than draft definitions; and (3) to delete the statement that it might alternatively submit "draft statements of the notion of aggression". The first part was rejected by 31 votes to 13, with 7 abstentions, the second by 32 votes to 7, with 12 abstentions, and the third by 23 votes to 13, with 4 abstentions.

The Czechoslovak amendment (A/C.6/-L275/Rev.1) proposed to increase the membership of the special committee from fifteen to eighteen, and to list the States which should be members. The proposal to increase the membership was rejected by 29 votes to 19, with 7 abstentions. As a result of this vote no further vote was taken on the Czechoslovak amendment.

The Sixth Committee adopted the joint draft resolution, as amended, in paragraph-by-paragraph votes and then as a whole:

The second paragraph of the preamble, as amended, was adopted by a roll-call vote of 35 to 8, with 12 abstentions.

The phrase "on the assumption of a definition being adopted by a resolution of the General Assembly" at the end of sub-paragraph 2 (b) of the operative part (see below), which was voted upon separately, was adopted by a roll-call vote of 20 to 15, with 19 abstentions.

Sub-paragraph 2 (b) of the operative part was adopted, as a whole, by a roll-call vote of 26 to 6, with 22 abstentions.

Paragraph 3 of the operative part was adopted by 40 votes to none, with 13 abstentions.

The joint draft resolution as a whole, as amended, was adopted by a roll-call vote of 36 to 9, with 9 abstentions.

At the 346th meeting of the Committee on 10 December, representatives of Greece, Burma, Sweden and the Philippines gave explanations of their votes, and at the 347th meeting on 11 December, the Chairman announced the proposed composition of the special committee.[24]

4. Resolution Adopted by the General Assembly

The General Assembly, at its 408th plenary meeting on 20 December 1952, considered the Sixth Committee's draft resolution (A/2322 and Corr.1) and an amendment (A/L.136) to it proposed by Poland.

The Polish amendment, which would have the special committee report to the Assembly at its eighth rather than ninth session, was rejected by 31 votes to 11, with 5 abstentions.

Separate votes on three parts of the draft resolution were then taken. Paragraph 2 of the preamble, beginning with the words "Considering that the discussion of the question" and ending with the words "any other problem which might be raised by a definition of aggression", was adopted by 28 votes to 8, with 12 abstentions.

Paragraph 2 (a) (see below) was adopted by 29 votes to 8, with 10 abstentions.

Paragraph 2 (b) was adopted by 23 votes to 7, with 20 abstentions.

The resolution as a whole was adopted by 37 votes to 2, with 13 abstentions.

Representatives of Bolivia, the Byelorussian SSR, Colombia, Czechoslovakia, Pakistan, Poland, Syria, the Ukrainian SSR, the USSR and the United Kingdom explained their votes.

Representatives of Pakistan and the United Kingdom, who had abstained in the vote, did not consider it wise or useful at present to define aggression. While expressing the opinion that a definition of aggression was possible in the future, the representative of Pakistan, in view of the sharp differences of opinion expressed, felt that the present time was not propitious for any attempt to define aggression. Although the representative of the United Kingdom in the Sixth Committee had voted against the resolution just adopted, he had abstained, he explained, because his country was willing to co-operate to the best of its ability and resources in studying the question, if a majority of the Assembly so wished.

[24] As India declared itself unable to serve on the committee, it was replaced by Pakistan. For membership of committee, see p. 33.

The representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR declared that they were in favour of defining aggression—the USSR first proposing its definition of aggression as early as 1933 in the League of Nations—because they felt that the adoption of a definition of aggression would be an important step in strengthening the peace and security of nations. While realizing that the mere existence of a definition would not in itself prevent aggression, it would, in their opinion, constitute a sharp warning to aggressors. A definition, they said, would serve as an effective instrument of the organs of the United Nations, assisting them to fulfil the tasks entrusted to them by the Charter for the maintenance of peace.

They went on to state that the majority of delegations, however, while recognizing the desirability and possibility of a definition of aggression, expressed a desire that studies and work which would ultimately lead to the formulation of a definition should be continued. In a spirit of co-operation, they had voted for the draft resolution, despite the fact that the Polish amendment was rejected and even though certain parts of the draft, in their opinion, were not favourable.

For example, they saw no reason to postpone defining aggression for two years. The special committee, in their opinion, should not be asked to do anything but deal specifically and directly with the question of defining aggression; it should not be asked to deal with the problems raised by the inclusion of a definition of aggressison in the Code of Offences Against the Peace and Security of Mankind, nor should it be asked to deal with any other problem which might be raised by a definition of aggression.

The representative of Syria felt that a definition of aggression was necessary in order to lessen international tension and to develop international law and international penal justice.

The representative of Colombia explained that he had voted in favour of the draft resolution on the understanding that it would contribute, through the establishment of a special committee, to the task of deciding whether a definition of aggression was in the interests of international peace. The special committee which had just been established, the representative of Bolivia observed, was to study the problem as a whole, not merely from one country's point of view.

The resolution adopted by the Assembly (688 (VII)) read:

"The General Assembly,

"Having regard to its resolution 599(VI) of 31 January 1952,

"Considering that the discussion of the question of defining aggression at the sixth and seventh sessions of the General Assembly and in the International Law Commission has revealed the complexity of this question and the need for a detailed study of:

" (a) The various forms of aggression,

"(b) The connexion between a definition of aggression and the maintenance of international peace and security,

"(c) The problems raised by the inclusion of a definition of aggression in the Code of Offences against the Peace and Security of Mankind and by its application within the framework of international criminal jurisdiction,

" (d) The effect of a definition of aggression on the exercise of the jurisdiction of the various organs of the United Nations,

"(e) Any other problem which might be raised by a definition of aggression,

"Considering that continued and joint efforts shall be made to formulate a generally acceptable definition of aggression, with a view to promoting international peace and security and to developing international law,

"1. Decides to establish a Special Committee of fifteen members, each representing one of the following Member States: Bolivia, Brazil, China, Dominican Republic, France, Iran, Mexico, Netherlands, Norway, Pakistan, Poland, Syria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, to meet at the Headquarters of the United Nations in 1953;

"2. Requests the said Special Committee:

"(a) To submit to the General Assembly at its ninth session draft definitions of aggression or draft statements of the notion of aggression;

"(b) To study all the problems referred to above on the assumption of a definition being adopted by a resolution of the General Assembly;

"3. Requests the Secretary-General to communicate the Special Committee's report to Member States for their comments and to place the question on the provisional agenda of the ninth session of the General Assembly."

E. THE INTERNATIONAL LAW COMMISSION

1. Report of the Commission's Fourth Session

The International Law Commission (ILC) held its fourth session at Geneva, Switzerland, from 4 June to 8 August 1952. It elected for a term of one year the following officers: Chairman—Ricardo J. Alfaro; First Vice-Chairman—J. P. A. François; Second Vice-Chairman — Gilberto Amado; Rapporteur—Jean Spiropoulos.

The Commission took note of the casual vacancies in its membership arising from the resignation of James Leslie Brierly, Vladimir M. Koretsky and Sir Benegal N. Rau. It elected F. I. Kozhevnikov (USSR), H. Lauterpacht (United Kingdom) and Radhabinod Pal (India) to fill these vacancies.

a. ARBITRAL PROCEDURE

A Second Report on Arbitration Procedure (A/CN.4/46), presented by the special rapporteur on the subject, Georges Scelle, to the Commission's third session was considered at the fourth session, as well as a Supplementary Note to the Second Report on Arbitration Procedure (A/CN.4/57) presented by Mr. Scelle. The Commission adopted a "Draft on Arbitral Procedure", consisting of 32 articles, with comments. In accordance with its Statute, it decided to transmit this draft, through the Secretary-General, to governments for comments. The Commission would then draw up a final draft on arbitral procedure at its next session and submit it to the General Assembly. It was also decided that the final draft should be accompanied by a detailed commentary giving an account and an analysis of the relevant practice, including arbitration treaties and compromissory clauses, arbitral decisions and the literature on the subject. That commentary, to be prepared by the Secretariat under the direction of and in consultation with a special rapporteur, was to be available to the Commission at its next session.

In its report the Commission pointed out that, while bearing in mind the distinction between the codification of existing practice and the development of international law on the subject, it had had to take both methods into account in preparing its draft. It considered that it had codified existing practice since it based the draft on the principle that arbitration is a method of settling disputes between States in accordance with law, as distinguished from the political and diplomatic procedures of mediation and conciliation.

On the other hand, in order to render the arbitration procedures as effective as possible, it had sought to introduce new methods for solving difficulties with respect to the drafting of a compromis and the constitution of an arbitral tribunal. Similarly, it had tried to safeguard the effectiveness of the process of arbitration and the independent standing of arbitral tribunals in their capacity as international organs, by provisions relating to the continuity of arbitral tribunals once constituted. In the interests of the effectiveness of the arbitration process it had elaborated provisions based on the generally accepted principle that the arbitral tribunal has the legal power to determine its jurisdiction in conformity with the instrument creating it and to decide on its procedure. While adopting the principle that arbitral awards are final and without appeal, the Commission also had included in the draft articles concerning revision and annulment of the award, limiting to three the causes justifying annulment.

The Commission stated that it had tried to strike a balance between the consideration that the parties must be in a position to adapt the arbitration procedure to the requirements of a particular dispute and the necessity, arising from the character of arbitration as a judicial process distinct from methods of political adjustment and conciliation, that some provisions, such as those relating to revision and annulment, must be mandatory.

During the discussions two points of view were expressed: (1) that the agreement of the parties was essential not only in the original obligation to have recourse to arbitration but also at every stage of the process; and (2) that provision must be made to safeguard the efficacy of the obligation to arbitrate when the subsequent attitude of the parties threatened to render nugatory the undertaking to arbitrate. The second conception had prevailed in the draft.

The articles of the Draft on Arbitral Procedure read:

Chapter I

The Undertaking to Arbitrate

Article 1

"1. An undertaking to have recourse to arbitration may apply to existing disputes or to disputes arising in the future.

"2. The undertaking shall result from a written instrument.

"3. The undertaking constitutes a legal obligation which must be carried out in good faith, whatever the nature of the agreement from which it results.

Article 2

"1. If, prior to the constitution of an arbitral tribunal, the parties to an undertaking to arbitrate disagree as to the existence of a dispute, or as to whether an existing dispute is within the scope of the obligation to have recourse to arbitration, the question may, in the absence of agreement between the parties upon another procedure, be brought before the International Court of Justice on an application by either party. The judgment rendered by the Court shall be final.

"2. In its judgment on the question, the Court may prescribe the provisional measures to be taken for the protection of the respective interests of the parties pending the constitution of the arbitral tribunal.

Chapter II

Constitution of the Tribunal

Article 3

"1. Within three months from the date of the request made for the submission of a dispute to arbitration, or from the date of the decision of the International Court of Justice in conformity with article 2, paragraph 1, the parties to an undertaking to arbitrate shall constitute an arbitral tribunal by mutual agreement. This may be done either in the compromis referred to in article 9, or in a special instrument.

"2. If the appointment of the members of the tribunal is not made by the parties within the period of three months as provided in the preceding paragraph, the parties shall request a third State to make the necessary appointments.

"3. If the parties are unable to agree on the selection of the third State within three months, each party shall designate a State, and the necessary appointments shall be made by the two States thus designated.

"4. If either party fails to designate a State under the preceding paragraph within three months, or if the governments of the two States designated fail to reach an agreement within three months, the necessary appointments shall be made by the President of the International Court of Justice at the request of either party. If the President is prevented from acting or is a national of one of the parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the parties, the appointments shall be made by the oldest member of the Court who is not a national of either party.

Article 4

"1. The parties having recourse to arbitration may act in whatever manner they deem most appropriate; they may refer the dispute to a tribunal consisting of a sole arbitrator or of two or more arbitrators as they think fit.

"2. With due regard to the circumstances of the case, however, the sole arbitrator or the arbitrators should be chosen from among persons of recognized competence in international law.

Article 5

"1. Once the tribunal has been constituted, its composition shall remain unchanged until the award has been rendered.

"2. A party may, however, replace an arbitrator appointed by it, provided that the tribunal has not yet begun its proceedings. An arbitrator may not be replaced during the proceedings before the tribunal except by agreement between the parties.

Article 6

"Should a vacancy occur for reasons beyond the control of the parties, it shall be filled by the method laid down for the original appointment.

Article 7

"1. Once the proceedings before the tribunal have begun, an arbitrator may not withdraw, or be withdrawn by the government which has appointed him, save in exceptional cases and with the consent of the other members of the tribunal.

"2. If, for any reason such as previous participation in the case, a member of the tribunal considers that he cannot take part in the proceedings, or if any doubt arises in this connexion within the tribunal, it may decide, on the unanimous vote of the other members, to request his replacement.

"3. Should the withdrawal take place, the remaining members shall have power, upon the request of one of the parties, to continue the proceedings and render the award.

Article 8

"1. A party may propose the disqualification of one of the arbitrators on account of a fact arising subsequently to the constitution of the tribunal; it may propose the disqualification of one of the arbitrators on account of a fact arising prior to the constitution of the tribunal only if it can show that it was unaware of the fact or has been a victim of fraud. In either case, the decision shall be taken by the other members of the tribunal.

"2. In the case of a sole arbitrator, the decision shall rest with the International Court of Justice.

Chapter III

The Compromis

Article 9

"Unless there are prior provisions on arbitration which suffice for the purpose, the parties having recourse to arbitration shall conclude a compromis which shall specify, in particular:

(a) The subject of the dispute, defined as precisely and as clearly as possible;

(b) The selection of arbitrators, in case the tribunal has not already been constituted;

(c) The appointment of agents and counsel;

(d) The procedure to be followed, or provisions for the tribunal to establish its own procedure;

(e) Without prejudice to the provisions of article 7, paragraph 3, if the tribunal has several members, the number of members constituting a quorum for the conduct of the proceedings;

(f) Without prejudice to the provisions of article 7, paragraph 3, the number of members constituting the majority required for an award of the tribunal;

(g) The law to be applied by the tribunal and the power, if any, to adjudicate ex aequo et bono;

(h) The time limit within which the award shall be rendered; the form of the award, any power of the tribunal to make recommendations to the parties; and any special provisions concerning the procedure for revision of the award and other legal remedies;

(i) The place where the tribunal shall meet, and the date of its first meeting;

(j) The language to be employed in the proceedings before the tribunal;

(k) The manner in which the costs and expenses shall be divided.

Article 10

"1. If the parties cannot agree on the contents of the compromis, they may request the good offices of a third State which shall appoint a person, or a body of persons, to draw up the compromis.

"2. If the parties are bound by an undertaking to arbitrate, and when the tribunal has been constituted, then, in the event of the failure of the above procedure for drawing up the compromis, the tribunal shall draw up the compromis within a reasonable time which it shall itself determine.

Chapter IV

Powers of the Tribunal

Article 11

"The tribunal, as the judge of its own "competence, possesses the widest powers to intrepret the compromis.

Article 12

"1. In the absence of any agreement between the parties concerning the law to be applied, the tribunal shall be guided by Article 38, paragraph 1, of the Statute of the International Court of Justice.

"2. The tribunal may not bring in a finding of non liquet on the ground of the silence or obscurity of international law or of the compromis.

Article 13

"In the absence of any agreement between the parties concerning the procedure of the tribunal, the tribunal shall be competent to formulate its rules of procedure.

Article 14

"The parties are equal in any proceedings before the tribunal.

Article 15

"1. The tribunal shall be the judge of the admissibility and the weight of the evidence presented to it.

"2. The parties shall co-operate with one another and with the tribunal in the production of evidence and shall comply with the measures ordered by the tribunal for this purpose. The tribunal shall take note of the failure of any party to comply with its obligations under this paragraph.

"3. The tribunal shall have the power at any stage of the proceedings to call for such evidence as it may deem necessary.

"4. At the request of the parties, the tribunal may visit the scene with which the case before it is connected.

Article 16

"For the purpose of securing a complete settlement of the dispute, the tribunal shall decide on any counter-claim or additional or incidental claims arising out of the subject-matter of the dispute.

Article 17

"The tribunal, or in case of urgency its president subject to confirmation by the tribunal, shall have the power to prescribe, if it considers that circumstances so require, any provisional measures to be taken for the protection of the respective interests of the parties.

Article 18

"When, subject to the control of the tribunal, the agents and counsel have completed their presentation of the case, the proceedings shall be formally declared closed.

Article 19

"1. The deliberations of the tribunal, which should be attended by all of its members, shall remain secret.

"2. All questions shall be decided by a majority of the tribunal.

Article 20

"1. Whenever one of the parties does not appear before the tribunal, or fails to defend its case, the other party may call upon the tribunal to decide in favour of its claim.

"2. In such case, the tribunal may give an award if it is satisfied that it has jurisdiction and that the claim is well-founded in fact and in law.

Article 21

"1. Discontinuance of proceedings by the claimant may not be accepted by the tribunal without the respondent's consent.

"2. If the case is discontinued by agreement between the parties, the tribunal shall take note of the fact.

Article 22

"The tribunal may take note of the conclusion of a settlement reached by the parties. At the request of the parties, it may embody the settlement in an award.

Chapter V

The Award

Article 23

"1. The award shall be rendered within the period fixed by the compromis, unless the parties consent to an extension of that period.

"2. In case of disagreement between the parties on such an extension of the period, the tribunal may refrain from rendering an award.

Article 24

"1. The award shall be drawn up in writing and communicated to the parties. It shall be read in open court, the agents of the parties being present or duly summoned to appear.

"2. The award shall include a full statement of reasons.

"3. The award shall contain the names of the arbitrators and shall be signed by the president and the registrar or secretary of the tribunal.

Article 25

"Subject to any contrary provision in the compromis, any member of the tribunal may attach his separate or dissenting opinion to the award.

Article 26

"As long as the time limit set in the compromis has not expired, the tribunal shall be entitled to rectify mere typographical errors or mistakes in calculation in the award.

Article 27

"The award is binding upon the parties when it is rendered, and it must be carried out in good faith.

Article 28

"1. Unless the parties agree otherwise, any dispute between the parties as to the meaning and scope of the award may, at the request of either party, be submitted to the tribunal which rendered the award.

"2. If, for any reason, it is impossible to submit the dispute to the tribunal which rendered the award, and if the parties have not agreed otherwise, the dispute may be referred to the International Court of Justice at the request of either party.

Chapter VI

Revision

Article 29

"An application for the revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered that fact was unknown to the tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision.

"2. The application for revision must be made within six months of the discovery of the new fact.

"3. The proceedings for revision shall be opened by a judgment of the tribunal recording the existence of such a new fact and ruling upon the admissibility of the application. The tribunal shall then proceed to revise the award.

"4. The application for revision shall be made to the tribunal which rendered the award. If, for any reason, it is not possible to address the application to that tribunal, the application may, unless the parties agree otherwise, be made to the International Court of Justice.

Chapter VII

Annulment of the Award

Article 30

"The validity of an award may be challenged by either party on one or more of the following grounds:

(a) That the tribunal has exceeded its powers;

(b) That there was corruption on the part of a member of the tribunal;

(c) That there has been a serious departure from a fundamental rule of procedure.

Article 31

"1. The International Court of Justice shall be competent, on the application of either party, to declare the nullity of the award on any of the grounds set out in the preceding article.

"2. In cases covered by paragraphs (a) and (c) of article 30, the application must be made within sixty days of the rendering of the award.

"3. The application shall stay execution unless otherwise decided by the Court.

Article 32

"If the award is declared invalid by the International Court of Justice, the dispute shall be submitted to a new tribunal to be constituted by agreement of the parties, or, failing such agreement, in the manner provided in article 3."

b. NATIONALITY INCLUDING STATELESSNESS

As regards the topic of nationality including statelessness, the special rapporteur on the subject, Manley O. Hudson, appointed by the Commission at its third session, submitted a report (A/CN.4/50) to the Commission's fourth session. Several documents prepared by the Secretariat were also made available to the Commission, including a consolidated report entitled The Problem of Statelessness (A/CN.4/56), Nationality of Married Women (E/CN.6/126/Rev.1 and E/CN.6/129/Rev.1) and A Study of Statelessness (E/1112 and Add.l).

In his report, the special rapporteur made a survey of the subject of nationality in general, and presented two working papers, one containing a draft of a convention on nationality of married persons, following closely the terms proposed by the Commission on the Status of Women and approved by the Economic and Social Council. The special rapporteur suggested that the ILC should agree to the request to draft a convention embodying those terms without expressing its own views. The Commission, however, did not agree with this view, and considered that the question of nationality of married women could only be considered as an integral part of the whole subject of nationality, including statelessness. The other working paper dealt with statelessness, listing nineteen points for discussion. The Commission considered that draft conventions on the elimination of statelessness and on the reduction of future statelessness should be prepared for its next session. To guide the special rapporteur as to the content of the proposed draft conventions it gave general directions, to which, however, three members of the Commission were opposed.

The Commission decided on 25 July 1952 to invite Ivan S. Kerno to serve, after his resignation from the Secretariat of the United Nations,[25] as an individual expert of the Commission to work on the question of elimination or reduction of statelessness. It elected Roberto Cordova to succeed Manley O. Hudson who resigned on 1 August as special rapporteur on the topic of nationality including statelessness.

c. OTHER DECISIONS

J. P. A. François, special rapporteur on the regime of the territorial sea, appointed at the Commission's third session, submitted a report (A/CN.4/53) to the fourth session containing a

[25] Dr. Kerno's resignation as Assistant Secretary-General for Legal Affairs became effective on his attaining the age of 61 on 26 September 1952.

"Draft Regulation", consisting of 23 articles together with comments. The Commission decided, as suggested by the special rapporteur, to use the term "territorial sea" instead of "territorial waters" since the latter expression had sometimes been taken to include inland waters. It also discussed the question of the juridical status of the territorial sea, of its bed and subsoil, and of the air space above it; the breadth of the territorial sea; base line; and bays. It decided that governments should be asked to furnish the Commission with information on their practice on the delimitation of the territorial sea of two adjacent States, and that experts should be consulted on technical aspects of the problem. It asked the special rapporteur to present to its fifth session a further report with a revised draft and commentary.

The Commission had before it the third report (A/CN.4/51) of J. P. A. François, the special rapporteur, on the regime of the high seas as well as comments from governments (A/CN.4/55 and Add. 1 to 4) on its "Draft Articles on the Continental Shelf and Related Subjects". It deferred consideration of the rapporteur's report until its fifth session. It invited governments which had not yet submitted comments on the "Draft Articles" to do so, and asked the special rapporteur to study replies from governments and other comments, and to submit to the Commission's fifth session a final report on the continental shelf and related subjects, so that the Commission might adopt a report for submission to the General Assembly.

Following the resignation of James L. Brierly, who had been special rapporteur on the law of treaties, the Commission did not discuss his "Third Report on the Law of Treaties" (A/CN.4/54) which was placed before it at its fourth session. It elected H. Lauterpacht to succeed Mr. Brierly, and asked him to take into account the work that had been done by the Commission, as well as that by Mr. Brierly, on this subject and to present a report to the Commission's fifth session.

2. Resolution Adopted by the General Assembly

At its seventh session, the General Assembly referred the report of the International Law Commission (A/2163) to the Sixth Committee which considered it at its 312th meeting on 28 October.

At the outset of the Committee's consideration of the item, the representative of Iran suggested that, since the report of the International Law Commission was in the nature of a progress report submitted to the General Assembly for its information, the Sixth Committee should not discuss questions on which the Commission had not yet completed its action. He accordingly submitted a draft resolution (A/C.6/L.241) by which the General Assembly, pending its consideration of the questions dealt with in the report of the Commission, would note the progress of the Commission's work on those questions.

The representative of Peru considered that the Committee should discuss the substance of the report. He stated that some of the questions dealt with in it were controversial and it might prove helpful to the Commission to have the comments of representatives on some of those points.

Other representatives, on the other hand, including those of Canada, the Dominican Republic, Egypt, Pakistan, Panama, Sweden, the United Kingdom and Yugoslavia, did not think it appropriate to discuss the substance of the report, since it contained no finished work for the Assembly's consideration.

The representative of Iran accepted an oral amendment by El Salvador to add the words "in due course" after the words "pending its consideration". The representative of El Salvador explained that this was intended to convey the idea that the General Assembly would, in time, consider the questions dealt with in the Commission's report.

The representative of Syria proposed orally that a clause be added by which the Assembly would note the decisions taken by the Commission during its fourth session. He withdrew the proposal in favour of a Brazilian oral amendment according to which the Assembly would take note of the report. The Brazilian amendment was accepted by the representative of Iran.

The amended Iranian draft resolution was adopted by 42 votes to none, with 7 abstentions (A/2248). It was adopted by the General Assembly at its 391st plenary meeting on 6 November" 1952 without objection or discussion as resolution 683 (VII).

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

1. Report by the Secretary-General

In accordance with the General Assembly's resolution 602 (VI)[26] of 1 February 1952 on the question of ways and means for making the evidence of customary international law more readily available, the Secretary-General submitted a report (A/2170) to the seventh session of the Assembly containing detailed plans on the form, contents and budgetary implications in regard to the possible publication of: (1) a United Nations juridical yearbook, (2) a consolidated index to the League of Nations Treaty Series, (3) a list of treaty collections supplementary to those already existing, and (4) a volume containing a repertoire of the practice of the Security Council.

The Secretary-General, in his report, expressed doubts as to whether the usefulness of a juridical yearbook would be sufficient to justify the expense and labour involved. The collection of the material to be included would require the highest technical skill, he said, and would be made more difficult by the degree of completeness and accuracy which would be expected of an official United Nations publication. Moreover, it would be difficult to avoid duplication with existing publications, such as the Legislative Series or the Reports of International Arbitral Awards.

With respect to the League of Nations Treaty Series, the Secretary-General stated that the work of preparation of a consolidated index to the 205 volumes could not be accomplished with the present personnel. The cost of two volumes of consolidated index covering all three sections of the nine existing index volumes of the League of Nations Treaty Series was estimated at $69,200 (gross); the cost of one volume containing the English and French version of a consolidation of the alphabetical part only of the nine index volumes was estimated at $62,400 (gross).

A list of treaty collections, also, it was stated, would not necessitate fresh appropriations for personnel but could be compiled by the existing staff. It was estimated that a United Nations list would be approximately 400 pages and an edition of 2,200 copies (in English and French) would cost $2,900. It was estimated that revenue from the sale of such a list would be $1,040.

A volume containing a repertoire of the practice of the Security Council based on the Official Records through December 1951, the Secretary-General estimated, would probably not exceed 500 pages, and would be available by the end of 1953. On this assumption, the cost of printing 2,100 copies in English and 750 copies in French would not exceed $11,150 on the basis of current prices. If the methods outlined in the report were accepted, the Secretary-General envisaged that no additional personnel would be required to carry out the work.

2. Consideration by the General Assembly at its Seventh Session

The Secretary-General's report was considered at the Assembly's seventh session at the 317th to 320th meetings of the Sixth Committee from 3 to 5 November 1952.

It was generally agreed that all the four publications envisaged in the Assembly resolution and surveyed in the report of the Secretary-General had considerable intrinsic usefulness. In view, however, of budgetary and other practical considerations the Sixth Committee could take decisions only by weighing their relative value against the estimated costs given in the report. The following were some of the points raised with respect to each of the four proposed publications.

Publication of a consolidated index to the League of Nations Treaty Series—It was generally agreed that, since there existed nine index volumes to the League of Nations Treaty Series, and in view of the cost involved as estimated in the report of the Secretary-General, the publication of a consolidated index should not be undertaken for the time being.

Publication of a list of treaty collections—Members of the Sixth Committee were agreed that the publication of a list of treaty collections would be of great value, not only as evidence of customary international law but also as likely to assist the work of the United Nations. The cost involved, as estimated by the Secretary-General in his report, they emphasized, would be relatively small.

The representative of Israel noted, however, that the Secretary-General's report was based on the assumption that the Manual of Collections of Treaties and of Collections relating to Treaties by Denys P. Myers (1922) was readily available.

[26] See Y.U.N., 1951, p. 851.

In actual fact, he pointed out, the Manual was out of print and it was extremely difficult to obtain a copy. It was therefore useless to suggest the publication of a supplement to a manual which was not itself available. In any event, the Manual prepared by Myers did not cover treaties exclusively; it contained a great deal of material which was of more use to the scientific researcher than to the legal practitioner. Some of the collections it listed were of purely historical interest. He therefore suggested that instead of publishing a supplement to Myers' Manual, the Secretariat should publish a new list omitting the material contained in the work by Myers which was not strictly required by the legal practitioner, and adding any new collections issued since 1922.

Publication of a repertoire of the practice of the Security Council—Most of the representatives participating in the discussion supported the publication of such a répertoire on the grounds of its practical usefulness and of the low cost involved. It was pointed out that such a répertoire would be of great value to Member States as well as to students and publicists of international law, and it would be very useful if a conference were called to review the United Nations Charter in 1955.

Some representatives expressed the opinion that it also would be useful eventually to have a répertoire of the practice of other organs of the United Nations. In this connexion, the Committee heard the representative of the Secretary-General who stated that the proposed répertoire of the practice of the Security Council would, of course, cover only a limited part of the work of the United Nations. If the General Assembly decided that that part was required first, the efforts of the Secretariat could be concentrated upon it without prejudice to the other work, but the combined results would in due course be made available to the General Assembly.

Publication of a United Nations juridical yearbook—Most of the discussion in the Sixth Committee centred around the proposal to publish a United Nations juridical yearbook.

Some representatives, including those of Afghanistan, Bolivia, Colombia, Cuba, the Dominican Republic, Ecuador, El Salvador, Egypt, Haiti, Honduras, Iran, Israel, Liberia, Pakistan, Panama and Yugoslavia, who were in favour of this publication, considered its intrinsic value as being worth the expenditure it would entail as estimated in the Secretary-General's report. It was emphasized that such a publication would provide a valuable means of following legal developments in the world and would form a link between theory and practice, thus exerting a favourable influence on legal decisions taken in the United Nations. The impact of the United Nations on international law and certain far-reaching developments in recent years, which greatly extended the applicability of international law, consequent upon the emergence of a number of independent States and the establishment of various intergovernmental organizations, were said to render the publication of a United Nations juridical yearbook an urgent necessity. In the view of some representatives, in particular those of Ecuador, Egypt and Honduras, such a publication would be especially useful in countries which do not at present possess libraries well stocked with material on international law.

On the other hand, some representatives, including those of Argentina, Denmark, Poland and the USSR, pointed to the difficulties inherent in the publication of a United Nations juridical yearbook. To be comprehensive, they said, it would in part duplicate existing publications, such as the United Nations Legislative Series, the Yearbook on Human Rights, the Yearbook of the International Court of Justice, the Yearbook of the United Nations and the Annual Digest and Reports of Public International Law Cases edited by Professor H. Lauterpacht. If, however, matters covered by existing publications were to be eliminated, there would probably remain an insufficient flow of material to warrant an annual publication. In their opinion such a publication would not be worth the relatively high cost envisaged.

The representatives of, among others, Australia, India, Iraq, the United Kingdom and Venezuela, expressed the opinion that further study was required concerning the publication of a juridical yearbook and that the project should not be undertaken immediately. It was emphasized, however, that this did not imply a complete abandonment of the proposition.

In answer to those representatives who stressed the possibility of duplication if a juridical yearbook were published, the representatives of Cuba, the Dominican Republic, Iran, Israel and Yugoslavia, among others, contended that the fear of duplication should not be over-emphasized. It was pointed out that existing publications similar to the proposed juridical yearbook were scattered; what was needed was a systematic compilation. Moreover, duplication could be overcome, they argued, by, for example, avoiding the reproduction in extenso of matter that had already appeared in official documents of the United Nations or the specialized agencies. For the sake of com-

pleteness, reference could be made to such documents, noting where they were to be found. The representatives of Ecuador and Iran, among others, stressed the fact that the costs involved in the publication of a juridical yearbook might perhaps be diminished by reducing the scope of the yearbook. They felt that the utility of the publication was commensurate with the costs involved.

The draft resolution eventually adopted by the Sixth Committee represented a compromise between those representatives who advocated immediate publication of a juridical yearbook and those who thought the publication undesirable at the present time.

The Sixth Committee, at its 320th meeting on 5 November, voted on the proposals before it. The only draft resolution before it was that submitted jointly by Australia, Canada, Denmark, the Netherlands, Sweden, Syria and the United Kingdom (A/C.6/L.255), which was later revised orally; and amendments to it:

(1) by Egypt (A/C.6/L.256); (2) jointly by Afghanistan, Bolivia, Colombia, Cuba, Ecuador, El Salvador, Haiti, Honduras, Iran, Israel, Liberia, Pakistan, Panama, the Dominican Republic and Yugoslavia (A/C.6/L.257) (which superseded an oral amendment by the representative of Ecuador on behalf of his delegation as well as those of Afghanistan, Bolivia, Cuba, El Salvador, the Dominican Republic, Honduras, Iran, Israel, Pakistan and Yugoslavia); and (3) by Iran (A/C.6/L.258).

The joint draft resolution provided in its operative part that the General Assembly would authorize the Secretary-General to undertake, as soon as feasible, the publication of:

(1) a list of treaty collections supplementary to those already existing; and (2) a repertoire of the practice of the Security Council. It would also request the Secretary-General to prepare and circulate to Member Governments "a report containing detailed plans as to form, contents and budgetary implications in regard to the expansion of existing United Nations publications and the launching of new special publications of limited scope . . ."

To meet the point raised by the representative of Israel during the discussion, the United Kingdom representative, on behalf of the sponsors, revised orally the clause concerning a list of treaty collections to provide for the compilation of such a list "taking into account the suggestions made during the debate in the Sixth Committee".

The Egyptian amendment related to the preamble of the joint draft. The first part of the amendment, which altered the terms of the Assembly's reference to the Secretary-General's report from "having considered" to "considering" was adopted by 27 votes to 1, with 21 abstentions. The second part, which would have deleted the second paragraph of the preamble (see below), was rejected by 27 votes to 10, with 13 abstentions.

The joint amendment proposed:

(1) to authorize the Secretary-General to undertake, as soon as feasible, the publication of a juridical yearbook, limited in scope, in addition to the publication of a list of treaty collections and a repertoire of the practice of the Security Council; and

(2) to delete the paragraph of the joint draft calling for a report containing plans for expanded and new publications. The first part of the amendment was rejected by 25 votes to 17, with 10 abstentions, and the second part was thereupon withdrawn by the sponsors.

The Iranian amendment, explained its author, was aimed at reaching a compromise solution. It proposed to reword the paragraph calling for a report on expanded and new publications; according to the Iranian amendment the Secretary-General would prepare and circulate to Member Governments a comparative study of the extent to which developments in customary international law and selected legal activities of the United Nations could usefully be covered by United Nations publications, including a juridical yearbook (for text, see paragraph 2 of resolution, as adopted, below). This amendment was adopted by 41 votes to none, with 10 abstentions.

The first paragraph of the operative part of the joint draft resolution, as revised by its sponsors, was put to the vote in parts. The first phrase "A list of treaty collections" was adopted by 45 votes to none, with 3 abstentions. The second phrase "to be compiled, taking into account the suggestions made during the debate in the Sixth Committee" was adopted by 20 votes to 14, with 14 abstentions.

The joint draft resolution as a whole, as amended, was adopted unanimously.

The draft resolution recommended by the Sixth Committee (A/2258) was considered by the General Assembly at its 400th plenary meeting on 5 December. The Assembly also had before it a report of the Fifth Committee (A/2280) which informed the Assembly that adoption of the Sixth Committee's proposed resolution would involve expenditure in 1953 which could be reasonably estimated at $14,100 on a gross basis. The Fifth Committee also recommended that, in the event of the adoption of the proposed resolution by the General Assembly, the necessary provision of $14,100 should be met out of the global appropriation already recommended by the Fifth Committee for publications.

The draft resolution proposed by the Sixth Committee was adopted, without discussion, by

44 votes to none, with 5 abstentions, as resolution 686(VII). It read:

"The General Assembly,

"Considering the report of the Secretary-General on ways and means for making the evidence of customary international law more readily available submitted in pursuance of General Assembly resolution 602(VI) of 1 February 1952,

"Having regard to the detailed plans in the report as to the form, contents and budgetary implications of certain publications referred to in the aforesaid resolution and to the conclusions of the Secretary-General stated in the report,

"1. Authorizes the Secretary-General to undertake, as soon as feasible, the publication of:

"(a) A list of treaty collections, to be compiled taking into account the suggestions made during the debate in the Sixth Committee;

"(b) A repertoire of the practice of the Security Council;

"2. Requests the Secretary-General to prepare and circulate to the governments of Member States a comparative study of the extent to which developments in the field of customary international law and selected legal activities of the United Nations can usefully be covered by an expansion of existing United Nations publications, by the launching of new special publications of limited scope and by a United Nations juridical yearbook; such study shall cover form, contents and budgetary implications."

G. QUESTION OF THE CODIFICATION OF "DIPLOMATIC INTERCOURSE AND IMMUNITIES" BY THE INTERNATIONAL LAW COMMISSION

The item "Giving priority to the codification of the topic 'diplomatic intercourse and immunities' " was placed on the agenda of the seventh session of the General Assembly at the request of Yugoslavia (A/2144).

In an explanatory memorandum (A/2144/-Add.l) accompanying the request for its inclusion, Yugoslavia stated that diplomatic envoys had, from the earliest times, been granted certain immunities which were deemed essential to the accomplishment of the concrete tasks they had been assigned. However, in view of the fact that violations of international law in the field of diplomatic intercourse and immunity had "not only become more frequent, but are assuming an increasingly serious character and are tending to become a more or less established feature of international relations, thus imperilling the maintenance of normal relations among States", Yugoslavia considered that this problem should be studied by the International Law Commission without delay as one of "obvious international urgency".

The memorandum stated that the confirmation of the existing rules of international intercourse and immunities by the International Law Commission would in itself mean a substantial contribution to the elimination of "such unhealthy international practices" and would lead to a better observance of the basic rules of diplomatic intercourse.

Yugoslavia felt compelled to propose the codification of this topic, the memorandum said, because the country had itself "been a victim of such practices" and had thus come to the conviction that "their continuance would further impair international relations". The item was considered by the Sixth Committee during its 313th to 317th meetings, held from 29 October to 3 November 1952.

Introducing the question in the Sixth Committee, the representative of Yugoslavia stated that the rules of law concerning diplomatic intercourse and immunities constituted one of the oldest and least controversial parts of international law.

Although the need for codification of these rules had not been felt in the past, certain steps had nevertheless been taken in that direction in both the League of Nations and the United Nations. One of the earliest tasks of the Sixth Committee had been to draft a general Convention on the Privileges and Immunities of the United Nations and, in the report covering the work of its first session, the International Law Commission had provisionally selected diplomatic intercourse and immunities as a topic suitable for codification.

This question, he said, had now become more urgent because of the continuing and increasing violation on the part of the "States of the Soviet bloc" of the fundamental rules of law relating to diplomatic intercourse. These countries had for years been pursuing a policy of aggressive pressure against Yugoslavia and their policy had resulted in Yugoslav representatives being subjected to flagrant violations of privileges and immunities which included: discourtesy; maltreatment and physical attacks; arrest; restriction of travel; denial of medical aid and various services; difficulties concerning food supplies; refusal of exit visas; illegal entry into the embassies and legations; the

prevention of official contact; censorship and refusal of permission to receive mail and newspapers.

Such violations, he said, were threatening to place the relations between States at the mercy of arbitrary action which was a matter of international concern. It should be considered by the United Nations, whose duty it was to safeguard the maintenance of international peace and security and the development of good-neighbourly relations between peoples.

The codification of rules concerning diplomatic intercourse and immunities by the International Law Commission, he submitted, would exert a positive influence on the application of and respect for the traditional rules of diplomacy by facilitating the determination of the offences committed and by serving as a warning to any who were disposed to commit them. The codification would mobilize world public opinion against aggressive machinations in general and against the activities he had mentioned in particular. World tension would certainly be relieved thereby.

Yugoslavia, he said, was of the opinion that the International Law Commission should give priority to this topic, as article 18 of its statute authorized it to do. He submitted a draft resolution (A/C.6/L248) to that effect.

In the course of the debate, most representatives expressed themselves in favour of requesting the International Law Commission to undertake the codification of the topic "diplomatic intercourse and immunities". They considered that, apart from the reasons mentioned by the Yugoslav representative, the topic was in itself sufficiently important to warrant its early codification. The fact that a growing number of international organizations were seeking immunity for the members of their staff made the matter even more pressing. Denmark was in favour of leaving the question to an international conference but a prior study of the question by the International Law Commission would be helpful.

The representative of the United States said that United States diplomats and citizens had also suffered at the hands of the "Cominform regimes" maltreatment similar to that described by the representative of Yugoslavia. Such treatment, the United States representative argued, infringed the basic precepts underlying the Charter and threatened the maintenance of peace. Therefore, to encourage agreement on the rules and practice governing the treatment of diplomatic officials was obviously a step in the right direction. The representative of the United States, supported by the representatives of Colombia and Lebanon, suggested that the Yugoslav draft resolution should be broadened so as to refer to consular as well as to diplomatic privileges and immunities. The two subjects, in their opinion, were so closely related that it seemed desirable and practical to have them treated together.

Some representatives, including those of Australia, Bolivia, Brazil, China, France, Greece, the United Kingdom and the United States, while in agreement with the main purposes of the Yugoslav proposal, were willing to support it on the understanding that it would not in any way have the effect of disrupting the work of the International Law Commission and that the Commission would have complete freedom of action.

The representative of Colombia, supported by representatives of Argentina, Bolivia, Cuba and El Salvador, considered that the topic "diplomatic asylum" was closely linked to that of "diplomatic intercourse and immunities", and should be added to the topic for which priority was requested. They maintained that the efforts of the American countries and the many jurists of all nations who had contributed to the defence of the human right of asylum clearly indicated that the time was ripe for the codification of this topic and that the circumstances justified its being placed on the Commission's list of priorities.

A number of representatives, however, including those of Afghanistan, Australia, Brazil, Chile, Egypt, India, Liberia, Norway, Panama, Peru, the Philippines, Sweden, Syria and the United Kingdom, admitted that while the topic "right of asylum" was closely related in some respects to the topic "diplomatic intercourse and immunities",, it was, in fact, a separate topic and should be treated as such. A few representatives, in particular those of Australia, Brazil, Chile and Sweden, also felt that consular immunity was a topic separate from diplomatic immunity.

The representative of Turkey observed that the object of diplomatic asylum was to ensure to diplomatic agents the inviolability of their person and residence, so that they could carry out their duties. In Europe, the inviolability of the diplomat's residence was an unwritten but generally recongized rule. In Latin America, there were written rules which formed part of conventions separate from those relating to diplomatic agents. There were thus two different conceptions, which should be harmonized in a single clear statement. The International Law Commission had planned to codify diplomatic immunity and the right of asylum under different headings. He thought that the difficulties might be avoided by the addition of the words "including the inviolability of embassies and diplomatic residences", for in that

way the scope of the topic would be limited and at the same time the right of asylum would not be dropped from the Commission's list.

The representative of Iran explained that the prevailing concept in modern times was that the purpose of diplomatic immunity was to enable diplomats to carry out their functions. In his opinion, it was questionable whether the right of asylum was a prerequisite for carrying out diplomatic functions. By adopting the Colombian viewpoint, the General Assembly, he argued, might give the impression that it had endorsed the controversial principle of the right of asylum.

The representatives of the USSR and Poland expressed the view that the discussion in the Sixth Committee had gone far beyond the scope of the item on the agenda. The question before the Committee, they said, concerned only the priority to be given to a certain topic, and there was no justification for discussing the substance of that topic. The discussion, in their opinion, had clearly shown that the item had been artificially created by the United States and Yugoslavia as a propaganda manoeuvre. There was no real need to recommend the topic "diplomatic intercourse and immunities" to be treated as a priority topic by the International Law Commission, because it was already included in the Commission's programme of work, which contained only priority topics. Consequently the Yugoslav proposal could be of value only if there were evidence that the International Law Commission had refused to carry out the General Assembly's earlier request, and there was in fact no such evidence. Moreover, they argued, article 18 of the statute of the International Law Commission, on which the Yugoslav proposal was based, did not apply since this article concerned only new topics referred to the Commission.

These representatives maintained that the charges made of failure to observe diplomatic privileges and immunities were without any foundation. The USSR representative charged the Yugoslav and United States Governments with attempts to carry out, through their diplomatic representatives, diversionist and espionage activities in the people's democracies. In particular, he cited the United States Mutual Security Act.

Voting on the Yugoslav proposal and the amendments to it took place at the Sixth Committee's 316th meeting on 31 October.

The original Yugoslav proposal (A/C.6/L.248) provided that the General Assembly "recommends the International Law Commission to undertake the codification of the topic 'diplomatic intercourse and immunities' as a matter of priority". Drafting amendments to this proposal were submitted by France (A/C.6/L.249), and oral amendments were proposed by Australia, Belgium, El Salvador, Iran and the United Kingdom.

At the suggestion of the Committee Chairman, a drafting sub-committee, composed of the representatives of Australia, Colombia, El Salvador, France, Iran, the United Kingdom and Yugoslavia, was set up to draw up an agreed text for the consideration of the Committee. As a result, Yugoslavia submitted a revised draft resolution (A/C.6/L.250 and Corr.1), which embodied most of the drafting amendments. The revised draft provided that the General Assembly "requests the International Law Commission, as soon as it considers it possible, to undertake the codification of the topic 'diplomatic intercourse and immunities', and to treat it as a priority topic".

To this revised draft resolution, an amendment was submitted by Colombia (A/C.6/L.251) and oral amendments were proposed by Argentina, Australia, Colombia, Egypt, Haiti, Indonesia and Lebanon.[27]

Some of the amendments, of a drafting character, were accepted by the representatives of Yugoslavia.

The only amendment adopted by the Committee was that of Argentina and Egypt to delete the reference to the provisions of the Statute of the International Law Commission concerning requests for priority by the General Assembly.

The Committee rejected, by 26 votes to 11, with 16 abstentions, and by 30 votes to 7, with 13 abstentions, respectively, an amendment by Argentina and Indonesia to delete the first paragraph and an amendment by Argentina to delete the fourth paragraph (see below). A further amendment by Argentina, which would have deleted from the operative paragraph the provision that the Commission should undertake the codification "as soon as it considers it possible", was rejected by 28 votes to 13, with 8 abstentions.

The amendment of Lebanon, which would have referred to the treatment of "consular" as well as "diplomatic" representatives, was rejected by 24 votes to 13, with 13 abstentions.

The amendment of Colombia, which would have included "diplomatic asylum" as an aspect of the topic to be codified, was rejected by 24 votes to 17, with 10 abstentions.

The amended draft resolution as a whole was adopted by 42 votes to 5, with 4 abstentions.

[27] These amendments, with the exception of the Australian amendment, which was submitted later, were tabulated in a working paper (A/C.6/L.251).

Explanations of voting were given by the representatives of Czechoslovakia and India at the Committee's 317th meeting on 3 November.

The representative of Czechoslovakia had voted against the resolution because, in its final form, he said, it left the International Law Commission completely free to decide when it should discuss the topic in question and consequently did not in any way alter the situation as established under a previous General Assembly resolution (373(IV)). In addition, the discussion had shown that the real purpose of submitting the item had been to give the representatives of Yugoslavia and the United States an opportunity to carry out hostile propaganda against the USSR and the people's democracies. He had not replied to the accusations of the United States representative because those accusations had been irrelevant to the item under discussion, and because there would be ample opportunity to discuss the "hostile activity of the United States against Czechoslovakia" when the General Assembly would take up the item submitted by Czechoslovakia which dealt with the "interference of the United States" in the "internal affairs of other States".

The representative of India said he had voted in favour of the resolution, but his vote should not be interpreted as an endorsement of any of the arguments used in the course of the discussion.

The draft resolution recommended by the Sixth Committee (A/2252) was adopted by the Assembly, without discussion, at its 400th plenary meeting on 5 December by 42 votes to 5 as resolution 685 (VII). The representative of Venezuela later requested that though he had been unable to vote, his vote should be considered as affirmative. The resolution read:

"The General Assembly,

"Recalling the purposes of the United Nations and the provision of the Preamble of the Charter according to which the 'peoples of the United Nations' are determined 'to practise tolerance and live together in peace with one another as good neighbours',

"Expressing its desire for the common observance by all governments of existing principles and rules and recognized practice concerning diplomatic intercourse and immunities, particularly in regard to the treatment of diplomatic representatives of foreign States,

"Considering that early codification of international law on diplomatic intercourse and immunities is necessary and desirable as a contribution to the improvement of relations between States,

"Noting that the International Law Commission has included the topic 'Diplomatic intercourse and immunities' in the provisional list of topics of international law selected for codification,

"Requests the International Law Commission, as soon as it considers it possible, to undertake the codification of the topic 'Diplomatic intercourse and immunities', and to treat it as a priority topic."

H. INTERNATIONAL CRIMINAL JURISDICTION

The Committee on International Criminal Jurisdiction met at Geneva from 1 to 31 August 1951 and prepared a draft statute for an international criminal court (A/2136). As requested by the Assembly, the Committee's report was communicated by the Secretray-General to Member Governments for their observations and the question was placed on the provisional agenda of the Assembly's seventh session. By 23 September 1952, eleven Governments—Australia, Chile, China, Denmark, France, Israel, the Netherlands, Norway, Pakistan, the Union of South Africa and the United Kingdom—had submitted their observations (A/2186 and A/2186/Add.l). Also, India in May 1952 informed the Secretary-General that it did not wish to make any comments at present, and Iraq in June 1952 stated that it had no comments. The observations of the eleven Governments were submitted to the General Assembly.

The Sixth Committee considered the item at its 321st to 328th meetings from 7 to 17 November 1952.

The discussions in the Committee were concerned:

(1) with the question of substance, as to whether, in the light of the report of the Committee on International Criminal Jurisdiction and of its draft statute for an international criminal court, such a court should be established; and (2) with the question of procedure, as to whether the question should be studied further or whether its consideration should be postponed.

Arguments were advanced again, as they had been in the International Law Commission and in the Committee on International Criminal Jurisdiction and, during 1950, in the Sixth Committee[28] both in favour and against the establishment of an international criminal court.

[28] See Y.U.N., 1950, pp. 857-61; Y.U.N., 1951, pp. 852-54.

Those in favour of establishing the court included, in particular, the representatives of France, Iran and the Netherlands. Among the arguments put forward in favour of establishing the Court were:

(1) that the individual had become a subject of international law and the concept was becoming accepted of the establishment of personal criminal responsibility in an international sense; (2) it was desirable that criminals should be tried by a court already in existence before the crime was committed rather than by an ad hoc tribunal such as that of Nurnberg; (3) the existence of a permanent international criminal court would be a deterrent to crimes; (4) it would contribute to the establishment of a body of precedents in international law; and (5) the court would have many functions to perform and could deal with the lesser as well as the graver crimes of international concern.

Those opposing the establishment of the court included, in particular, the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR. Among the arguments they advanced were:

(1) that since criminal jurisdiction was part of the sovereign rights of States, the establishment of such a court would infringe upon the sovereignty of States; (2) it would result in interference in the domestic affairs of States, thereby violating Article 2, paragraph 7, of the Charter; (3) it was incompatible with the principle of territorial jurisdiction; and (4) it would not contribute to the maintenance of international peace.

The representatives of Egypt, Iraq and Venezuela pointed to the obstacles involved, especially with respect to restrictions upon the concept of state sovereignty. Other objections were:

(1) that the court might simply be used as a forum for propaganda; (2) that it could only meet with success if unusually good relations prevailed among nations whereas relations at present were somewhat strained; and (3) that it might well increase international tension.

Several representatives took the position that it was impracticable in existing circumstances to establish an international criminal court. These included the representatives of Argentina, Brazil, the Dominican Republic, Egypt, El Salvador, India, Indonesia, Iraq, Mexico, the Union of South Africa, the United Kingdom and Venezuela. They emphasized that it was essential that such a court should have the necessary powers to function effectively. Some of these representatives considered that the court envisaged in the draft statute prepared by the Committee on International Criminal Jurisdiction would be unable to function. For example, it was stated that the draft statute imposed no obligations upon States and left such questions as bringing the accused and witnesses before the court and the execution of sentences passed by the court to be dealt with by separate conventions.

In the opinion of the United Kingdom representative, in particular, there was no need for an international criminal court. In his view, war crimes could be dealt with reasonably well by national tribunals, or by ad hoc international tribunals such as those of Nürnberg and Tokyo; these latter tribunals, he said, were more effective than a permanent international court. Judges of neutral nationalities could be appointed in order to overcome the objection that judges of an ad hoc tribunal were often persons of the nationality of the victors. He argued further that the existence of a permanent international criminal court would not constitute a deterrent to crimes against peace and against humanity, since those who committed them relied on the protection of their government and no government would ever start a war unless it expected to win.

Some representatives, including those of Argentina, the Dominican Republic, Egypt, Iraq, India and Indonesia, expressed the opinion that it would be premature to take a final decision for the establishment of an international criminal court until general agreement had been reached on the law to be applied by the proposed court. It would be a contradiction of criminal justice to set up a court without clearly and explicitly defining the law it was to apply. The code of offences against the peace and security of mankind, prepared by the International Law Commission, had not yet been adopted by the General Assembly, and aggression, in particular, had not yet been defined.

The fact that no delegation had as yet declared that its government would agree, at the moment, to recognize the jurisdiction of an international criminal court was also said to militate against the immediate establishment of such a court.

On the question of procedure, most of the representatives, including all of those who were in favour of the establishment of an international criminal court, considered that further study was necessary before a final decision on the matter could be taken. These representatives included, among others, those of Afghanistan, Australia, Canada, Chile, China, Cuba, Denmark, Greece, Haiti, Israel, Liberia, New Zealand, Norway, Panama, Pakistan, the Philippines, Saudi Arabia, Syria, Turkey and the United States. They felt that the Committee on International Criminal Jurisdiction had left unsolved many questions relating to the proposed court. In their opinion, a special committee to undertake a further study of the matter should be established.

It was felt that directives to such a committee should not imply either favour or disfavour of

the idea of an international criminal court, nor should the committee be expected to decide whether the establishment of such a court was feasible; all such questions of policy must be left to the decision of the Sixth Committee. The task of the committee would be to assemble and consider all that had been said regarding the report and the draft statute submitted by the Committee on International Criminal Jurisdiction and to report back to the Sixth Committee regarding the type of statute that could take into account the comments and criticisms which the 1951 report had evoked.

Some representatives, in particular those of Israel, Sweden and Venezuela, noted that only eleven Governments had submitted their observations on the report of the Committee on International Criminal Jurisdiction. The representative of Sweden argued that the views of more governments must be ascertained before any further steps were taken to prepare drafts for the establishment of an international criminal court. As only a small minority of the eleven governments which had submitted their observations favoured the establishment of an international criminal court, he considered that the majority of States were not at present inclined to favour the establishment of such a court. He was in favour of postponing indefinitely the consideration of this question.

The Sixth Committee had before it two draft resolutions—one submitted jointly by Cuba, El Salvador, France, Iran, Israel, the Netherlands and the United States (A/C.6/L.260), which was later revised (A/C.6/L.260/Rev.1); and the other submited by Sweden (A/C.6/L.261), which was likewise later revised (A/C.6/L.26l/Rev. 1 and Rev.1/Corr.1).

Amendments to the original joint draft were submitted by the United Kingdom (A/C.6/-L.262). These were, however, withdrawn by the sponsor at the 328th meeting of the Sixth Committee on 17 November, in view of the submission of a revised text of the original joint draft. Oral amendments to the original Swedish draft were proposed by the representatives of Panama and Egypt. These oral amendments were accepted by Sweden at the 327th meeting of the Committee on 14 November and were incorporated in the revised draft resolution.

The revised joint draft resolution (A/C.6/-L.260/Rev.) provided, inter alia, for the appointment of a seventeen-member committee which would meet in Geneva in August 1953 and, in the light of suggestions made before 1 June 1953 by governments in their written observations, as well as of those made during the debates in the Sixth Committee, would:

(1) explore the implications and consequences of establishing the international criminal court and of the various manners by which this might be done;

(2) study the relationship between such a court and the United Nations and its organs;

(3) re-examine the draft statute prepared by the Committee on International Criminal Jurisdiction; and

(4) report to the Assembly at its ninth session.

The draft would also request the Secretary-General to communicate to Members the report of the proposed committee and to place the question of international criminal jurisdiction on the provisional agenda of the Assembly's ninth session.

The representative of the United Kingdom explained that he had submitted amendments to the original joint draft because he felt that its wording should in no way prejudge the question of the possibility of establishing an international criminal court. As it originally stood, the joint draft seemed to take for granted that establishment of such a court was possible, since it instructed a special committee to study the various methods of establishing it, and not the question of principle, that is, whether or not such a court should be established. The special committee, he said, like its predecessor, the Committee on International Criminal Jurisdiction, might decide that the question of principle was not within its competence; but if its terms of reference were drafted as proposed by the United Kingdom, it would be competent to study the question of principle. Since the revised joint draft, in his opinion, came closer to the United Kingdom position by providing for the proposed committee not only to examine way and means of establishing an international criminal court but also to consider the fundamental preliminary question, he withdrew his amendments.

The effect of the oral amendments proposed by the representatives of Panama and Egypt to the revised Swedish draft (A/C.6/L.26l/Rev.1 and Corr.1) was to have the General Assembly decide to postpone the consideration of the question of international criminal jurisdiction for one year (instead of indefinitely as provided for in the original draft) in order to give sufficient time to Member States to present their observations. In addition, the draft would have the Assembly urge the Member States which had not yet done so to make their comments and suggestions on the draft statute, in particular if they were of the opinion that further action should be taken by the General Assembly with a view to the establishment of an international criminal court.

It would also request the Secretary-General to publish the comments and suggestions received from governments for such use as the General Assembly might find desirable at a later stage and to place the question on the provisional agenda of the Assembly's eighth session.

Voting on the two proposals took place at the Committee's 328th meeting on 17 November. The representative of Sweden stated that, since his revised draft would have the effect of postponing a decision on the establishment of a new committee to consider the subject, it would be reasonable for it to be voted upon before the revised joint draft, which provided for the immediate establishment of a committee. On his motion, the Committee decided, by 21 votes to 13, with 19 abstentions, to vote first upon his revised draft.

The various parts of the revised Swedish draft were first voted upon and adopted by votes ranging from 21 to 18, with 5 abstentions, to 14 to 11, with 19 abstentions. The revised draft as a whole was adopted by a roll-call vote of 23 to 16, with 7 abstentions.

In view of the adoption of the revised Swedish draft resolution, the Sixth Committee did not vote upon the revised joint draft resolution.

The draft resolution recommended by the Sixth Committee (A/2275) was considered by the General Assembly at its 400th plenary meeting on 5 December. To this draft, the representative of the Netherlands submitted a number of amendments (A/L.119). These, in effect, would have the Assembly appoint a seventeen-member committee to meet at United Nations Headquarters sometime in 1953 to explore the implications and consequences of establishing an international criminal court, to study the relationship between such a court and the United Nations and its organs, and to report to the Assembly.

The representative of the Netherlands, supported by the representatives of Belgium, New Zealand, Pakistan and Yugoslavia, spoke in support of the amendments and the representatives of Poland and Sweden opposed them. They repeated the arguments which had been put forward previously in the Sixth Committee.

The Netherlands amendments were voted upon first, and adopted by votes ranging from 32 to 7, with 11 abstentions, to 28 to 12, with 7 abstentions. The draft resolution submitted by the Sixth Committee, as amended and as a whole, was adopted by 33 votes to 9, with 8 abstentions.

The resolution (687(VII)) read:

"The General Assembly,

"Bearing in mind that, by resolution 489 (V) of 12 December 1950, the General Assembly established a Committee on International Criminal Jurisdiction, consisting of representatives of seventeen Member States, charged with the task of preparing one or more preliminary draft conventions and proposals relating to the establishment of an international criminal court,

"Recalling that, by the same resolution, the General Assembly requested the Secretary-General to communicate the report of the Committee to the governments of Member States so that their observations could be submitted not later than 1 June 1952, and to place the question on the agenda of the seventh session of the General Assembly,

"Noting that the Committee, meeting in August 1951, has prepared a report containing a draft statute for an international criminal court and that the Secretary-General, by a letter of 13 November 1951, has transmitted the Committee's report to the governments of Member States requesting their observations thereon,

"Considering, however, that the number of States which have given their comments and suggestions is very small,

"Considering that there is need for further study of problems relating to an international criminal jurisdiction,

"1. Expresses to the Committee on International Criminal Jurisdiction its appreciation for its valuable work on the draft statute;

"2. Urges the Member States which have not yet done so to make their comments and suggestions on the draft statute, in particular if they are of the opinion that further action should be taken by the General Assembly with a view to the establishing of an international criminal court;

"3. Decides to appoint a Committee composed of one representative each of seventeen Member States, which States shall be designated by the President of the General Assembly in consultation with the Chairman of the Sixth Committee, and directs that this Committee shall meet at the Headquarters of the United Nations in 1953, the exact date to be determined by the Secretary-General, with the following terms of reference:

"(a) In the light of the comments and suggestions on the draft statute submitted by governments, as well as of those made during the debates in the Sixth Committee,

"(i) To explore the implications and consequences of establishing an international criminal court and of the various methods by which this might be done;

"(ii) To study the relationship between such a court and the United Nations and its organs;

"(iii) To re-examine the draft statute;

"(b) To submit a report to be considered by the General Assembly at its ninth session;

"4. Requests the Secretary-General to provide all the necessary services and facilities for the meetings of the Committee."

In accordance with the terms of the resolution, the President of the General Assembly announced,, at the 407th plenary meeting on 19 December 1952, that, in consultation with the Chairman of

the Sixth Committee, he had designated the following as members of the new committee: Argentina, Australia, Belgium, China, Denmark, Egypt, France, Israel, the Netherlands, Pakistan, Panama, Peru, the Philippines, the United Kingdom, the United States, Venezuela and Yugoslavia.

I. QUESTION OF THE REVISION OF THE CHINESE TEXT OF THE GENOCIDE CONVENTION

The permanent representative of China, concurrently with the deposit, on 19 July 1951, of China's ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, requested the Secretary-General to revise the Chinese text of the Convention. He transmitted a new text incorporating the amendments desired by his Government with a view to bringing the Chinese text into greater conformity with the other authentic texts of the Convention. The Secretary-General replied that, since all five official texts adopted by the Assembly were equally authentic, he had no authority to undertake, by himself, the revision of the Chinese text.

The permanent representative of China confirmed that his request should be considered an official request for revision in accordance with article XVI of the Convention.

The Chinese request was discussed by the Assembly at its sixth session. By resolution 605 (VI)[29] of 1 February 1952, the Assembly decided that as the elements necessary for the discussion of the question were not yet at its disposal, the item should be included in the provisional agenda of its seventh session.

At the Assembly's seventh session, the Czechoslovak and USSR representatives, at the 79th meeting of the General Committee on 15 October, and the representative of the Ukrainian SSR, at the 380th plenary meeting of the Assembly on 16 October, objected to the inclusion of this item in the agenda. They argued that the request for the revision of the Chinese text of the Convention had been submitted, "not by the legitimate government of the People's Republic of China, which alone is entitled to make such a request, but by the representative of the Kuomintang group, which has been expelled by the Chinese people and occupies a place in the United Nations illegally". After the representative of China, in both instances, had declared that the objections regarding the right of his delegation to make proposals was contrary to the provisions of the Charter and to the rules of procedure and, consequently, out of order, the General Committee, by 10 votes to 2, with 2 abstentions, decided to recommend the inclusion of this item in the agenda; the General Assembly, by 37 votes to 6, with 10 abstentions, rejected a Ukrainian SSR proposal to exclude the item.

The Assembly, at its 382nd plenary meeting on 17 October, decided to consider the item in plenary meeting without reference to a committee.

The Assembly had before it a memorandum (A/2221) by the Secretary-General which stated that the Language Services Division of the Secretariat had made a comparative study of the original Chinese text of the Convention and the revised text submitted by the Government of China, annexed to the memorandum. The revised Chinese text, it was stated, appeared to introduce in the main only linguistic revisions and not to alter in any sense the substance or meaning of the Convention as expressed in the other four official texts. It was suggested that the Assembly might give effect to any alterations it desired in the Chinese text either by (1) drawing up a protocol listing the alterations agreed upon, which would thereafter have to be formally accepted by the States parties to the Convention, or (2) adopting such alterations by resolution.

The item was considered at the 400th plenary meeting of the Assembly on 5 December 1952. The representative of China submitted a draft resolution (A/L.116) which, in its preamble, would have the Assembly:

(1) refer to the Chinese request for revision of the Genocide Convention; (2) state that the revised Chinese text introduced revisions which, in the main, were of a linguistic nature; (3) declare that official texts in diferent languages should be in as close harmony as possible; (4) state that the revised Chinese text was in closer harmony than the existing Chinese text; and (5) refer to article XVI, paragraph 2, of the Convention, under which the General Assembly is empowered to decide upon the steps, if any, to be taken in respect of any request for the revision of the Convention.

In its operative part, it would have the Assembly:

(1) approve the revised Chinese text of the Genocide Convention submitted by China;

(2) recommend that States signatories of, or parties to, the Convention accept the revised Chinese text as the official Chinese text, in lieu of the existing Chinese text of the Convention;

[29] See Y.U.N., 1951, p. 859.

(3) request the Secretary-General to transmit, in accordance with article XVII of the Convention, a certified copy of the revised Chinese text, as well as a copy of the resolution adopted by the Assembly, to all Members of the United Nations and to the non-member States contemplated in article XI, and to request States already signatories of or parties to the Convention to notify him, within 90 days from the date of transmission, of their acceptance of or objection to the revised Chinese text. The draft resolution would state that it was understood that States failing to signify their objection within this period would be deemed to have accepted the revised Chinese text.

The representatives of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua submitted a joint draft resolution (A/L.123) proposing that the item be referred to the Sixth Committee during the current session.

The USSR representative opposed the consideration of the draft resolution on the same grounds he had advanced in the General Committee. Any decision to alter the Chinese text of the Genocide Convention that the Assembly might adopt on the basis of the application by the representative of the "Kuomintang clique" would, he said, have no legal basis and would consequently have no legal effect.

The joint draft resolution, being of a procedural nature, was put to the vote first and was adopted by 30 votes to 16, with 3 abstentions. The Chinese draft resolution was, therefore, not voted upon.

The Sixth Committee considered the item at its 354th to 357th meetings, on 18 and 19 December 1952.

The representative of China stated that the sole purpose of his Government's request for revision of the existing Chinese text of the Genocide Convention was to bring the text into greater conformity with the other authentic texts of the Convention. He contended that the existing Chinese text was defective and gave several examples to substantiate his contention. The Chinese text submitted by his Government (A/2221, annex III) would, in the opinion of experts in China, remove such defects. He submitted a draft resolution (A/C.6/L.283), the text of which was identical with that of the draft (A/L.116) introduced by China in the Assembly's plenary meeting.

Some representatives, including, among others, those of Egypt, Turkey, the United Kingdom and the United States, expressed themselves in favour of accepting in principle the Chinese request. They emphasized that the Convention on the Prevention and Punishment of the Crime of Genocide did not grant any rights but only imposed obligations on parties to it. In requesting revision of the Chinese text, the Government of China could not be suspected of seeking advantage from the Convention. It was motivated solely by a desire to rectify. some inaccuracies in the Chinese text and its good faith was beyond question. The Secretary-General's memorandum had stated that the changes suggested were only of a linguistic nature and did not alter the substance of the Convention. The Chinese request should therefore be acceded to, the more so as its refusal could not fail to harm the Convention, since the Government of China would then be unable to enforce it.

In the light of the advisory opinion[30] of 28 May 1951 of the International Court of Justice on Reservations to the Convention on Genocide, the General Assembly, in the opinion of these representatives, was undoubtedly competent to deal with such a question as that raised in the request of China, even if that request were not in the nature of one for revision within the meaning of article XVI of the Convention. This was so because it was the General Assembly that had prepared and approved the Convention and had proposed it for signature and ratification or accession. It would, therefore, be appropriate for the Secretary-General to transmit the text submitted by China to all the parties to the Convention, which would be free to accept or reject it.

Some representatives, including, in particular, those of Afghanistan and Sweden, stated that, since their Governments had recognized the Central People's Government of China, they felt that that Government should have an opportunity to consider any revision of the Chinese text of the Convention.

The representative of India said that he deplored the absence of any "representative of the 400 million Chinese people" and considered that the matter before the Sixth Committee should be deferred until the question of Chinese representation in the United Nations had been realistically and equitably settled. He therefore urged that there should be no further discussion of the Chinese Government's request at the current session.

The representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR declared that they could not entertain a request submitted by a Government which their Governments did not recognize as the Government of China. They added that they would not participate in the discussion of the item, would vote against the draft resolution before the Com-

[30] See Y.U.N., 1951, pp. 820-33.

mittee and would not consider as legally valid any decision reached without the participation of the People's Republic of China.

In reply, the representatives of Chile, China, the United Kingdom and the United States stated that it was out of order to raise the question of China, since the General Assembly by resolution 609 A (VII)[31] of 25 October 1952, had decided to postpone for the duration of its seventh session consideration of that question.

As to the substance of the Chinese draft resolution, certain representatives pointed to the legal difficulties involved. The representative of France pointed out that the Convention was binding on its 40 signatories, eleven of which were not Members of the United Nations and stated that the utmost caution must be used in deciding what action the Assembly could take in connexion with a text already binding upon non-member States.

The representative of Mexico declared that the States parties to the Convention were not bound to adopt the revised text submitted by China. It might well be that that text would be accepted by some States and rejected by others, which would result in great confusion.

Some representatives, including, among others, those of Israel and Peru, questioned whether the request of China under consideration constituted one for revision within the meaning of article XVI of the Genocide Convention. In the law of treaties, it was explained, revision was usually construed to mean modification of substance or such modifications of language as were substantive in nature. Accordingly, it was suggested that the Chinese draft resolution should refer to "correction" instead of "revision" and any reference therein to article XVI of the Convention should be omitted. This suggestion was accepted by the representative of China, who withdrew the paragraph of the preamble of the draft resolution which had referred to article XVI of the Convention.

It was also contended by the representatives of Belgium, Colombia, Israel and the Philippines, among others, that, as most members of the Sixth Committee were not well versed in the Chinese language and therefore could not appraise the text submitted by China, the Committee could not, as provided in the first two operative paragraphs of the Chinese draft, recommend that the General Assembly "approve" the text nor ask the Assembly to recommend that States signatories of or parties to the Convention accept the text. Nor could the Committee, as provided in the fourth paragraph of the preamble, assert that the text submitted by China was in closer harmony with the other authentic texts of the Convention than the existing Chinese text. As to the third paragraph of the preamble, stating that the official texts in different languages of a convention should be in as close harmony as possible, that was said to be a truism which it was superfluous to affirm. In view of these objections, the representative of China withdrew all these paragraphs.

Objections were also expressed to the provision in the third operative paragraph that consent would be presumed where a State signatory of or party to the Convention failed to signify its objection within 90 days. The representative of Belgium said that the General Assembly had, in principle, only powers of recommendation; its recommendations were not binding on States. He considered, therefore, that the Assembly would not be competent to declare, with binding effect, that contracting States would be deemed to have accepted the revised Chinese text unless they had signified objections, thereby subjecting those States to changes in the text of a treaty already in force.

The time-limit of 90 days provided in the same paragraph was criticized as too rigid by, among others, the representatives of Australia, Belgium, Brazil, Colombia, Israel, the Philippines and the United Kingdom. Replies from governments in a treaty matter, they held, often required a longer period. It was also suggested that replies called for under the draft resolution should not be restricted to relate only to "the revised Chinese text", which phrase should be omitted; States should be at liberty to comment not only on the text but also on the procedure and the principle involved. All the passages to which objections had been raised were withdrawn by the representative of China.

As a result of the suggestions accepted by the representative of China, the Chinese draft resolution was revised twice by its author. The first revised text (A/C.6/L.283/Rev.1) was submitted at the 355th meeting on 18 December and the second revised text (A/C.6/L.283/Rev.2) at the following meeting on 19 December.

The second revised text would refer in the preamble to: (1) the Chinese request for a correction of the existing Chinese text of the Genocide Convention, and (2) the Secretary-General's memorandum (A/2221) in which it was stated that the revised Chinese text introduced only corrections which in the main part were of a linguistic nature. In its operative part, it provided that the Assembly request the Secretary-General to transmit a certified copy of the corrected Chinese text of the Convention to the States

[31] See p. 67.

concerned and to request States signatories of or parties to the Convention to notify him of their acceptance or objection.

The representative of China accepted an oral amendment to this text proposed by the representative of France to refer, in the first paragraph of the preamble, to the "authentic Chinese text" and "the other authentic texts", rather than the "official" Chinese and other texts.

He also accepted a suggestion of the Chairman to delete from the second paragraph of the preamble the reference to the statement of the Secretary-General to the effect that the proposed new Chinese text introduced corrections only of a "linguistic nature" and that it did not in any sense "alter the substance or meaning" of the Genocide Convention as expressed in the other four official texts.

The representative of China also accepted another French oral amendment to delete the last five words of the operative paragraph, which repeated a reference to the "corrected" Chinese text.

The Sixth Committee, at its 356th meeting on 19 December, voted on the second revised draft, as further revised by the representative of China.

It adopted the two paragraphs of the preamble, by 24 votes to 12, with 5 abstentions, and 23 votes to 16, with 3 abstentions, respectively.

The operative paragraph was adopted by 24 votes to 14, with 4 abstentions.

The draft resolution, as a whole, was adopted by 24 votes to 16, with 1 abstention.

The representative of the USSR, at the Committee's 357th meeting on 19 December, declared that he had voted against the draft resolution because he considered that draft irregular for reasons he had explained previously. Accordingly, the USSR, he said, would not attach any legal validity to that draft resolution as regards either the item to which it related or any other item in which it might be invoked as a precedent.

The draft resolution recommended by the Sixth Committee (A/2351) was considered by the Assembly at its 411th plenary meeting on 21 December.

The representatives of China and the United States spoke in support of the resolution and the USSR representative against it; they expressed the views that had previously been advanced in the Sixth Committee.

The representative of Pakistan, stating that he would abstain from voting, said that he entertained some doubts as to the soundness of the resolution, even in its amended form. In his opinion, the proposed new Chinese text sought to introduce into the concept of genocide two new elements, by injecting "ruthlessness" as an inseparable attribute of the crime and by including any kind of human group in the existing definition. It that were so, he said, then the proposed Chinese revision would in effect change the essence of the concept of genocide, and Pakistan was against such a change.

The representative of China deplored that the question of Chinese representation had been raised. As long as his delegation was recognized by the General Assembly, it represented China, he argued. His Government, he explained, needed a satisfactory Chinese text for implementing its obligations under the Genocide Convention, and the Sixth Committee had discovered a formula that would meet that need without causing harm or inordinate inconvenience to anybody. He appealed to the Assembly to accept that formula.

The draft resolution was adopted by 31 votes to 13, with 10 abstentions, as resolution 691(VII). It read:

"The General Assembly,

"Considering that the Government of China has made a request for correction of the authentic Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide, with a view to bringing the Chinese text into greater harmony with the other authentic texts of the Convention, and had for this purpose submitted a corrected text,

"Considering the memorandum submitted to the General Assembly by the Secretary-General,

"Requests the Secretary-General to transmit a certified copy of the corrected Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as a copy of the present resolution, to all Members of the United Nations and to the non-member States contemplated in article XI of the Convention, and to request States signatories of or parties to the Convention to notify him of their acceptance or objection."

J. USE OF THE CITATION "DIED FOR THE UNITED NATIONS"

France, in July 1952, requested the inclusion of the following item in the provisional agenda of the Assembly's seventh session: "Use of the citation 'Died for the United Nations' in respect to persons who, in certain circumstances, are killed in the service of the United Nations."

In an explanatory memorandum (A/2145/-Rev.1), France referred to General Assembly

resolution 483(V)[32] of 12 December 1950 which provided for the issue of a United Nations ribbon for personnel participating in Korea in the defence of the principles of the Charter.

In France, and doubtless in other countries, the memorandum stated, those who in certain circumstances fell in the defence of their national territory or during hostilities in which their country was engaged, were declared to have "died for their country" and a notation to that effect was made on their death certificate. France believed that measures similar to those adopted on the national level in certain countries could be adopted by the United Nations to honour those who were killed in its service. Each State could, of course, make domestic arrangements to render such honour, but the tribute, it appeared to France, would rest on a firmer legal basis and would carry greater prestige if it were the outcome of a United Nations decision and were rendered by that Organization.

The French Government had in mind not only men on active service under the flag of the United Nations, as in Korea, but also, in certain cases, those entrusted by the United Nations with missions as mediators or observers in connexion either with measures of pacification or efforts to settle a dispute or a situation and to prevent them from degenerating into hostilities.

In the opinion of the French Government, the conferring of such a citation should not carry with it any material consequences, so that there would be no change in the practice already followed for compensation in respect of persons who had died in the service of the United Nations.

The General Committee at its 79th meeting on 15 October considered the French request. The representative of France explained that the only purpose of the proposal was to pay a tribute to all those who had fallen in the service of the United Nations in the fight against aggression.

The United States supported the inclusion of the item in the agenda, stating that the time had now come to pay a tribute to those who had sacrificed their lives in defence of the principles of the Charter.

The USSR representative declared that the French proposal was the outcome of the current situation in Korea which had been brought about by the aggressive policy of the United States and the States which supported that policy. An attempt, he argued, was being made to involve the United Nations in that policy under cover of the United Nations flag. The USSR, he stated, refused to be associated with such a plan and opposed the inclusion of the item in the agenda.

The General Committee decided to recommend the inclusion of the item in the agenda.

The General Assembly, at its 380th plenary meeting on 16 October, considered the recommendation of the General Committee. The representative of Czechoslovakia proposed the deletion of the item, advancing arguments similar to those the USSR representative had put forward in the General Committee. The representatives of France and the United States spoke in support of its inclusion. The Assembly, by 48 votes to 5, with 1 abstention, rejected the Czechoslovak proposal, and placed the item on its agenda.

It decided to consider the item directly in plenary session without reference to a Committee.

The Assembly discussed the question at its 401st plenary meeting on 5 December 1952. It had before it a draft resolution (A/L.121 and Corr.1) submitted by France which would have the Assembly declare to have "Died for the United Nations" all those killed in the course of an action or mission on behalf of the Organization in connexion with the maintenance of international peace and security, the prevention, or ending of hostilities, or the suppression of aggression.

The representative of France explained that the only purpose of the draft resolution was that of paying a tribute internationally, and quite impartially, to those who die in the service of the United Nations in order to ensure the victory of the Charter's main aim of maintaining international peace and security. It was true that most of those who were now laying down their lives in defence of this aim are falling in Korea. The draft resolution, however, was intended to have a general application, not only to the present, but also to the past and the future. Men had fallen in Greece, in Palestine and elsewhere, and they deserved that their memory should be honoured.

In days gone by, he noted, men had died for just causes; but today, for the first time, they were dying for a peaceful world organization. Through its proposal, France wished to pay a tribute to the soldiers of the United Nations ideal; it also wished in this solemn manner to set a seal upon the United Nations commitment and determination to defend a future in which aggression would be as inconceivable as were the human sacrifices of the past.

The representatives of Belgium, Colombia, Greece, Turkey, the Union of South Africa, the United Kingdom and the United States supported

[32] See Y.U.N., 1590, p. 301.

the French draft resolution. They stated that it was appropriate that the United Nations should by this gesture pay tribute to those who have made the supreme sacrifice under its flag and in defence of its ideals. Furthermore, the United Nations in honouring men who had rendered such outstanding services would be honouring itself.

They pointed out that since the United Nations was established many people had laid down their lives in action or on missions on behalf of the Organization and in connexion with the maintenance of international peace and security, the prevention or termination of hostilities, or the suppression of aggression. United Nations actions in Korea was emphasized. The achievements there, the efforts and sacrifices which had been made, far surpassed anything previously undertaken by any international organization in the world's history, it was stated. Special distinctions had been provided for the soldiers defending the United Nations cause in Korea, but the draft resolution now before the Assembly would add a further mark of appreciation for those who lost their lives for the United Nations.

The representative of Greece took the opportunity of paying tribute to the members of the United Nations Special Committee on the Balkans who had died or had been wounded while performing their duty to the United Nations; the representative of the United Kingdom recalled also those who had died in Palestine and Kashmir.

At the end of the discussion, the draft resolution was adopted by 43 votes to 5 as resolution 699 (VII). It read:

"The General Assembly,

"Recalling its resolutions 92 (I) of 7 December 1946 regarding the official seal and emblem of the United Nations, 167 (II) of 20 October 1947 regarding the United Nations flag, and 483 (V) of 12 December 1950 providing for a United Nations distinguishing ribbon or other insignia for personnel having participated in Korea in the defence of peace and of the Principles of the Charter,

"Considering that, together with those killed in ensuring that defence under the United Nations Command, others have met or may meet their death in the service of the United Nations in connexion with actions for the suppression of aggression, or missions the aim of which is the cessation of hostilities, or efforts to prevent a dispute or a situation from deteriorating into hostilities,

"Considering that it is proper to recognize the sacrifice of each and every person in the international cause by rendering to their memory such tribute as will keep alive the remembrance of that sacrifice,

"1. Declares to have 'Died for the United Nations' all those who are killed in the course of an action or a mission on behalf of the Organization in connexion with the maintenance of international peace and security, the prevention or ending of hostilities, or the suppression of aggression;

"2. Requests the Secretary-General to indicate in each case the actions or missions, past, present or future, coming within the scope of the present resolution."

In accordance with the resolution, the Secretary-General submitted to the General Assembly a list (A/2362), by geographical areas and in the chronological order of the date of their establishment of those past actions or missions of the United Nations in the course of which fatal casualties had occurred, and those actions or missions of the United Nations which were still operational, and which in his opinion came within the scope of this resolution, as follows:

Past missions or actions

(1) United Nations Special Committee on the Balkans established by General Assembly resolution 109 (II) of 21 October 1947

(2) United Nations Commission on Korea established by General Assembly resolution 195(III) of 12 December 1948

(3) Security Council Truce Commission for Palestine established by Security Council resolution of 23 April 1948 (S/727)

(4) United Nations Mediator in Palestine appointed by General Assembly resolution 186(S-2) of 14 May 1948

(5) United Nations Representative for India and Pakistan appointed by Security Council resolution of 14 March 1950 (S/1469)

Present missions or actions

(1) United Nations Truce Supervision Organization established by the Mediator in Palestine in May 1948, and continued by Security Council resolution of 11 August 1949 (S/1376)

(2) United Nations Conciliation Commission for Palestine established by General Assembly resolution 194(III) of 11 December 1948

(3) United Nations Relief and Works Agency for Palestine Refugees in the Near East established by General Assembly resolution 302(IV) of 8 December 1949

(4) United Nations Military Observer Group **in** India and Pakistan set up in 1949 on the recommendation of the United Nations Commission for India and Pakistan in its resolution of 13 August 1948, to assist in the implementation of the Cease-Fire Agreement of 1 January 1949

(5) United Nations Representative for India and Pakistan appointed by Security Council resolution of 30 April 1951 (S/2017/Rev.1)

(6) United Nations Commission for the Unification and Rehabilitation of Korea established by General Assembly resolution 376(V) of 7 October 1950

(7) United Nations action in Korea initiated by Security Council resolutions of 27 June and 7 July 1950 (S/1511 and S/1588)

(8) United Nations Korean Reconstruction Agency established by General Assembly resolution 410(V) of 1 December 1950

(9) Balkan Sub-Commission established by the Peace Observation Commission on 23 January 1952 (A/CN.7/6)

K. STATUS OF CLAIMS FOR INJURIES INCURRED IN THE SERVICE OF THE UNITED NATIONS

The General Assembly, on 1 December 1949, adopted resolution 365(IV),[33] concerning reparation for injuries incurred in the service of the United Nations, under which the Secretary-General was authorized to present an international claim against the government of a State, Member or non-member of the United Nations, alleged to be responsible, with a view to obtaining the reparation due in respect of the damage caused to the United Nations and to the victim or to persons entitled through him. The Secretary-General was authorized to submit to arbitration such claims as could not be settled by negotiations. The resolution also requested the Secretary-General to submit an annual report to subsequent sessions of the Assembly on the status of such claims.

The Secretary-General, accordingly, submitted to the seventh session of the General Assembly a report (A/2180) informing it of the action taken in connexion with the death in Palestine of one member of the Secretariat and four French military observers and the injury suffered by one French military observer.

In reply to a letter sent by the Secretary-General in May 1951, the Minister for Foreign Affairs of Jordan had disclaimed responsibility for the death in Palestine in July 1948 of Ole Helge Bakke, member of the Secretariat. While expressing its regret and condemnation of the incident, the Jordan Government stated that the shooting had started from the Israel side during the passage of the United Nations convoy which included the jeep driven by Mr. Bakke, that he had been hit by a stray bullet, and that the shot had not been fired by a member of the Arab Legion. The Jordan Government had expressed the hope that it would be relieved of all financial claims connected with the incident.

The Secretary-General reported that, on the basis of the information available to the United Nations, he was unable to release the Jordan Government from all financial liability in connexion with the matter and had proposed in January and again in June 1952 that the claim be submitted to arbitration. The Jordan Government had informed him that it could not agree to this proposal. The Secretary-General stated that in view of the "unwillingness of the Jordan Government to settle this claim by negotiation or by arbitration in accordance with General Assembly resolution 365 (IV)", he sought guidance from the Assembly regarding any future steps which might be taken in the prosecution of the claim.

On 11 September 1952 the Secretary-General requested Israel to pay $25,233 to the United Nations as reparations for the monetary damage borne by the Organization in connexion with the death of Colonel Andre Sérot, a United Nations observer of French nationality, who was assassinated with the United Nations Mediator Count Folke Bernadotte in Jerusalem on 17 September 1948. Although the claim had not been answered, the Secretary-General recalled that Israel had substantially complied with the United Nations claim for the death of Count Bernadotte.

On 5 September 1952 the Secretary-General requested Egypt to pay $52,874.20 to the United Nations as reparation for the damage caused to the Organization as a consequence of the deaths on 28 August 1948 of Lt. Colonel Queru and Captain Pierre Jeannel, United Nations military observers of French nationality. The Secretary-General in his letter to the Egyptian Government recalled that the two observers were attacked and killed by Saudi Arabian troops under Egyptian command after leaving their plane which had landed at the Gaza airfield after being the object of Egyptian anti-aircraft fire. Egypt, he reported, disclaimed all responsibility for the deaths of the two observers. In the event that Egypt maintained this position, he recommended the matter to be submitted to arbitration.

The Secretary-General reported that an examination by him of the circumstances of the incident in which Commander René de Labarrière (France) was killed and Commander Etienne de Canchy (France) was wounded on 6 July 1948 in the Nazareth region of Palestine led him to the conclusion that this incident was caused by the explosion of land mines accidentally set off by Commander de Canchy and by a Franciscan Father who was with the two United Nations military observers. The Secretary-General therefore determined that this incident did not involve the international responsibility of any government, and he did not intend to take any further action in the matter.

The report of the Secretary-General was considered at the 357th meeting of the Sixth Committee on 19 December 1952.

The representative of France stated, with reference to the claims in respect of the death of two French officers, that her Government, acting

[33] See Y.U.N., 1948-49,p. 945; see also Y.U.N., 1950, pp. 863-65.

in pursuance of resolution 365 (IV), had concluded an agreement with the Secretary-General whereby the United Nations alone would submit the international claim. The French Government, for its part, had not presented any claim to the governments alleged to be responsible.

The representative of Egypt disclaimed any responsibility of his country for the death of the two French officers on the ground that the aircraft had failed to observe regulations on flights of aircraft over the Egyptian front.

The representative of the Secretary-General gave further details of the Secretary-General's position.

The representative of Sweden introduced a draft resolution (A/C.6/L.288) which, in its operative paragraph, provided that the General Assembly "Urges those governments to which claims have been presented to negotiate a settlement with the Secretary-General, or, if no settlement can be reached, to agree to arbitrate the questions at issue on the basis of a mutually acceptable procedure." He said that he recommended recourse to arbitration as the method of settlement, inasmuch as there were legal questions involved which it had been impossible to settle by negotiation.

The representatives of Greece, the Netherlands, the Philippines, the United Kingdom and the United States were, in principle, in agreement with the Swedish proposal. The Sixth Committee, they stated, was called upon to give the Secretary-General guidance regarding the procedure to be followed to obtain settlement of certain claims and not to pronounce on the merits of the cases referred to in the Secretary-General's report.

They saw no reason why anyone should contest the General Assembly's competence to do what any party to a dispute had a right to do, namely, to request the other party to have recourse to arbitration, a procedure admitted both by international practice and by General Assembly resolution 365 (IV).

The representative of Sweden argued that the acceptance of arbitration was not an admission of responsibility and did not prejudge the substance of the case. Furthermore, these were international claims and could not be brought before national courts.

The representatives of Egypt, Iran, Mexico, Syria and the USSR opposed the Swedish proposal on the following main grounds:

(1) the cases in question involved the United Nations directly, and the Organization should not be judge and party at the same time; (2) the claims presented by the Secretary-General were for damages under private law and should be brought before national courts; (3) the General Assembly could not impose arbitration on States unwilling to agree to it and could not even recommend to States to submit to arbitration their controversies with the Secretary-General; and (4) the submission to arbitration presupposed an admission of responsibility on the part of a State against which the Secretary-General had brought a claim.

The representative of Mexico, in particular, stated that his delegation could not accept the principle of responsibility of States towards the United Nations. That principle, he argued, would in fact add to and overlap the diplomatic responsibility of States towards the country of which the injured person was a national.

The representatives of Brazil and Yugoslavia felt that the Assembly should perhaps have further information regarding each of the cases mentioned in the Secretary-General's report before inviting the States concerned to submit the Secretary-General's claim to arbitration.

In the course of the discussion, the representative of the United Kingdom stated that arbitration was not the sole method which could be used by the Secretary-General and the States alleged to be responsible; under Assembly resolution 365(IV) they might, for example, conclude an agreement to institute an investigation into the facts. In order that there should be more latitude in the choice of methods likely to lead to a settlement of the claims, he proposed orally that the Swedish draft be amended so as to: (1) delete the third paragraph of the preamble, which would have stated that it was highly desirable that the claims should be settled by direct negotiation or by recourse to arbitration; and (2) replace the operative paragraph by the phrase "Recommends that such claims be settled by the procedures envisaged in resolution 365(IV)."

The representative of France felt that the wording of the Swedish draft was open to misinterpretation; it might be thought that to speak of negotiating a settlement implied an admission that there was something to be settled. Moreover, while the Secretary-General should be encouraged to continue his efforts to reach agreement with the governments in question, those efforts did not necessarily have to be directed exclusively towards arbitration; other means of settlement existed. She therefore supported the United Kingdom proposal.

The representative of the Philippines proposed orally that the words "alleged to be responsible" should be omitted from the second paragraph of the preamble, which referred to the claims presented to Governments alleged to be responsible and the operative part should be redrafted to read: "Invites those governments to which claims

have been presented to consider a just settlement of the question at issue."

The representative of Iran introduced an amendment (A/C.6/L.290) to: (1) delete the third paragraph of the preamble; and (2) replace the operative paragraph by the following: "Invites the Secretary-General to continue his efforts, in pursuance of resolution 365 (IV), to obtain reparation for injuries incurred."

The representative of Sweden stated that he could accept the oral amendments of the United Kingdom and the Philippines, and a modified version of the Swedish draft, incorporating the United Kingdom's amendments and the first Philippine amendment, was presented to the Committee. In view of the acceptance of the United Kingdom proposal to delete the third paragraph of the preamble it became unnecessary to vote on the first part of the Iranian amendment. The second part was rejected by a roll-call vote of 22 to 15, with 5 abstentions.

The Swedish draft, as revised, was then voted on. The preamble was adopted by 22 votes to 7, with 7 abstentions; and the operative paragraph was adopted by a roll-call vote of 22 to 10, with 10 abstentions. The revised draft resolution as a whole was adopted by 21 votes to 11, with 7 abstentions.

The draft resolution recommended by the Sixth Committee (A/2353) was adopted by the General Assembly, without discussion, by 40 votes to 10, with 4 abstentions, at its 410th plenary meeting on 21 December as resolution 690 (VII). It read:

"The General Assembly,

"Having considered the report of the Secretary-General on the status of claims for injuries incurred in the service of the United Nations.

"Noting that the Secretary-General, pursuant to General Assembly resolution 365(IV) of 1 December 1949 has presented international claims for reparation to governments in connexion with the death of agents of the United Nations,

"Recommends that such claims be settled by the procedures envisaged in resolution 365 (IV)."

L. PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

There was no change in 1952 in the state of accessions to the Convention on the Privileges and Immunities of the United Nations. A total of 38 States had deposited their instruments of accession, as follows (in chronological order):

	Date of deposit of instrument	
United Kingdom	17 September	1946
Dominican Republic	7 March	1947
Liberia	14 March	1947
Iran	8 May	1947
Honduras	16 May	1947
Panama	27 May	1947
Guatemala	7 July	1947
El Salvador	9 July	1947
Ethiopia	22 July	1947
Haiti	6 August	1947
France	18 August	1947
Norway	18 August	1947
Sweden	28 August	1947
Afghanistan	5 September	1947
Philippines	28 October	1947
Nicaragua	29 November	1947
New Zealand	10 December	1947
Greece	29 December	1947
Poland	8 January	1948
Canada	22 January	1948
Iceland	10 March	1948
Netherlands	19 April	1948
India	13 May	1948
Denmark	10 June	1948
Egypt	17 September	1948
Pakistan	22 September	1948
Belgium	25 September	1948
Chile	15 October	1948
Luxembourg	14 February	1949
Australia	2 March	1949
Lebanon	10 March	1949
Iraq	15 September	1949
Israel	21 September	1949
Costa Rica	26 October	1949
Brazil	15 December	1949
Bolivia	23 December	1949
Yugoslavia	30 June	1950
Turkey	22 August	1950

On 25 July 1952 an agreement, which had been initialled on 23 April 1952, was concluded with the Government of Japan relating to the Privileges and Immunities of the United Nations in that country.

During 1952, three instruments of accession, two with reservations, to the Convention on the Privileges and Immunities of the Specialized Agencies were deposited with the Secretary-General; the reservations were submitted to the States and specialized agencies concerned. Four notifications from States already parties to the Convention, namely—Haiti, Luxembourg, Netherlands and Yugoslavia—extending the application of the Convention to further specialized agencies, were also received during 1952.

By 31 December 1952, sixteen States (including two States not Members of the United Nations) had acceded to the Convention; in addition, two States, Egypt and Italy, had submitted instruments subject to reservations. The States acceding to the Convention and the dates of deposit of their instruments of accession are:

State	Date of deposit of instrument
Netherlands	2 December 1948
India	10 February 1949
United Kingdom	16 August 1949
Denmark	25 January 1950
Norway	25 January 1950
Philippines	20 March 1950
Austria	21 July 1950
Luxembourg	20 September 1950
Hashemite Kingdom of Jordan	12 December 1950
Ecuador	8 June 1951
Guatemala	30 June 1951
Pakistan	23 July 1951
Sweden	12 September 1951
Chile	21 September 1951
Yugoslavia	23 November 1951
Haiti	16 April 1952

A Handbook on the Legal Status, Privileges and Immunities of the United Nations (ST/-LEG/2) was issued in mimeographed form on 19 September 1952. It was planned to publish the Handbook as a printed document after experience has been gained regarding the effectiveness of its form and content. The Handbook, which serves as a source of reference, contains such material as the texts of the various agreements on privileges and immunities between the United Nations and Member and non-member States, and the texts of national laws, including those of the host State—the United States—regarding privileges and immunities and related matters.

M. MULTILATERAL CONVENTIONS

1. New Conventions Concluded under the Auspices of the United Nations

The following conventions, protocols, agreements or other instruments of which the Secretary-General is the depositary were drawn up under the auspices of the United Nations during 1952.[34]

International Convention to facilitate the crossing of frontiers for passengers and baggage carried by rail, signed at Geneva on 10 January 1952

International Convention to facilitate the crossing of frontiers for goods carried by rail, signed at Geneva on 10 January 1952

Final Act of the Second United Nations Technical Assistance Conference, signed at Paris on 7 February 1952[35]

International Convention to facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva on 7 November 1952

Second Protocol of Rectifications and Modifications to the Texts of the Schedules to the General Agreement on Tariffs and Trade, signed at Geneva on 8 November 1952

Second Protocol of Supplementary Concessions to the General Agreement on Tariffs and Trade (Austria and Germany), Innsbruck, 22 November 1952

Additional Protocol amending certain provisions of the Agreement providing for the International Application of the Draft International Customs Conventions on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road, opened for signature at Geneva from 28 November 1952 to 1 July 1953 and at the United Nations Headquarters until its entry into force

2. Status of Signatures, Ratifications and Accessions; Entry into Force

The number of international agreements for which the Secretary-General exercises depositary functions had risen by 31 December 1952 to 99.[36]

During 1952, a total of 126 signatures were affixed to international agreements for which the Secretary-General exercises depositary functions, and 132 instruments of ratification, accession or notification were transmitted to the Secretary-General.

The following seven agreements entered into force during 1952:

Convention on the Declaration of Death of Missing Persons, annexed to the Final Act of the United Nations Conference on Declaration of Death of Missing Persons, signed at Lake Success, New York, on 6 April 1950 (entered into force on 24 January 1952)

Convention on Road Traffic, signed at Geneva on 19 September 1949 (entered into force on 26 March 1952) annexed to the Final Act of the United Nations Conference on Road and Motor Transport held at Geneva from 23 August to 19 September 1949

Agreement on the Importation of Educational, Scientific and Cultural Materials, signed at Lake Success, New York, on 22 November 1950 (entered into force on 21 May 1952)

European Agreement on the application of article 23 of the 1949 Convention on Road Traffic concerning the dimensions and weights of vehicles permitted to travel on certain roads of the Contracting Parties, signed at Geneva on 16 September 1950 (entered into force on 1 July 1952)

Protocol modifying Part I and Article XXIX of the General Agreement on Tariffs and Trade, signed at

[34] This list includes all agreements which have been deposited with the Secretary-General from 1 January—31 December 1952 but excludes other conventions, protocols and agreements which were drawn up under the auspices of the specialized agencies and of which the Secretary-General is not the depositary.

[35] Open for signature at United Nations Headquarters until 30 April 1952 but not constituting an international agreement.

[36] This number does not include those agreements concluded under the auspices of the League of Nations for which the Secretary-General of the United Nations exercises depositary functions.

Geneva on 14 September 1948 (entered into force on 24 September 1952)

Protocol replacing Schedule VI (Ceylon) of the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949 (entered into force on 24 September 1952)

First Protocol of Modifications to the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949 (entered into force on 24 September 1952)

3. Revised General Act for the Pacific Settlement of International Disputes

Denmark on 25 March 1952 acceded to all the provisions (Chapters I, II, III and IV) of the Revised General Act for the Pacific Settlement of International Disputes.

N. REGISTRATION AND PUBLICATION OF TREATIES AND INTERNATIONAL AGREEMENTS

During 1952, a total of 753 treaties and agreements were registered with the Secretariat—95 ex officio, 476 by seventeen governments, and 182 by six specialized agencies. A total of 130 treaties and agreements were filed and recorded—30 by the United Nations, 89 at the request of a government and eleven at the request of a specialized agency. [37]

This brought to 3,273 the total of treaties and agreements registered or filed and recorded by the end of 1952.

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 translations in English and French. Twenty volumes (62 to 81) of the Treaty Series were published in the course of 1952.

In order to facilitate reference to the United Nations Treaty Series the Secretariat publishes a General Index. Three volumes of the General Index were published by the end of 1952: No. 1 covering the first fifteen volumes of the Treaty Series, No. 2—volumes 16 to 30, and No. 3—volumes 31 to 50. General Index No. 4 covering volumes 50 to 75 of the Treaty Series was being prepared.

O. PROCEEDINGS IN NATIONAL COURTS

The capacity of the United Nations to institute legal proceedings is governed by Article 104 of the Charter and by article I of the Convention on the Privileges and Immunities of the United Nations. With respect to the United States, which has not yet acceded to the Convention, the International Organization Immunities Act of 1945 provides that international organizations, including the United Nations, shall possess the capacity to institute legal proceedings.

Under this authority the United Nations has brought a number of legal actions of a private law character in the courts of several countries. Some of these actions were brought by the United Nations on its own behalf, others on behalf of the United Nations International Children's Emergency Fund (UNICEF) or the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWAPRNE). For instance, the United Nations undertook to take the necessary steps for the collection of certain maritime and other claims assigned by the United Nations Relief and Rehabilitation Administration (UNRRA) to the United Nations for the benefit of UNICEF. In the prosecution of these claims the United Nations brought legal actions in the courts of several countries including the United States, Canada and the United Kingdom. Other types of action included the legal proceedings instituted by the United Nations in New York courts in connexion with traffic accidents involving United Nations vehicles, a petition brought in a California court in connexion with the distribution of an estate, and an action instituted in France by the United Nations on behalf of UNICEF and UNRWAPRNE in connexion with the substitution of blankets purchased by UNICEF as agent for UNRWAPRNE.

During 1952 the United Nations continued to be engaged in legal proceedings before the courts of various countries.

[37] For further information regarding these treaties and agreements, that is, 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/59 to 70).

The legal status of the United Nations was discussed in the two following actions which were commenced in Belgium and Canada respectively by the United Nations as the assignee of claims transferred by UNRRA to the United Nations for the benefit of UNICEF.

United Nations vs. Brandes, Tribunal de Bruxelles, Belgium, (Seventh Chamber), judgment of 27 March 1952. This action was for reimbursement of over-payments made by UNRRA to a former staff member. The defendent contended that the United Nations was not entitled to the rights of UNRRA, and that neither UNRRA nor the United Nations had legal personality. The Tribunal held that UNRRA and the United Nations, having been established by international conventions ratified by Belgian law, were recognized under Belgian law as public international organizations and had legal personality in Belgium. The Tribunal also decided that the United Nations was entitled to exercise the rights of UNRRA under the terms of the assignment of claims made by UNRRA to the United Nations for the benefit of UNICEF.

United Nations vs. Canada—Asiatic Lines Ltd., et al, Superior Court of Montreal, Canada (No. 317814), judgment of 26 September 1952. This was an action for over-payment of freight paid by UNRRA in connexion with the shipment of supplies to countries receiving UNRRA assistance. The defendant contended that the United Nations had no right to institute legal proceedings. The Court held that, under Canadian law, the United Nations possessed Juridicial personality and had the capacity to institute legal proceedings.

A number of actions against sub-tenants under leases concluded by the United Nations, commenced by the United Nations before New York courts, went to trial during the year under review.