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1966 SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at Headquarters, New York,
on Thursday, 17 March 1966, at 4.30 p.m.

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PRESENT:

Chairman:	Mr. Krishna RAO	(India)
Rapporteur:	Mr. RIPHAGEN	Netherlands
Members:	Mr. MAMERI	Algeria
	Mr. QUIJANO) Mr. GOWLAND)	Argentina
	Sir Kenneth BAILEY) Mr. McKEOWN)	Australia
	U BA THAUNG	Burma
	Mr. ENGO	Cameroon
	Mr. GOTLIEB	Canada
	Mr. ALBONICO) Mr. ILLANES)	Chile
	Mr. PECHOTA	Czechoslovakia
	Mr. IGNACIO-PINTO	Dahomey
	Mr. MONOD	France
	Mr. VANDERPUYE	Ghana
	Mr. VIZCAINO LEAL	Guatemala
	Mr. MISHRA) Mr. THERATTIL)	India
	Mr. ARANGIO RUIZ	Italy
	Mr. AMAU	Japan
	Mr. BHOI	Kenya
	Mr. CHAMMAS	Lebanon
	Mr. RAMAHOLIMIHASO	Madagascar
	Mr. MERCADO	Mexico
	Mr. ODCGWU	Nigeria
	Mr. OLSZOWKA	Poland
	Mr. BOLINTINEANU	Romania
	Mr. BLIX	Sweden
	Mr. NACHABE	Syria
	Mr. MOVCHAN	Union of Soviet Socialist Republics
	Mr. EL-REEDY	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland

PRESENT (continued):	Mr. HARGROVE	United States of America
Members (continued):	Mr. MOLINA	Venezuela
	Mr. SAHOVIC	Yugoslavia
Secretariat:	Mr. STAVROPOULOS	Legal Counsel
	Mr. BAGUINIAN	Secretary of the Committee

CONSIDERATION, PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2103 (XX) A AND B OF 20 DECEMBER 1965, OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

(i) CONTINUED CONSIDERATION OF THE FOUR PRINCIPLES SET FORTH IN PARAGRAPH 3 OF GENERAL ASSEMBLY RESOLUTION 1815 (XVII)

(c) THE DUTY NOT TO INTERVENE IN MATTERS WITHIN THE DOMESTIC JURISDICTION OF ANY STATE, IN ACCORDANCE WITH THE CHARTER (A/AC.125/L.12-15, L.17) (continued)

1. Mr. MOLINA (Venezuela) said that his delegation had welcomed the adoption of General Assembly resolution 2131 (XX) as an affirmation of elements of consensus with regard to the principle of non-intervention. The resolution marked a great advance when contrasted with the negative results achieved at Mexico City in respect of that principle. His delegation could agree that the Committee must give the resolution careful study in order to clarify its juridical content. He respected the doubts expressed by delegations regarding some of the terminology used, although many of the terms which had been criticized were taken from unquestioned authorities in the field of international law. Oppenheim's International Law stated specifically that intervention could take place in the external as well as the internal affairs of a State. With regard to the concept of "personality", Oppenheim said that recognition of a State as a member of the international community involved recognition of its equality, dignity, independence and territorial and personal supremacy and that those qualities together constituted the international personality of a State. As to the terms "State" and "people", Oppenheim defined a State as existing when a people was settled in a country under its own sovereign government, and a people as an aggregate of individuals living together as a community. Another author, Charles Fenwick, defined States as "corporate juristic bodies possessing a legal unity or personality by reason of the political or constitutional bond between their individual members".

2. It seemed important to safeguard those points which had already won agreement in the General Assembly. That was the aim of draft resolution A/AC.125/L.17, and his delegation would support it if, as he assumed, it was to be put to the vote. He would not comment on draft resolutions A/AC.125/L.12 and L.13 for the present, except to say that, while agreeing with most of the content of those drafts, his delegation had reservations on certain points which seemed either to go beyond resolution 2131 (XX) or to limit its scope.

3. Mr. VANDERPUYE (Ghana) thanked the sponsors of document A/AC.125/L.13 for their contribution to the discussion of principle C. He wished to analyse some of the proposals in that document, in the light of certain Articles of the United Nations Charter. He thought that it would be found that some parts of document A/AC.125/L.13 involved revolutionary departures from the terms of the Charter. Paragraph 2 D was a case in point. Article 51 of the Charter authorized individual or collective self-defence in one specific circumstance, namely in the event of an armed attack; nothing was said in it about collective self-defence against "intervention". Moreover, under Article 53, no enforcement action could be taken under regional arrangements or by regional agencies without the authorization of the Security Council; it thus seemed clear that no group of States could take it upon itself to intervene in the affairs of another State on the pretext of "collective self-defence". It was extremely doubtful whether there could be said to be an inherent right of collective self-defence under natural law. At any rate, as Bowett pointed out in Self-Defence in International Law, the principle in Article 51 did not justify a third State not directly threatened in intervening in a dispute. His impression was that the sponsors had not given sufficient thought to the wording of paragraph 2 D. It would surely be a dangerous departure from the Charter and from international law as generally accepted to authorize a group of States to take collective action on the pretext of collective self-defence against, for example, the fomenting of civil strife or infiltration.

4. As for paragraph 3 A, it seemed incompatible with the purposes of the United Nations, especially that of developing friendly relations and co-operation among nations. It was hard to see how freedom could be given to States to "seek to influence the policies and actions of other States" without violating the principle of sovereign equality and respect for the political independence of States.

5. In its other parts, the draft remained fairly close to General Assembly resolution 2131 (XX). However, he did not see what useful purpose was served by the inclusion of paragraph 2 A, which concerned the principle of the non-use of force and not that of non-intervention; in fact, the sponsors appeared not to have made a clear distinction between armed attack, or the use of force, on the one hand and intervention on the other. Moreover, there seemed to be general agreement that the Committee should work on the basis of General Assembly resolution 2131 (XX). Document A/AC.125/L.13 departed significantly from the text approved by the General Assembly and would, in his view, tend to confuse the issue.

(Mr. Vanderpuye, Ghana)

6. His delegation considered that the Committee should adhere closely to the text of the General Assembly resolution, and therefore welcomed the joint draft resolution submitted by Chile and the United Arab Republic (A/AC.125/L.17). However, it did seem that the Special Committee, as a body of lawyers, was entitled to consider whether the text was well drafted from the legal standpoint and to allow for the possibility of drafting changes which would not affect the general content of the document. He also felt that additions which were consistent with the tenor of the resolution could be made to it. Consequently, while supporting draft resolution A/AC.125/L.17 in principle, his delegation wished to reserve the right to propose drafting changes in the text of resolution 2131 (XX) where they seemed required.

7. U BA THAUNG (Burma) said that his delegation agreed with all other delegations that General Assembly resolution 2131 (XX) was the starting point of the Special Committee's work on the principle of non-intervention. It also shared the view of some delegations that the meaning of that resolution, which had been adopted unanimously, was clear and that no substantive changes could be made in its text, though minor drafting changes should be made to give it juridical form.

8. Burma maintained friendly relations with virtually all the countries of the world, and it considered the principle of non-intervention of the utmost significance for the progressive development of international law and the strengthening of peaceful coexistence. When the draft Declaration on the inadmissibility of intervention had been under consideration in the First Committee, the Burmese delegation had recalled that Burma had endeavoured to strengthen world peace and to promote international understanding by pursuing a policy of positive neutrality ever since it had rid itself of foreign domination and regained its identity as a sovereign State. The Burmese delegation had stated the view that peace and international understanding could not be realized unless all States meticulously observed the principles endorsed by the Bandung Conference in 1955 and by the Belgrade and Cairo Conferences in 1961 and 1964, including the principle of non-intervention, to which it attached the greatest importance because of its conviction that all nations should have the fullest right to self-determination, the right to shape their own destiny, to choose their own political and social systems and their own way of life, based on their own national requirements and aspirations, without any outside interference or pressure.

(U Ba Thaung, Burma)

9. Viewing the proposals before the Special Committee in the light of that declared policy, his delegation could generally support the six-Power proposal in document A/AC.125/L.12, and was prepared to abide by the decision of the majority on it. It believed that paragraph 3 of that proposal could be appropriately retained in the statement of principle C for the reasons stated by previous speakers.

10. His delegation could not agree with some of the provisions of the six-Power proposal in document A/AC.125/L.13, particularly paragraph 3 A. However, it needed more time to study that proposal and would comment on it, if necessary, at a later stage.

11. Lastly, his delegation was in complete agreement with the joint draft resolution submitted by Chile and the United Arab Republic (A/AC.125/L.17), and would vote for it if a vote became necessary.

12. Mr. MISHRA (India) said that the introduction of the proposal in document A/AC.125/L.13 had changed the situation. He had thought that the adoption of the Declaration on the inadmissibility of intervention made the Special Committee's task in respect of principle C an easy one. The criticism of the language of the Declaration on grounds of grammar and clarity at previous meetings had led him to believe that only some drafting changes were required. It was apparent, however, that the sponsors of the proposal in document A/AC.125/L.13 sought to do more than merely improve the language of the Declaration.

13. Thus, the reference in paragraph 1 of the Declaration to intervention in the external affairs of States was eliminated by paragraph 1 of the six-Power proposal (A/AC.125/L.13). It would be a major backward step unless the sponsors made it clear beyond doubt that intervention in matters within the domestic jurisdiction of a State included intervention in its external affairs. Even if that clarification was made, however, the second sentence of the paragraph gave the first sentence a very limited connotation.

14. In paragraph 2 of the six-Power proposal, moreover, the concept of non-intervention was severely limited by linking it to the concept of force. The language of sub-paragraph A, taken from Article 2 (4) of the United Nations Charter, was applicable to principle A rather than to principle C. Sub-paragraph B did not indicate who was to decide whether action was "of such design and effect as to impair or destroy the political independence or territorial integrity" of a State; nor was it clear whether the word "action" included both armed and unarmed action.

(Mr. Mishra, India)

These questions are relevant in view of the limiting nature of the proposals. Even more restrictive, however, was the fact that sub-paragraph B referred to impairment or destruction of political independence and territorial integrity only, and omitted any reference to action against the political, economic, social or cultural systems of a State, mentioned in paragraph 1.

15. The first sentence of sub-paragraph C was very vague and ambiguous. In the second sentence, the word "means" was presumably limited to forcible means. The Indian Government, in signing the Tashkent Agreement, had gone much farther by prohibiting propaganda against the régime of another State. The expression "to interfere" in paragraph 2 of the Declaration was not restricted to action by forcible means, and on the whole paragraph 2 of the Declaration was a much better statement of the matter covered by sub-paragraph C.

16. In sub-paragraph D, the word "intervention" was not qualified by the word "armed", and the concept of self-defence, which should apply to the use of force, had been introduced not against armed attack but merely against intervention.

17. If the words "freedom of States to seek to influence the policies and actions of other States" in paragraph 3 A could be construed to include intervention, then the paragraph would amount to an international institutionalization of intervention. There was no "generally recognized freedom" of States to intervene in the affairs of other States. On the other hand, if the words referred only to ordinary diplomatic and consular activities, there was no need for the provision. The principle of non-intervention had never been considered to prohibit such activities, which were now governed by the Vienna Conventions on Diplomatic Relations and Consular Relations.

18. The Declaration was the starting point for the Special Committee's work on principle C. The Special Committee could add to that Declaration and could try to clarify its meaning, but it could not derogate from it. The proposal in document A/AC.125/L.13, however, limited the elements of the principle of non-intervention spelled out in the Declaration. His delegation would therefore support the Chilean and United Arab Republic joint draft resolution (A/AC.125/L.17), which instructed the Drafting Committee to proceed from the starting point provided by the Declaration.

19. Mr. CHAMMAS (Lebanon), speaking first on behalf of the sponsors of the proposal in document A/AC.125/L.12, said that the sponsors wished to revise their text. Since some delegations appeared to forget that the first three paragraphs of the proposal were part of the Declaration on the inadmissibility of intervention, the substance of which could not be changed, the sponsors had decided to submit only the last three paragraphs of their proposal as additional paragraphs for consideration in connexion with the text of the Declaration. Moreover, they would replace the words "maintain territorial settlements or special advantages" in paragraph 5 of the original proposal by the words "perpetuate political or economic advantages", to take account of the points raised by the Latin American delegations. To meet the criticism of the Swedish and other delegations, they would substitute the word "colonial" for the word "foreign" in paragraph 6 of the original proposal.

20. Turning to the draft resolution in document A/AC.125/L.13 and speaking on behalf of his own delegation, he said that the proper place in which to submit such a proposal would have been in the First Committee of the General Assembly. Earlier in the debate on non-intervention in the Committee one of the fundamental reservations expressed with regard to the Declaration in resolution 2131 (XX) had been that it went beyond the scope of the principle of non-intervention and included a political element. The Declaration was, however, admittedly a political document and that was why the Special Committee was now engaged in the task of determining its juridical content. Yet the proposal in document A/AC.125/L.13 was itself of a political character. Moreover, though it had been agreed that the Declaration was to constitute the basis of the Committee's work, the new proposal was not based on the Declaration at all. The essential term "external affairs" was omitted from the first sentence of paragraph 1. The reference in the second sentence of that paragraph to the right of a State to choose its political, economic, social or cultural systems without intervention by another State did not include any prohibition on intervention at a later stage, after that choice had been made; the second sentence of paragraph 1 of document A/AC.125/L.12 was therefore preferable. Also, the right of choice referred to could more appropriately be dealt with in the context of the principle of self-determination. After all, the intent of paragraph 1 of the Declaration was to prohibit all forms of intervention, while in the draft L.13 that concept was subject to limitations. Similarly, the right of a State to choose the form and degree of its association with other States, as

(Mr. Chammas, Lebanon)

referred to in the latter part of the second sentence, was related more closely to the duty of States to co-operate with one another than it was to non-intervention.

21. He agreed with the Indian representative's comment that a reference to the threat or use of force in paragraph 2 A was out of place in a proposal concerning the principle of non-intervention and that paragraph 2 B was deficient because it was concerned only with political independence and territorial integrity.

22. He associated himself with the Ghanaian representative's remarks regarding paragraph 2 D, which introduced an idea that was not included in the Declaration. It must also be asked what type of intervention was intended in that paragraph; was it the type referred to in sub-paragraph 2 C?

23. In view of the statement in paragraph 1 as to the right of a State freely to choose the form and degree of its associations with other States, meaning that States had the right to enter freely into alliances and regional arrangements and hence to allow their foreign policies to be influenced by their partners in those alliances and arrangements, and bearing in mind the readiness to influence and be influenced because of obligations emanating from such arrangements, the intent of paragraph 3 A was to call upon the Assembly to sanction through international law unlimited and undefined rights for States to influence the policies of other States. Areas of influence in international relations had not been defined, nor was there a settled international practice in that respect. This was why the delegation of Lebanon could not accept the concept proposed in paragraph 3 A and opposed the inclusion of such a concept in the drafting of this principle.

24. Mr. GOTLIEB (Canada) said that he would like to associate his delegation with the explanations of the proposal in document A/AC.125/L.13 given by some of the other sponsors, particularly the representative of Australia. He wished to emphasize that the proposal represented a sincere attempt on the part of the sponsors to express the basic elements of General Assembly resolution 2131 (XX) in acceptable juridical language. Thus the sponsors were in no way departing from the position they had taken on that resolution in the General Assembly. Canada had supported that resolution and what it was now seeking to do was to place the general principles of non-intervention, as reflected in that resolution, firmly within the context of international law. He was therefore surprised to hear one of the speakers at the previous meeting suggest that the proposal was a politically motivated attempt to depart from the Assembly's endorsement of the principles set

(Mr. Gotlieb, Canada)

forth in resolution 2131 (XX) and thereby reduce the area of agreement among States which had already been established. His delegation wished once again to place clearly on record that its support for the Declaration was unqualified but that it supported that document as a statement of the political conviction and will of the General Assembly and never intended it to be regarded by the Special Committee as not requiring careful consideration from a legal standpoint with a view to formulating in terms of general legal application the basic principles of non-intervention.

25. He hoped that members had taken careful note of the Australian representative's statement concerning paragraph 2 B of the proposal. In his opinion, the juxtaposition of paragraphs 2 A and 2 B should make it apparent that the provisions were broad in scope and generally covered the same ground as the corresponding part of the Declaration. The wording of paragraph 2 B appropriately drew attention to the fact that no action of whatever character should be taken which would in any way impair or destroy the territorial integrity or political independence of States - ideas which were clearly recognized and defined in international law. Thus that paragraph sought to express in legal terms the related principles set forth in the Declaration.

26. In reply to the Ghanaian representative's question why there was a reference to the threat or use of force in paragraph 2 A, he explained that the sponsors felt it was the duty of the Special Committee to spell out what was meant by the reference to armed intervention in the Declaration: intervention based on the use of armed force was one of the commonest forms of intervention and any formulation of the legal principles of non-intervention should give due prominence to that example.

27. The Indian representative had objected to the wording of paragraph 2 C. While his own delegation considered that wording an improvement on the wording of the corresponding paragraph in the alternative six-Power proposal (A/AC.125/L.12), it saw no reason why the Drafting Committee should not be able to work out a generally acceptable text.

28. With regard to paragraph 2 D, he observed that in a political statement dealing with the principles of non-intervention there would be no need to include a reference to closely related obligations and rights; however, as the Committee was seeking to formulate a statement of international law, his delegation thought it correct and necessary to state the all-important principle that countries had a right to defend

(Mr. Gotlieb, Canada)

themselves against intervention. It should be noted that the paragraph referred specifically to the fact that action in self-defence must be taken in accordance with international law. That provision, far from being inconsistent with the Charter, sought to ensure recognition of the principle that States which were guilty of acts of intervention must realize that certain consequences would flow from those acts: in other words, that States against which intervention had been committed would have the right to take whatever action was permissible under international law, and in accordance with the Charter, to defend themselves.

29. With regard to the Indian representative's comment on paragraph 3 A, he would like to give assurances that it was in no way intended to suggest that intervention was permissible. In drafting that paragraph the sponsors had had in mind the fact that when general principles were formulated it was often necessary to put in a saving clause to indicate what it was that those general principles did not affect. The relationship of Article 51 of the Charter to Article 2 (4) was a case in point. Also, it should be noted that the freedom referred to in paragraph 3 A of the proposal was specifically to be exercised in accordance with international law. The idea underlying that paragraph was that in the modern world States were interdependent and were called upon by the Charter to co-operate in maintaining international peace and security. There might be many instances in which States should try to influence others to follow policies consistent with the maintenance of peace and security - or, to give another example, with the principle of respect for human rights. Thus the idea that States should have freedom to influence the policies of other States seemed to his delegation to be essential to the fulfilment of the obligations of States to the international community.

30. Mr. ODOGWU (Nigeria) said his delegation noted with regret that the submission of the proposal in document A/AC.125/L.13 appeared to represent a departure from the Committee's original intention to abide by the Czechoslovak representative's suggestion that it should avoid becoming embroiled in academic considerations.

31. His delegation could not support the argument that because the Declaration in resolution 2131 (XX) had been based on the deliberations of a political committee it was deficient in legal content. It had agreed, however, that the Special Committee, composed as it was exclusively of jurists, could re-write the principles set forth in the Declaration in more appropriate juridical language. The proposal

(Mr. Odogwu, Nigeria)

in document A/AC.125/L.12 had done just that. Until the previous day his delegation had heard no valid criticism of that document but merely requests for clarifications and drafting changes, which could be taken care of in the Drafting Committee. Now, however, the Committee had before it in document A/AC.125/L.13 a proposal which his delegation could have found acceptable only if the principle under consideration had been that States had a right to intervene in the affairs of other States.

32. With reference to specific provisions of that new proposal, he observed, firstly, that he did not think it was an improvement even from the standpoint of drafting to say that "Every State has the duty to refrain from intervening" instead of saying "No State has the right to intervene". Secondly, it came as a surprise to his delegation to hear the representative of the very country from which Nigerian jurists had obtained their legal training, and which had taught them that one of the attributes of a sovereign State was its ability effectively to control its internal and external affairs, make a statement which in effect denied the existence of external affairs of a State. Lastly, he would like to ask the sponsors why they considered that paragraph 2 A should find a place in a text relating to non-intervention and what they meant by "the generally recognized freedom of States to seek to influence the policies and actions of other States".

33. In view of the vital importance of resolution 2131 (XX) in relation to the work of the Committee, his delegation urged the adoption of the joint proposal in document A/AC.125/L.17.

The meeting rose at 6.40 p.m.