

United Nations  
GENERAL  
ASSEMBLY

THIRTY-FIRST SESSION

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SIXTH COMMITTEE  
50th meeting  
held on  
Monday, 22 November 1976  
at 3 p.m.  
New York

SUMMARY RECORD OF THE 50th MEETING

Chairman: Mr. MENDOZA (Philippines)

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Distr. GENERAL  
A/C.6/31/SR.50  
29 November 1976  
ENGLISH  
ORIGINAL: FRENCH

The meeting was called to order at 3.30 p.m.

AGENDA ITEM 124: CONCLUSION OF A WORLD TREATY ON THE NON-USE OF FORCE IN INTERNATIONAL RELATIONS (A/31/243, 305; A/RES/31/9; A/C.6/31/7)

1. Mr. KUZNETSOV (Union of Soviet Socialist Republics) noted that the First Committee's in-depth discussion of the conclusion of a world treaty on the non-use of force in international relations had shown the urgency of considering and resolving that question, especially as international détente was currently creating conditions conducive to that goal.
2. The United Nations and all States were devoting particular attention to the renunciation of the threat or use of force, as was illustrated by a whole series of instruments, such as the Declaration on the Strengthening of International Security and the solemn declaration adopted by the General Assembly at its twenty-seventh session concerning the non-use of force in international relations and permanent prohibition of the use of nuclear weapons.
- 2a. The Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers in 1973, and the Fifth Conference, held at Colombo in August 1976, had again emphasized the importance of that principle. The non-use of force in international relations was not only widely recognized and embodied in numerous international instruments but it was also increasingly observed in practice. At the same time, a number of instruments had recently been adopted in international bodies, and particularly in the United Nations, to strengthen that principle in international law: for example, the United Nations General Assembly had adopted the definition of aggression.
3. It was particularly important to confirm even more strongly the principle of non-use of force since, despite the Charter provisions concerning the avoidance of the threat or use of force, numerous armed conflicts had broken out between States since the signing of the Charter and many problems were currently still unresolved. The resolution adopted by the General Assembly on 8 November 1976 reflected the deep-seated desire of States for additional effective measures to reduce the risk of a new world war and to ensure lasting peace in the world.
4. The exchanges of views which had taken place in the First Committee also made it possible to outline the contents of the proposed treaty. The main provision of the treaty should be based on Article 2, paragraph 4, of the Charter, whereby States should refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; that principle should become an intangible law of international relations and should constitute an immutable obligation for all States. Consequently, the States parties to the treaty should undertake to refrain from the threat or use of all types of weapons, including nuclear weapons.
5. States should, above all, undertake not to resort to force to settle disputes but to seek a solution by peaceful means such as negotiation, mediation,

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conciliation, arbitration, judicial settlement or other peaceful means of their own choice, in accordance with the Charter.

6. The conclusion of the treaty should in no way affect the right of individual or collective self-defence proclaimed in Article 51 of the Charter. Nor should it affect the right of peoples to struggle for the elimination of the consequences of aggression and for the recovery of land conquered by the aggressor. In that connexion, it should be emphasized that there was a fundamental difference between hostilities unleashed for purposes of aggression and the legitimate right to resist aggression and to eliminate its consequences. In order to fight aggression, it was thus necessary to use force.

7. Furthermore, the proposed treaty should not jeopardize the legitimate struggle waged by the colonial peoples for their freedom and independence by all means at their disposal. That right had been recognized by the United Nations; it was based on the United Nations Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the definition of aggression adopted by the United Nations.

8. The draft world treaty on the non-use of force in international relations submitted by the Soviet Union was in full conformity with the United Nations Charter, with the decisions adopted by the United Nations and with contemporary international law. It took into account many considerations voiced in the First Committee; the Soviet Union was prepared to consider in a constructive spirit any proposals which might be submitted and it would make every effort to ensure that the instrument reflected the views of all the parties concerned.

9. In order to formulate the proposed treaty, it was of course necessary to bear in mind the practice established in the United Nations. It was customary in the Organization to adopt resolutions on the basis of the Charter provisions in order to put them into practice and thus enhance the effectiveness of the United Nations; for example, a number of treaties and agreements had been adopted to give specific application to the Charter provisions concerning disarmament. In that connexion, it should be recalled that the provisions of the Charter were based on the need for States to co-operate in order to promote the progressive development of the principles proclaimed therein.

10. It was undeniable that the conclusion of a world treaty on the non-use of force in international relations would help considerably to strengthen peace, to prevent war, to improve further the international climate and to consolidate détente in the world. By strengthening trust between States, the treaty would reduce military confrontations, promote the deceleration of the arms race and encourage disarmament. It would shore up the foundations of international security without jeopardizing the interests of anybody, provided that they were compatible with the safeguarding of world peace. The conclusion and implementation of the treaty would thus hasten the final elimination of the threat of war and of aggression and would guarantee peace. That measure would undoubtedly help to strengthen the Charter and to increase the role of the United Nations.

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(Mr. Kuznetsov, USSR)

11. In addition, the proposed world treaty would play an important role in strengthening the aspects of inter-State relations which were governed by international law in accordance with the principles of peaceful coexistence; that would, in turn, promote widespread and mutually beneficial co-operation between States. Lastly, the treaty would strengthen contemporary international law and thus consolidate one of the fundamental principles of the United Nations Charter, the condemnation of aggression, colonialism, racial discrimination and all forms of aggression.

12. The proposed treaty was therefore in the interests of all peaceful States, and no State would profit by opposing its adoption or delaying its conclusion. The treaty would have considerable political significance, since it would exert a moderating influence on States which had designs on other States and which wanted the law of the strongest to prevail.

13. In brief, the time had come, in view of the present international situation, to formulate and conclude a world treaty on the non-use of force in international relations. That measure would strengthen the Charter and enhance the effectiveness of the United Nations. In the resolution which it had adopted on 8 November 1976, the General Assembly had invited Member States to examine the question further and to communicate to the Secretary-General their views and suggestions not later than 1 June 1977. In accordance with that resolution, the Soviet Union would spare no effort to promote the conclusion of the proposed world treaty and it was prepared to co-operate with other States to that end.

14. His delegation was sure that the Sixth Committee would confirm the need to conclude such a treaty without delay, thus contributing to the strengthening of peace and the prevention of war.

15. Mr. LAUTERPACHT (Australia) noted that the question under consideration had come before the Sixth Committee in rather unusual procedural circumstances, since the First Committee had already discussed it and had formulated a draft resolution on the subject, which had been adopted by the General Assembly at its plenary meeting on 8 November 1976 (A/RES/31/9). His delegation was surprised that the General Assembly should have adopted that resolution before the Sixth Committee had had an opportunity to consider the question. However, since it was faced with a fait accompli, it would not object to the Sixth Committee considering the legal implications of the item, as instructed by the General Assembly, but it reserved the right to comment further in writing, if necessary.

16. Before embarking on a detailed analysis of the draft treaty submitted by the Soviet Union in document A/31/243, he recalled his country's firm commitment to the avoidance of the use of force in international relations and to the settlement of disputes by peaceful means, and its unqualified adherence to the terms of Article 2, paragraph 4, of the Charter.

(Mr. Lauterpacht, Australia)

17. The wording of the first subparagraph of paragraph 1 in article I of the draft treaty differed slightly from that of Article 2, paragraph 4, of the Charter. Firstly, the phrase "The Contracting Parties shall strictly abide by their undertaking ..." did not appear in the Charter. Yet the provision in Article 2, paragraph 4, of the Charter itself constituted an undertaking which States Members of the United Nations were required strictly to observe. If it was considered that the commitment in that Charter provision required reinforcement, the fact of asking States to give a further commitment added nothing from the legal viewpoint. The provisions of the treaty would not have greater value than those of the Charter, since once an obligation had been clearly stated there was no need for any restatement.

18. The restatement of an obligation would have merit if either (a) the original obligation had been eroded by disregard or change of circumstances or (b) the restatement introduced some new concepts or amended the language or ideas associated with the old statement.

19. It was clear that, in the present case, the first possibility must be ruled out; for it was beyond doubt that one principle of the Charter which remained fully in force was that stated in Article 2, paragraph 4. The second possibility, however, required closer scrutiny.

20. The first variation in language in the draft treaty was replacement of the words "shall refrain" by the words "undertaking not to use". In English there was probably no effective difference between those two expressions, but one was bound to ask why a change in language had been made.

21. The second variation was that, in Article 2, paragraph 4, of the Charter, Member States undertook to refrain "in their international relations" from the threat or use of force, while under the draft treaty they would undertake not to use "in their mutual relations, or in their international relations in general", force or the threat of force. Although the new words were not in any way objectionable, one was bound to ask why the authors of the draft had chosen not to retain the wording of the Charter.

22. The third variation was that the Charter prohibited "the threat or use of force", while the draft treaty prohibited States from using "force or the threat of force". Once again there was no substantive difference, but one wondered why the change was necessary. It should be noted that in the French text of the draft treaty the Charter phrase "à la menace ou à l'emploi de la force" was retained.

23. In short, article I, paragraph 1, of the draft treaty provided that the Contracting Parties should undertake to comply with an obligation already existing under the Charter; at the same time, it expressed that undertaking in words which were not identical with the words of the Charter, and it contained no explanation of why that was so.

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24. The second subparagraph of paragraph 1 of article I gave rise to a different kind of question.

25. In the first place, the subparagraph was expressed in terms indicating that its content followed logically as a consequence of the prohibition of recourse to force in the first subparagraph. However, it was evident that the prohibition of the use of force had many more consequences than were stated in the second subparagraph. One must therefore ask why the authors of the draft had decided to introduce only some of those consequences - which the Charter did not do - and to omit the others.

26. Secondly, the subparagraph referred to "armed forces", which meant military personnel. It was therefore grammatically incorrect to speak, as the English text did, of "armed forces involving any types of weapons", since armed forces could not "involve" weapons of any type.

27. It might be that the intention had been to speak of "armed force" in the singular, but that concept was so broad and general that what followed would either be meaningless or would have such broad implications as to require the most careful consideration.

28. Another possibility was that the word "involving" in the English text was wrong, since the French version used the expression "dotées de".

29. The second subparagraph of paragraph 1 was in fact unnecessary, since it simply repeated what was stated in the first subparagraph, namely, that the Parties undertook not to use force or the threat of force. The amplification concerning "types of weapons" was also unnecessary; for, clearly, if the use of force was prohibited, then the use of "armed forces involving any types of weapons" was also prohibited.

30. The phrasing "any types of weapons, including nuclear or other types of weapons of mass destruction" also called for some comment. Some might read into the reference to nuclear weapons an attempt to secure a formal and absolute treaty prohibition of the use of nuclear or other types of weapons of mass destruction. If that was what was intended, it would raise issues of great complexity and delicacy.

31. The fact that his delegation could not immediately rally to such a proposal did not in any way mean that it thereby dissented from the prohibition or limitation of the use of nuclear weapons or weapons of mass destruction. In its view, the proposal would require considerable thought and would need to be related closely to other moves in the field of disarmament. The appearance of such a proposal in the Soviet draft treaty could not give its proponent any moral superiority over those who, recalling the complex history of past negotiations on such matters, suggested that the solution was not so simple.

32. Article I, paragraph 2, contained the agreement of the Parties "not to assist, encourage or induce any States or groups of States to use force or the threat of force in violation of the provisions of this Treaty". That was one of the logical consequences of the prohibition of the use of force, but one was bound to ask why that consequence alone should be spelt out.

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33. One must also ask why the scope of the paragraph was limited to "States or groups of States". Everyone was aware that organizations which did not possess statehood might be assisted, encouraged or induced by States to use force. By adopting such restrictive language, one would impliedly be licensing the use of subversive non-statal elements as instruments for the use of force.

34. The provision contained in paragraph 3 did not appear in the Charter. Indeed, it ran counter to the principles of the Charter in failing to reflect the terms of Article 51 of the Charter concerning the inherent right of individual and collective self-defence.

35. It might be answered, in reply to that comment, that article III of the draft treaty provided that "Nothing in this Treaty shall affect the rights and obligations of States under the United Nations Charter", and that the principle contained in Article 51 of the Charter did not, therefore, need to be restated.

36. His delegation did not disagree but felt that, in that case, there was also no need to restate in the draft treaty the principle set forth in Article 2, paragraph 4, of the Charter.

37. It was not necessary for him to go into article II in detail, but he wished to make a comment on paragraph 1, which referred to the obligation of the Parties to settle disputes among them by peaceful means.

38. The sentiments of the authors of the draft in reaffirming their commitment to the principle of peaceful settlement of disputes should of course be applauded, but unless such statements of principle were put into effect they were without worth.

39. If the Soviet draft treaty was to constitute genuine progress in relation to the Charter, it should incorporate, for instance, an effective and binding undertaking by the Parties to accept the jurisdiction of the International Court of Justice, or a system of arbitration or conciliation.

40. None the less, if the intention was to initiate a constructive debate on the peaceful settlement of disputes, his delegation for its part was ready to join in such a debate.

41. The draft treaty was not the first document which had been produced on the subject. As stated in the explanatory memorandum (A/31/243) submitted by the Soviet delegation, "the principle of the non-use of force is embodied in many important documents adopted by the United Nations in recent years: in the definition of aggression; in the declarations on strengthening international security and on the principles of international law concerning friendly relations and co-operation among States in accordance with the United Nations Charter; in the General Assembly resolution on the non-use of force in international relations".

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(Mr. Lauterpacht, Australia)

42. When one examined those documents carefully, one found that they did not limit themselves to a reassertion of the principle of the non-use of force but developed that principle to a level of some sophistication.

43. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations not only proclaimed the principle of the non-use of force but gave a detailed statement of the consequences of that principle. It contained the following points: a war of aggression constituted a crime against the peace, for which there was responsibility under international law; States had the duty to refrain from propaganda for wars of aggression; every State had the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or international lines of demarcation, or as a means of solving international disputes; States had a duty to refrain from acts of reprisal involving the use of force and from any forcible action which deprived peoples of their right to self-determination; every State had the duty to refrain from organizing or instigating acts of civil strife or terrorist acts in another State; the territory of a State should not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter or of acquisition by another State resulting from the threat or use of force; and, finally, nothing in those points was to be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force was lawful.

44. There was also one of the preambular paragraphs of the resolution on "Non-use of force in international relations and permanent prohibition of the use of nuclear weapons" (General Assembly resolution 2936 (XXVII)) which reaffirmed, in accordance with Article 51 of the Charter, the inalienable right of States to self-defence against armed attack.

45. One might wonder, therefore, why the consequences arising from the prohibition on the use of force had been omitted from the draft treaty and whether, because of that omission, the draft treaty was not a retrogressive step from the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which reflected a consensus of the international community.

46. Finally, he pointed out that the substance of article I of the draft treaty was very close to that of resolution 2936 (XXVII), which had been submitted by the USSR and adopted by 73 votes to 9, with 46 abstentions. There was therefore justification for asking the sponsors what their reasons were for believing that resolution 2936 (XXVII) had become inadequate and that the conclusion of a treaty was required. It was hard to see why a treaty should be more necessary in 1976 than in 1972.

47. It should be noted in that connexion that the second paragraph of the 1972 resolution recommended "that the Security Council should take, as soon as possible, appropriate measures for the full implementation of the present declaration of the General Assembly". It would be useful to know why the USSR had done nothing during the previous four years to pursue the implementation of that recommendation by the

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Security Council and why it should be returning to the General Assembly with a draft treaty which was merely a watered-down version of the 1972 resolution.

48. His delegation was not saying that the principle stated in Article 2, paragraph 4, of the Charter needed restatement, particularly if the restatement was to take the form proposed in the draft treaty before the Committee. Nevertheless, if the proposal was to be dealt with properly, the Committee would have to study all its legal implications carefully.

49. While he recognized the paramount importance of the principle of non-use of force, he hoped that the Committee would have the courage to say that the General Assembly had more pressing things to do than to re-examine principles which, in their existing wording, were quite adequate.

50. If the provision of the Charter prohibiting the use of force was not being implemented, that was not because there was anything wrong with its stated content or legally operative force; the only thing that was missing was the political inclination fully to honour that prohibition.

51. If the question was to be talked about, however, it should be talked about by lawyers, and his delegation accordingly supported the proposal that if consideration of the item was to be resumed in the General Assembly, the matter should be referred to the Sixth Committee.

52. Mr. JAIPAL (India) said that, in his delegation's view, the Sixth Committee should not reopen consideration of the substance of an item that had already been considered by the First Committee and had been the subject of a decision of the plenary of the General Assembly (A/RES/31/9). What it could do was to examine the legal implications of the item, by which he meant the legal implications, not of the draft treaty submitted by the Soviet Union, but of the resolution adopted by the General Assembly, in the same way as the Fifth Committee examined the administrative and financial implications of resolutions already adopted by the Assembly.

53. An examination of resolution A/RES/31/9 revealed, however, that it had no legal implications for the time being. The Committee should therefore confine itself for the moment to taking note of the resolution and submitting in its report to the General Assembly a summary of its debates on the matter without making any recommendation on the future course of events. It should be left to the General Assembly to decide at its thirty-second session, in the light of the report to be submitted to it by the Secretary-General on the communications received from Member States, whether the matter should be referred to the Sixth Committee and, if so, what the terms of reference of the Committee were to be. One could not anticipate the views to be expressed by Member States or which of the range of possible actions the General Assembly might decide upon.

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54. Mr. FLORIN (German Democratic Republic) observed that on 8 November 1976 the General Assembly had adopted a resolution concerning the conclusion of a world treaty on non-use of force in international relations (A/RES/31/9), in which it asked Member States to communicate to the Secretary-General their views and suggestions on the subject and asked the Secretary-General to submit to the Assembly at its thirty-second session a report on the communications he had received. Both the communications from Member States and the Secretary-General's report could be expected to deal with the legal aspects of the proposed treaty.

55. His delegation welcomed the initiative taken by the Soviet Union as part of its pacifist policy, which was based on the "Decree concerning peace". That policy had helped to overthrow an international legal order characterized by the jus ad bellum, with its corollary of national and colonial oppression; the struggle of peoples united in the anti-Hitler coalition had enabled a new international democratic order to be established with the United Nations Charter as its principal instrument. That new order was characterized by an absolute prohibition on the use of force and by the right of peoples to self-determination; its main purpose was to ensure peace and peaceful coexistence among States having different social systems.

56. The principles stated in the Charter of the United Nations, particularly in Article 2, paragraph 4, concerning the prohibition of the use of force, provided the foundations for the fruitful work on the codification and progressive development of international law undertaken by the United Nations. They also made possible the practical fulfilment of the obligations of the Charter. Accordingly, far from weakening the efficacy of the principles of the Charter, the proposed treaty would strengthen it. The draft world treaty on the non-use of force in international relations demonstrated how the conclusion of agreements could help to give greater practical force to the principles of the United Nations Charter and thereby to strengthen the hand of the United Nations.

57. That treaty could, in the same way as the definition of aggression adopted at the twenty-ninth session of the General Assembly, constitute a further guarantee of respect for the Charter. Similarly, the work of the International Law Commission on the draft articles on State responsibility were an encouraging attempt to establish rules of international law and accordingly contributed to the implementation of the principles of the Charter. It was imperative to reaffirm that the principle of refraining from aggression, stated in Article 2, paragraph 4, of the Charter, was a peremptory legal norm (jus cogens).

58. The conclusion of a world treaty on the non-use of force in international relations would strengthen trust at the international level, make the process of détente irreversible and general, and promote the development of international co-operation.

59. When the Secretary-General had submitted the report requested in resolution A/RES/31/9 on the conclusion of a world treaty on the non-use of force in international relations, the General Assembly could at its thirty-second session continue its consideration of that question in full knowledge of the facts. It

(Mr. Florin, German Democratic Republic)

was of paramount importance that States should have the political will to strengthen and consolidate the obligation to refrain from resorting to force in international relations.

60. Mr. ROSENSTOCK (United States of America) gave a brief outline of the history of the prohibition on the threat or use of force in international relations, with special reference to the League of Nations Covenant and the Kellogg-Briand Pact. He said that the United Nations Charter represented the culmination of all efforts to that end. For the first time in the history of the world States had expressly committed themselves to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations (Article 2, para. 4). In the contemporary world that rule was universally recognized as a peremptory norm of international law not subject to derogation by unilateral declarations or bilateral agreements.

61. Ever since 1945 the international community had deepened its understanding of that fundamental norm through experience and through the adoption of such instruments as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter. It was far from clear that further United Nations pronouncements on the matter were likely to be useful.

62. The rule stated in Article 2, paragraph 4, was unambiguous; none of the armed conflicts which had broken out since 1945 could be attributed to any misunderstanding of that rule by Governments, but only to the cynical disregard of the prohibition it contained or to the explosion of long-festered disputes. What was needed was not further instruments reiterating obligations that none denied: above all, States should honour what they knew full well to be obligations. It was also essential to seek methods of resolving differences as to facts and to make an intensive and detailed study of the peaceful settlement of disputes.

63. In the contemporary world the peaceful settlement of disputes was both a moral and a pragmatic imperative. The Charter wisely imposed on States the obligation to settle international disputes by peaceful means before prohibiting the threat or use of force, because the two rules were part of an inseparable whole.

64. It was clear that the issues involved were complex and delicate and that they required careful examination by the Sixth Committee, whose members had been trained in the analysis of legal norms and had prepared such instruments as the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States and the definition of aggression. Moreover, great care would have to be taken to avoid basing the Committee's examination of those issues on premises which were harmful to the shared goal of the international community.

65. To commence discussion with the argument that a new treaty was needed was to approach the problem in a counter-productive manner. By accepting the Charter, all States had entered into a solemn treaty commitment to avoid the threat or use of force. They must not diminish the force of those Charter obligations by elaborating

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(Mr. Rosenstock, United States)

a partial parallel treaty structure. If the provisions of both treaties were identical, they would debase the rule of pacta sunt servanda by suggesting that two treaties were better than one. If the words of the two treaties were not precisely the same, a number of difficulties would be bound to arise. All States might not become parties to the second treaty and thus there would be two régimes, sometimes parallel, sometimes divergent. A second major difficulty would be that some States would seek interpretive loopholes stemming from the differences between the two texts. Some might even argue that the elaboration of a new treaty implied that Member States were free to adopt or reject the basic prohibition of the threat or use of force. All those difficulties must be avoided.

66. If the Committee did not follow the treaty route, but decided the question merited further examination, it would do well to ask whether the Soviet Union proposal contained a useful basis for pursuing the elaboration of a resolution or a declaration. Obviously, the question would need careful examination in the Sixth Committee and at the present stage only preliminary comments were possible.

67. On balance, the United States delegation was inclined to think that the Soviet text did not constitute a good basis for consideration of the complex of issues involved in the prohibition of the threat or use of force and the obligation to settle disputes by peaceful means. His delegation was disinclined to take note of an unspecified series of instruments and declarations, some of which might support doctrines not consonant with the fundamental obligations of the Charter. It was also concerned to ensure that any reference to the Conference on Security and Co-operation in Europe should not suggest that any one part of that Conference's work was more important than any other part. The Helsinki Declaration was a compilation of various elements, including the non-use of force but also including humanitarian issues and the free exchange of ideas and information. If the Conference had produced nothing more than a reiteration of existing obligations, it would have been redundant. The emphasis on human rights and the free exchange of ideas and information was what protected that Declaration from a charge of redundancy.

68. Whether in the context of a treaty or a resolution, the paraphrase of Article 2, paragraph 4 of the Charter could only create confusion of a potentially dangerous nature, when the paraphrase took a single notion out of the context of an entire legal framework.

69. His delegation agreed that any serious effort to deal with the problem of the threat or use of force must deal with the peaceful settlement of disputes. In order to be meaningful, however, any effort to deal with peaceful settlement must build upon the principle set forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, according to which "recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality". What was needed was an examination of the various means of settlement and a recognition that acceptance of settlement procedures involving impartial third parties was essential if force was

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(Mr. Rosenstock, United States)

to be eliminated. States must come to recognize that the supreme manifestation of their sovereignty was to agree not merely to the principle of peaceful settlement but also to meaningful and expeditious settlement procedures.

70. Any meaningful effort to discuss the norms contained in Article 2 of the Charter must also take into account Chapters VI, VII and VIII in order to avoid the impression that emphasis on only some parts of the interlocking system was downgrading the other parts. Vague references to measures for limiting confrontation and for disarmament were more likely to distract the international community from serious efforts to reduce armaments and tension than contribute to positive change.

71. All those aspects of the problem must be carefully studied and analysed. No benefit was to be derived from the hasty adoption of glib generalities. For that reason, the United States delegation was firmly convinced that, if the question was to be studied in the future, it must be studied within the Sixth Committee, whose members possessed the necessary competence.

72. Mr. PAWIAK (Poland) said that, in his delegation's view, the Soviet proposal to conclude a world treaty on the non-use of force was of fundamental importance for the future of international relations.

73. His delegation welcomed the Soviet initiative because it was in keeping with the noblest aspirations of all nations striving for peace, security and progress. The discussion of the item in the First Committee and the adoption by the General Assembly of the draft resolution recommended by that Committee showed that the great majority of States were convinced of the need to conclude without delay a world treaty on the non-use of force in international relations.

74. He fully realized the difficulty of the task. However, the Committee's work would be greatly facilitated by the broad support given to the main provisions of the draft put forward by the USSR.

75. Undoubtedly, the question might give rise to certain legal implications. That was why his delegation had not objected to the idea that the item should be brought before the Sixth Committee. It felt, however, that it was still too early for the legal aspects to be discussed. According to General Assembly resolution A/31/9 of 8 November 1976, States must first continue to study the draft treaty submitted by the Soviet Union, together with other proposals and statements made during consideration of the item in the First Committee.

76. In his delegation's opinion, a legal body like the Sixth Committee could play its role only when all the views of the States concerned were known.

77. The object of a treaty on the non-use of force in international relations should be to reinforce that principle and to consolidate the provisions of the Charter by imposing on States additional and more precise obligations so as to ensure its universal respect.

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(Mr. Pawlak, Poland)

78. As Poland's Deputy Minister for Foreign Affairs had stated on 26 October 1976 in the First Committee, the broader the scope of the principle of the non-use of force in bilateral and multilateral international agreements, the stronger the roots it would have in the practice of international life.

79. Hence, the Polish delegation felt that Member States, in the preparation of their replies in accordance with the resolution adopted by the General Assembly on 8 November 1976, should bear in mind the comments made by the members of the Sixth Committee.

80. Mr. FIFOOT (United Kingdom) said that the item touched on two of the fundamental obligations imposed by the Charter of the United Nations and set forth in Article 2, paragraphs 3 and 4 of that document, namely, the principles that States should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any States and the corollary that States should settle their international disputes by peaceful means.

81. However, the debate in the Sixth Committee was not concerned with the principles as such but with a proposal to make the obligations already imposed by the Charter the subject of a new and separate international agreement.

82. Item 124 had been referred to the Sixth Committee after being considered in the First Committee and after the adoption by the General Assembly in plenary session of a resolution (A/31/9) in which the Assembly requested Member States to communicate to the Secretary-General by 1 June 1977 their views and suggestions on the subject. Clearly, the substance of the debate could not take place until those views and suggestions had been received. However, it might be helpful at the present stage for the Committee to undertake a preliminary examination of the subject. Since the item concerned the elaboration of a legal instrument, it was the Sixth Committee which had to continue consideration of the question at the next session.

83. A study of document A/31/243, which set forth in an annex the draft world treaty on the non-use of force in international relations proposed by the Soviet Union, gave rise to two questions. What did the draft say, bearing in mind existing international law and in particular the Charter? What would be the relationship between the new document and existing law?

84. Article I, paragraph 1, first subparagraph of the draft was very similar to Article 2, paragraph 4, of the Charter. However, they were not absolutely identical. In the first place, the order of words was not quite the same. Moreover, whereas the Charter mentioned only international relations, the draft drew a distinction between mutual relations and international relations in general. Was that formulation intended to make provision for something not in the Charter or was it a reformulation which was intended to go no further than the Charter. If the first assumption was correct, was it appropriate to go beyond the Charter in a document intended to have universal application rather than regional application, such as the Final Act of Helsinki, or bilateral application? If it

(Mr. Fifoot, United Kingdom)

was intended to go beyond the Charter, what was the pre-existing undertaking of a universal character which the parties had accepted?

85. The second subparagraph of paragraph 1 of draft article I appeared to be intended to indicate what force meant. However, that provision was drafted in such a way that its application to self-defence was not excluded. That might not perhaps be the intention but in any event, when there was a proposal involving selective recourse to the Charter, it was necessary to consider its effect on those relevant provisions of the Charter which had not been selected. There was no need to recall that Article 51 of the Charter did not confer a right of self-defence; it recognized an existing inherent right of self-defence. The question therefore arose whether "the rights and obligations of States under the United Nations Charter" included an inherent right of self-defence. As for article I, paragraph 2 of the draft, what did it say beyond what was in the Charter?

86. The wording of the first sentence of article II of the draft was very like that of Article 2, paragraph 3, of the Charter. But there was a significant omission. There was no mention of justice. If the second sentence of article II was compared with the corresponding provision in the Charter, namely Article 33, paragraph 1, omissions would again be noted. The draft made no reference to inquiry or to regional agencies or arrangements. Again, why?

87. Article III posed a problem which emphasized the difficulties involved in reaffirming existing obligations. For States Members of the United Nations the question of a conflict between obligations under the draft treaty and their obligations under the Charter could not arise, since Article 103 of the Charter provided that, if there was a conflict between the Charter and any other international agreement their obligations under the Charter should prevail. But what about the position regarding those other treaties and agreements concluded by them earlier? If the proposed treaty was no more than a reaffirmation of the Charter then did not Article 103 of the Charter apply as between the new agreement and those other earlier treaties and agreements?

88. Article V of the draft was not compatible with article 26 of the Vienna Convention, which provided that "every treaty in force is binding upon the parties to it and must be performed by them in good faith".

89. In conclusion, his delegation noted that the first two articles of the draft reaffirmed certain existing undertakings concerning the non-use of force and the settlement of disputes. However, the terms in which those articles were couched departed from the terms of the Charter. In examining the proposals and commenting on the draft, Governments would have to apply themselves to those differences and to their significance. It would also be necessary for them to consider what would be the effect of entering into a new international agreement of the kind proposed. Would a reaffirmation of the principles increase the prospects of better observance of those principles?

90. Unlike the Charter, the proposed treaty contained no provisions on sanctions for non-performance. Since it would be a later instrument than the Charter, was there not a danger that it might be construed as weakening the Charter provisions regarding sanctions?

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(Mr. Fifoot, United Kingdom)

91. Lastly it should be recalled that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States referred to a number of Charter principles, and expressly stated that all those principles were interrelated, and each should be construed in the context of the others. Was that interrelationship affected by the emphasis placed upon two of those principles by the proposal to make them the subject of a separate agreement?

92. Mr. YANKOV (Bulgaria) wished to draw attention to the fact that the item had been referred to the Sixth Committee by the First Committee after a lengthy discussion at the present session, and that an overwhelming majority of delegations had already expressed, through their statements or their votes, the view that the conclusion of a world treaty on the non-use of force in international relations was appropriate as a further effort to promote peaceful relations among all States and to strengthen the global collective security system. His delegation believed that the conclusion of such a treaty should be considered as a matter of urgency. With very few exceptions, a number of constructive comments had been made in the First Committee with regard to the scope of the proposed treaty, its relationship with the Charter and the appropriate mechanism for its implementation. The Sixth Committee was now required to examine its legal implications; but, while not opposing that ruling, his delegation felt that it was inappropriate and even impracticable to examine the legal aspects of a highly political issue without taking into consideration its pertinent political features.

93. The fundamental principle of prohibiting the use of force in international relations had always been a pillar of the international order which had acquired particular significance in the nuclear age. Awareness of the indivisibility of international peace and security and the ever-growing desire to build international relations on the rule of law provided for more favourable conditions for the conclusion of a treaty that would outlaw the use of force. Furthermore, an impressive number of international instruments, such as United Nations declarations and resolutions, or bilateral and multilateral treaties which had reaffirmed the principle of the non-use of force, had paved the way for the progressive development and codification of international law on the subject. The General Assembly was called upon to promote international co-operation in the political field in accordance with the competence conferred on it by the Charter in Article 13. The Charter, being a general code of conduct in contemporary international relations, provided the political, moral and legal basis for international treaties in various fields and primarily in the maintenance of international peace and security.

94. The draft treaty on the non-use of force in international relations, submitted for consideration by the Soviet delegation at the current session of the General Assembly (A/31/243) was based on the respective provisions of the Charter and more specifically on Article 2, paragraphs 3 and 4. Accordingly article II, paragraph 1, of the draft treaty corresponded to Article 2, paragraph 4, of the Charter, and article II, paragraphs 1 and 3 of the draft treaty reproduced in substance paragraphs 3 and 4 of Article 2 of the Charter with regard to the principle of the peaceful settlement of international disputes, while paragraph 2 of article II of the draft treaty was essentially based on Article 33 of the Charter.

(Mr. Yankov, Bulgaria)

95. However, the draft treaty contained some supplementary elements which made it more up-to-date and more elaborate, and in that connexion his delegation had in mind the following elements that deserved special attention. First, article IV brought to the forefront the duty of the parties to the treaty to make all possible efforts to implement effective measures for lessening military confrontation and for disarmament which would constitute important steps towards the achievement of of general and complete disarmament under international control. That undertaking would bring about a greater degree of mutual confidence and would give greater effect to the renunciation of force. His delegation felt that the provision embodied in article IV was one of particular importance in that it constituted a further elaboration of the principles of the Charter and emphasized the intrinsic relations between the prohibition of the use of force and the process of disarmament. Secondly, article I of the draft specifically stated that the contracting parties should refrain from the use or threat of the use of armed forces involving any types of weapons.

96. Thirdly, the draft treaty contained some other provisions which would be qualified as safeguards or conditions required to give effective validity to the preventive and prohibitive measures mentioned in paragraphs 2 and 3 of article I of the draft treaty. Those provisions had been inspired by some United Nations documents related to the principle of the non-use of force and, more specifically, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the definition of aggression.

97. Fourthly, the interpretation of the general provision appearing in article III of the draft indicated that the renunciation of the use of force could not be prejudicial to the rights of States to individual or collective self-defence, as provided for in Article 51 of the United Nations Charter, or impair the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal, as stipulated in General Assembly resolution 2936 (XXVII) and in the Declaration on the Granting of Independence to Colonial Countries and Peoples.

98. Without wishing to make a detailed evaluation of the political and legal aspects of the problem, his delegation wished to emphasize that the conclusion of a treaty on the non-use of force was both useful and necessary and constituted a valuable contribution to the progressive development and codification of international law in the field of the promotion of peaceful relations among States. It was true that the draft treaty was based on the fundamental principles enshrined in the Charter, but the arguments that the draft treaty would not have any practical implications for peace and security and would do nothing to strengthen the principle of the non-use of force were quite unjustified and very artificial and arbitrary. How, moreover, could a treaty based on the Charter undermine the Charter? Could the other conventions which were based on the Charter, particularly those in the field of human rights, the elimination of racial discrimination or in the economic field, be considered to weaken the Charter? Why should that be the case in the political field with the treaty on the non-use of force?

(Mr. Yankov, Bulgaria)

99. There was, of course, room for further improvements in the draft treaty, in so far as both substance and format were concerned, particularly by introducing greater precision or by examining in greater detail the mechanism for its implementation. There was a need for further study of all those issues, and that was precisely the purpose of General Assembly resolution A/RES/31/9, in which Member States were invited to examine further the draft treaty as well as other proposals and statements made during the consideration of that item and to communicate to the Secretary-General their views and suggestions so that they could be brought to the attention of the Assembly at its thirty-second session.

100. Having in mind that resolution, the Bulgarian delegation held the view that, at the present stage, the Sixth Committee should, on the basis of a consensus, take note of the discussions on the item and recommend that due consideration should be given to its legal aspects. But it would be premature to adopt any rigid procedural decision which would prejudice further action as far as the comprehensive consideration of the conclusion of the draft treaty was concerned.

101. Mr. BAROODY (Saudi Arabia) said that whatever the true intentions of the Soviet Union were and whatever the chances of success of the treaty it had proposed, it had to be granted the benefit of the doubt. It was useless to accuse it of engaging in propaganda, since that reproach could be directed against all the great Powers, and propaganda was not in the least reprehensible when it served a good cause. It was also useless to say that the principles of the Charter did not need to be reaffirmed, for if that was true the United Nations would not have adopted any conventions or declarations since the adoption of the Charter. In fact, the Organization had on many occasions reaffirmed the principles of the Charter in numerous instruments.

102. It was equally useless to reproach the great Powers for speaking of peace while developing new weapons, since it was only in speaking of peace that it could be hoped to avoid war, and there would be no reason for the existence of the United Nations if countries ceased speaking of peace. It was true that wars had continued in the world since adoption of the Charter, but that was because the principles of the Charter had not been implemented, and it was consequently useful to reaffirm them.

103. Attempts at neutralization had so far clashed with the interests of the great Powers, which sought to maintain their spheres of influence. States that formerly considered treaties to be so many scraps of paper had now found other ways of waging war. They waged war by proxy, and for that reason as long as spheres of influence subsisted in the world, wars would continue and treaties would be violated.

104. He did not see what harm it would do to study the possibility of refraining from the use of force in international relations. The international community had nothing to lose by studying the draft treaty submitted by the Soviet Union. That treaty would probably contain lacunae, but that was true of all treaties. If it did not succeed in ensuring peace, the world would not have suffered a great loss, but it risked losing a great deal by refusing such a treaty.

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(Mr. Baroody, Saudi Arabia)

105. Most of the members of the First Committee had taken a stand in favour of the Soviet proposal, whereas most of the members of the Sixth Committee who had spoken so far had opposed it, undoubtedly because as jurists they had approached the question from a purely technical point of view that led them to lose sight of its humanitarian aspects. It was difficult to understand why 31 States in the First Committee had abstained from voting on a question as important as the non-use of force in international relations, and he regretted that the Members of the United Nations did not show the courage of their convictions to a greater extent and take more definite stands on questions submitted to them.

106. Above all, the humanitarian aspect of the Soviet proposal should be considered and not rejected outright. The Committee should therefore study the draft treaty before it and refer it to a working group for study in consultation with the permanent members of the Security Council.

AGENDA ITEM 110: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (A/31/33, A/31/51 and Add.1; A/C.6/31/L.6; A/AC.182/L.2) (continued)

107. The CHAIRMAN announced that the following States had joined the sponsors of draft resolution A/C.6/31/L.6: Barbados, Bolivia, Brazil, Burundi, Central African Republic, Chad, China, Congo, Federal Republic of Germany, Ghana, Greece, India, Iran, Jamaica, Kenya, Liberia, Libyan Arab Republic, Mali, Mozambique, Nepal, Nicaragua, Niger, Senegal, Sudan, Syrian Arab Republic, Thailand, Togo, Tunisia, United Republic of Cameroon, Upper Volta, Uruguay and Yemen. He suggested that the Committee should adopt the draft resolution by consensus.

108. It was so decided.

109. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that during the debate his delegation had shown that there was no reason to bring up the question of revision of the Charter, since the Organization's weaknesses did not derive from the Charter but rather from lack of respect for its provisions. It had also demonstrated that the Charter contained numerous resources that had not yet been exploited. The Minister for Foreign Affairs of the Soviet Union had stated at a plenary meeting of the General Assembly that in the current climate of détente the United Nations should employ all the means at its disposal to strengthen peace, adding that it could not demonstrate all its possibilities unless all Member States implemented its decisions.

110. His delegation remained convinced that the role of the Organization could not be strengthened unless all Member States were determined to fulfil the obligations they had assumed and that no committee could fill the gap created by failure to implement the provisions of the Charter. It considered, however, that the Special Committee could help to improve the situation by concentrating, not on consideration of proposals aimed at revising the Charter, but on a search for ways of making the Organization more effective, in other words, helping it to perform its basic task, namely to ensure the maintenance of international peace and security on the basis of the Charter. His delegation was prepared to collaborate with the Special Committee with a view to the attainment of that objective.

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111. Mr. MUSEUX (France) thanked the sponsors of draft resolution A/C.6/31/L.6 for their co-operative spirit, which had enabled his delegation to associate itself with the consensus by which that draft had been adopted. However, that did not mean that his delegation had abandoned its position concerning the resolutions mentioned in the preambular part and the means of attaining the goals shared by all Member States. It was still of the opinion that the role of the United Nations could be strengthened, not by revising the Charter, but by improving the Organization's methods of work and using all the possibilities offered by the Charter. It was in that spirit that France intended to participate in the work of the Working Group of the Special Committee.

112. Mr. RESHETNYAK (Ukrainian Soviet Socialist Republic) said his delegation had already expressed its views on the question of the revision of the Charter in its statement at the 43rd meeting of the Committee. It wished to make it clear that its participation in the consensus by which draft resolution A/C.6/31/L.6 had been adopted did not mean that it had changed its view of the matter.

113. Mr. CEAUSU (Romania) observed that during the current debate, as well as the debate in the General Assembly, many interesting suggestions had been made, and that since the end of the Special Committee's session several States had submitted observations and proposals to the Secretariat in writing, in accordance with General Assembly resolution 3499 (XXX). He hoped that other States would submit their observations and proposals on the question as requested in operative paragraph 3 of draft resolution A/C.6/31/L.6, and that the Office of Legal Affairs of the Secretariat would take those observations and proposals fully into account and transmit them to the Special Committee for consideration at its next session. For that purpose the Secretariat should consolidate the observations and proposals received into an addendum to its analytical study (A/AC.182/L.2) using the same method of classification as in the study.

114. As a sponsor of draft resolution A/C.6/31/L.6 he appreciated the interest which the members of the Sixth Committee had shown in the work of the Special Committee, an interest reflected in the number of sponsors of the draft resolution and the number of delegations which had participated in the debate. He noted that most of the speakers had supported the draft resolution by favouring continuation of the Special Committee's work in accordance with paragraphs 1 and 2 of General Assembly resolution 3499 (XXX). He hoped that all members of the Special Committee would take an active part in that work. The adoption of draft resolution A/C.6/31/L.6 by consensus seemed to be a good omen for the continuation of the Special Committee's work.

115. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that the fact that his delegation had not opposed the adoption by consensus of draft resolution A/C.6/31/L.6 in no way signified that it had changed its position on the question of revision of the United Nations Charter, a position which it had indicated in two communications addressed to the Secretary-General and in its statement at the 48th meeting of the Sixth Committee. His delegation would always be among those which upheld the immutability of the Charter and resolutely opposed any attempt to revise it, but it would support all efforts to strengthen the role of the Organization. It therefore felt that the Special Committee should focus its

(Mr. Buben, Byelorussian SSR)

efforts on proposals designed to increase the efficiency of the United Nations, in accordance with its mandate as defined in General Assembly resolution 3499 (XXX).

116. Mr. LOPEZ BASSOLS (Mexico) said he was pleased to note that draft resolution A/C.6/31/L.6, of which his delegation had been a sponsor, had been adopted by consensus.

117. Mr. PEDAUYE (Spain) said that, as a sponsor of draft resolution A/C.6/31/L.6, he, too, was pleased that the draft had been adopted by consensus. The considerable interest which the question of the Charter had aroused was demonstrated by the number of sponsors of the draft resolution and by the number of statements made during the debate. Those statements had treated the substance of the question and had dealt with specific proposals relating to the revision of the Charter and the strengthening of the role of the Organization. The debate had been extremely useful because it had made it possible to hear new proposals from States which were not members of the Special Committee and had therefore not been able to express their position on the question.

118. He supported the proposal by the representative of Romania regarding the way in which the Secretariat should submit the new observations it received from Governments to the Special Committee.

119. The participation of his delegation in the consensus on draft resolution A/C.6/31/L.6 did not change its reservations regarding its administrative and financial implications, reservations which it would communicate to the Fifth Committee.

120. Mr. GAVIRIA (Colombia) said he, too, supported the suggestion of the representative of Romania. He noted with satisfaction that the adoption by consensus of draft resolution A/C.6/31/L.6 reflected the interest shown by the international community in the revision of the Charter. He welcomed the spirit of co-operation which had prevailed during the debate and which was characteristic of the Sixth Committee.

121. Mr. PAWLAK (Poland) said that his position on the question of the revision of the Charter had not changed. It was in a spirit of compromise and because of a wish to uphold the principle of consensus in the Sixth Committee that he had not opposed adoption of draft resolution A/C.6/31/L.6.

The meeting rose at 6.25 p.m.