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

UNITED KINGDOM: PROPOSAL

Principle A: Threat or Use of Force

Statement of Principles

1. Every State has the duty to refrain in its 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.
2. By the expression "force" as used in paragraph 1 above is meant armed force. Armed force includes both the use by a Government of its regular naval, military or air forces and of irregular or volunteer forces.
3. The prohibition of the threat or use of force embraces the duty of every State to refrain from organizing or encouraging the organization of armed bands within its territory or any other territory for incursions into the territory of another State.
4. The prohibition of the threat or use of force embraces both the direct and indirect use of force. Accordingly, every State is under a duty to refrain from fomenting civil strife or committing terrorist acts in another State, or from tolerating organized activities directed towards such ends.

5. The use of force is lawful when undertaken by or under the authority of a competent United Nations organ, including in appropriate cases the General Assembly, acting in accord with the Charter, or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence.

Commentary

(1) Paragraph 1 reproduces verbatim, in the form of a statement of the duties of States, the language of Article 2 (4) of the Charter. This is the basic principle enshrined in the Charter from which the other subsidiary principles set out in paragraphs 2 to 5 necessarily flow. Article 2 (4) of the Charter cannot, however, be viewed and interpreted in isolation. It must be considered in the context of the Charter as a whole, bearing in mind the purposes and principles stated in the preamble and in Articles 1 and 2 as well as the provisions of Chapters VI and VII and notably Article 51. In particular, there is a clear and vital connexion between Article 2 (4) and Article 39 which deals with any "threat to the peace, breach of the peace, or act of aggression". The phrase "threat or use of force" as used in Article 2 (4) is not wholly co-extensive with the language of Article 39, but the practice of the United Nations shows clearly that allegations of violations of the principle enshrined in Article 2 (4) have almost invariably been framed in terms of Article 39. The powers and functions of the Security Council under Chapters VI and VII of the Charter in relation to the maintenance and restoration of international peace and security cover much wider ground than is comprehended within Article 2 (4) of the Charter; but it is nevertheless beyond dispute that the machinery set up under Chapters VI and VII of the Charter whereby the Security Council carries out

its primary responsibility for the maintenance and restoration of international peace and security constitutes the framework within which allegations of violations of the basic principle prohibiting the threat or use of force can be investigated and determined.

(2) Paragraph 2 explains what is meant by the term "force". The travaux préparatoires of the San Francisco Conference indicate that, in the context of Article 2 (4) of the Charter, the expression "force" means physical force or armed force and does not include economic or political pressure. The second sentence of this paragraph incorporates the well-established principle that the use of irregular forces or volunteers under Government control in order to participate in a military campaign or to support active rebel groups constitutes a use of force within the meaning of the general prohibition in paragraph 1.

(3) Paragraph 3 deals with the case where the threat or use of force results from the connivance or collusion by the authorities of a State in activities whereby armed bands are organized on its territory or permitted to use its territory as a base for the purpose of effecting incursions into the territory of another State. The principle imputing responsibility to any State which organizes or encourages such activities is clearly established, although, in particular cases, it may not always be easy to determine the true facts of the situation.

(4) Paragraph 4 deals with another aspect of what is sometimes referred to as "indirect aggression". A definitive list of the actions which might be considered to fall within the concept of "indirect aggression" would however be impossible to compile since it would of necessity have to deal with the whole range of subversive activities which may take many forms. Hence, the well-established principle which imputes responsibility of any State which engages in such activities is expressed in generalized

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terms, and its application in particular cases may give rise to differences of view because of the inherent difficulty of establishing the facts of the situation.

(5) Paragraph 5 sets out in a non-exhaustive manner the principal circumstances in which the use of force is lawful. It is based on and reflects a number of provisions in the Charter, including Articles 2 (4) and 10 and Chapters VII and VIII. Circumstances in which force may be used vary widely and an exhaustive definition of them would be impracticable.

(6) The necessary complement to the prohibition of the threat or use of force is the duty of every State to settle its international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

Principle B: Peaceful Settlement of Disputes

Statement of Principles

1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.
2. The parties to any such dispute shall first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
3. Unless they are capable of settlement by some other means, legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Commentary

(1) The language of paragraph 1 follows closely that of Article 2 (3) of the Charter. Although the primary objective of the United Nations, as an organization, is to ensure the maintenance of international peace and security, it is essential to bear in mind that the organization is equally dedicated to the concept that the principles of justice must be respected.

(2) Paragraph 2, the language of which follows closely that of Article 33 of the Charter, spells out, in a non-exhaustive manner, the various means of peaceful settlement. Broadly speaking, the means of peaceful settlement thus enumerated fall into two categories:

- (a) those means which, so far as the terms of settlement are concerned, depend upon voluntary acceptance by the parties;
- (b) those means which oblige the parties to accept settlement determined by a third party organ.

Negotiation, mediation, inquiry and conciliation fall into the first of these categories; arbitration and judicial settlement fall into the second. Although reference to regional agencies or arrangements is not a means of settlement in itself, resort to such regional agencies or arrangements, which may incorporate either or both of the categories of peaceful settlement, should in any case be encouraged. Although the means of negotiation is that most commonly used, at least in the initial stages, for the peaceful settlement of international disputes, it is not the only or necessarily the most effective method of resolving a dispute. In the event that the method of negotiation is initially adopted by the parties to a dispute and does not

result in a solution, the parties should continue to seek a solution by making use of one of the other means of peaceful settlement enumerated, having regard to the nature of the dispute.

(3) Paragraph 3 emphasizes the principle, enshrined in Article 36 (3) of the Charter, that legal disputes should as a general rule be referred by the parties to the International Court of Justice. All States Members of the United Nations are ipso facto parties to the Statute of the Court. The principle that legal disputes should as a general rule be referred to the Court also finds expression in operative paragraph 3 of Part C of General Assembly resolution 171 (III) of 14 November 1947. The second preambular paragraph of Part C of that resolution draws attention to the consideration that the International Court of Justice could settle or assist in settling many disputes in conformity with the principles of justice and international law if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services. In this connexion, operative paragraph 1 of Part C of the resolution draws the attention of those States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible.

(4) The second sentence in paragraph 3, which is based on Article 95 of the Charter, makes it clear that parties to a dispute of a legal nature may entrust the solution of their differences to other means of judicial settlement.

Principle C: Non-intervention

Statement of Principles

1. Every State has the right to political independence and territorial integrity.
2. Every State has the duty to respect the rights enjoyed by other States in accordance with international law, and to refrain from intervention in matters within the domestic jurisdiction of any other State.

Commentary

Non-intervention

(1) The basic principle in paragraph 1 is reflected in the United Nations Charter, for example, in Article 2 (4).

(2) The first part of paragraph 2 expresses the duty of States correlative to the right enjoyed by them under paragraph 1.

The second part of paragraph 2, which expresses the classic doctrine of non-intervention to be found in numerous multilateral, regional and bilateral treaties, is a particular application of the first part. The wording does, however, leave certain questions unresolved, as, for example, what is meant by "intervention" and what is meant by "matters within the domestic jurisdiction". In the context of inter-State relations, "intervention" connotes in general forcible or dictatorial interference.

(3) In considering the scope of "intervention", it should be recognized that, in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and self-determination of their peoples.

(4) It would, therefore, be impossible to give an exhaustive definition of what constitutes "intervention". Much of the classic conception of intervention has been absorbed by the prohibition of the threat or use of force against the political independence or territorial integrity of States in accordance with Article 2 (4) of the Charter. There are, however, other forms of intervention, in particular the use of clandestine activities to encompass the overthrow of the Government of another State.

or to secure an alteration in the political and economic structure of that State, which illustrate the dangers of attempting an exhaustive definition of what constitutes "intervention".

(5) In the event that a State becomes a victim of unlawful intervention practised or supported by the Government of another State, it has the right to request aid and assistance from third States, which are correspondingly entitled to grant the aid and assistance requested. Such aid and assistance may, if the unlawful intervention has taken the form of subversive activities leading to civil strife in which the dissident elements are receiving external support and encouragement, include armed assistance for the purpose of restoring normal conditions.

Principle D: Sovereign Equality

Statement of Principles

1. The principle of the sovereign equality of States includes the following elements:
 - (a) that States are juridically equal;
 - (b) that each State enjoys the rights inherent in full sovereignty;
 - (c) that the personality of the State is respected, as well as its territorial integrity and political independence;
 - (d) that the State should, under international order, comply faithfully with its duties and obligations.
2. The principle that States are juridically equal means that States are equal before the law.
3. Every State has the duty to conduct its relations with other States in conformity with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

Commentary

- (1) Article 2 (1) of the Charter of the United Nations declares that "the Organization is based on the principle of the sovereign equality of all its Members". The concept of "sovereign equality" was first enunciated in paragraph 4 of the Four-Power Declaration on General Security adopted at the Moscow Conference on 1 November 1943. During the course of the San Francisco Conference in 1945, the phrase "sovereign equality" was subjected to careful analysis. The Conference eventually accepted that the notion of "sovereign equality" comprehended the four elements set out in paragraph 1.
- (2) Paragraph 2 expresses what is meant by the concept of juridical equality. The thought underlying this paragraph has been expressed in numerous declarations adopted by non-governmental bodies as well as in article 5 of the Draft Declaration on the Rights and Duties of States adopted by the International Law Commission in 1949.
- (3) Juridical equality connotes equality before the law; it does not preclude States, in the exercise of their sovereignty, from entering freely into treaty or other conventional arrangements whereby the contracting parties undertake certain obligations either towards each other or more generally, notwithstanding that the future freedom of action of the Contracting Parties may be qualified by the terms of the agreement in question.
- (4) Paragraph 3 expresses one of the most fundamental principles of international law relevant not only to the doctrine of sovereign equality but to the whole corpus of principles concerning friendly relations and co-operation among States. The principle embodied in paragraph 3 is directly relevant to the doctrine of sovereign equality in the sense that, while States are entitled to enjoy and exercise the rights inherent in full sovereignty, they must equally comply with their duty to respect the supremacy of international law.
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