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CONTENTS

Chairman: Mr. Abdullah EL-ERIAN (United Arab Republic).

AGENDA ITEMS 90 AND 94

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (continued) (A/5725 and Add.1-7, A/5763, A/5865; A/C.6/L.537/Rev.1 and Corr.1 and Add.1; A/C.6/L.574-L.577/Rev.1):

(a) Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/5746);

(b) Study of the principles enumerated in paragraph 5 of General Assembly resolution 1966 (XVIII);

(c) Report of the Secretary-General on methods of fact-finding (A/5694)

Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities (continued) (A/5757 and Add.1, A/5937)

1. Mr. ENGO (Cameroon) said that his country's absence from the meetings in Mexico City, for reasons outside its control, should not be interpreted as a lack of his delegation's interest on the subject under discussion. The success of the deliberations of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had been limited, but the report produced (A/5746) was a useful document which the present discussions were carrying a stage further on the road to the codification and development of international law.

2. His country was itself an experiment in co-existence, being a federation of two regions that were formerly ruled by the French and the English respectively and sharing boundaries with seven States using three or four different languages. It had in the past experienced colonial oppression and had had to resist attempts at internal interference and the threat to force. It was, therefore, vitally interested in the establishment on firm foundations of international machinery for the settlement of disputes and the maintenance of peace.

3. His delegation was a co-sponsor of draft resolution A/C.6/L.577/Rev.1 and he would merely add a footnote to the remarks made by the Malian representative when introducing the original draft resolution (A/C.6/L.577). The draft represented a compromise between the two views regarding the form further discussion of the principles should take. It wished to retain the membership of the old Special Committee so as to profit by its experience, but to add to it a few more members so as to give wider representation, for example, to the great variety of legal systems and doctrine in the continent of Africa. Moreover, the new and smaller countries needed the protection of international law most and therefore should play a greater part in its establishment. The United Nations, being a free association of nations, could not impose laws: they must be the result of a free consensus of all nations represented in it and it was probable that a committee of wider representation could reach such complete agreement.

4. Mr. VANDERPUYE (Ghana) said that the crisis-ridden world demanded the establishment of rules of order to prevent war and the development of principles of international justice and procedures to keep those rules up to date and to ensure their application in international disputes. The International Court of Justice and the Charter of the United Nations provided the framework, but world public opinion had yet to understand that the demand for national integrity must take account of the need for international co-operation. International law and legal institutions must be capable of expansion and modernization. The principles of international law must be recognized as universally applicable, while modernization required that they should be adaptable to the changing realities of the contemporary world. For that reason the General Assembly had empowered the Special

Committee to meet in Mexico City to study the principles of international law concerning friendly relations and co-operation among States.

5. The failures of the Special Committee so lucidly stated in the report were due to the unwillingness of some Powers to abandon the position of privilege which traditional international law had conferred on them and accept a more progressive interpretation as urged at several international conferences over the past twenty years. Their insistence on the formulation of the principles on the basis of consensus bore an ominous resemblance to the veto of the Security Council. Thus the attempt by Ghana, India and Yugoslavia in Mexico City to gain recognition of the right of people to self-defence against colonial domination in the exercise of their right to self-determination and to ensure that situations resulting from economic pressure should be outlawed had met with opposition from some delegations.

6. Certain points of topical interest were relevant to the item under discussion. The financial crisis of the United Nations which had rendered it powerless to act, the Dominican crisis and the war in Viet-Nam had brought to the forefront an intermingling of civil and international law in a manner that threatened the very foundations of international law. The increasing use of civil war situations by third States as justification for armed intervention constituted the greatest and most immediate threat to the principles relating to the control of the use of force in international disputes. The remarks made by the Legal Adviser to the United States Department of State, Mr. Meeker, in justification of United States intervention in the Dominican crisis, that in international law reliance on absolutes, abstract imperatives or fundamentalist views would prove inadequate, had blurred the distinction between the legal and the illegal and had thus set the clock back in the development of international law.

7. The recent seizure of power by the white racist minority in Southern Rhodesia, in flagrant violation of the principle of self-determination, made yet more urgent the need of the international community to find effective checks to such acts in the future. Such checks should be available and, in the light of the Rhodesian crisis, the Ghanaian delegation found further justification for the resolution which it had sponsored in Mexico City, seeking the enforcement of non-recognition of such advantages obtained by force and also the justification of the use of force by colonial peoples in their struggle for liberation.

8. In view of the foregoing, his delegation was prepared to support any proposal to set up a new special committee to continue the study and codification of the principles of international law. Their efforts in that direction should be sustained by the knowledge that only by the establishment of a supranational legal order could peace be consolidated.

9. The three draft resolutions before the Committee (A/C.6/L.575, L.576 and L.577/Rev.1) sought the re-establishment of the Special Committee and re-inclusion of agenda item 90 on the provisional agenda of the General Assembly's twenty-first session. There the similarity ended. It was incorrect to state, as did the fourth preambular paragraph of A/C.6/L.575, that the text on the threat or use of force in the Special Committee's report had "received the support of all members represented on the Special Committee", as a perusal of the summary records of the meetings in Mexico City would reveal.

10. There was very little difference between the Czechoslovak draft resolution (A/C.6/L.576) and draft resolution A/C.6/L.577/Rev.1 except that the latter was perhaps more comprehensive. He therefore appealed to the Czechoslovak delegation to withdraw its draft, or to co-operate with the sponsors of A/C.6/L.577/Rev.1 to produce a joint text.

11. He reserved the right of his delegation to make further comments on the items under discussion.

12. Mr. BLIX (Sweden) said that he would like to express his delegation's view on a number of points on which he was unable to touch when he addressed the Committee in his capacity as Rapporteur of the Special Committee.

13. His delegation considered that the Special Committee's penetrating survey of the fundamental concepts of international law was valuable for itself alone. There was value also in revealing where differences of opinion were irreconcilable, for an apparent but illusory agreement would serve no useful purpose. As his Government had submitted comments on the four principles and had expressed its views in the Special Committee, he would restrict his comments to a few important points.

14. His delegation welcomed the consensus reached on the principle of sovereign equality. If consensus was the aim, it could hardly be expected that any formulation could cover all the points which various representatives wished to have included. He suggested that the Sixth Committee should accept the formulation already made on the understanding that the Special Committee or the Sixth Committee itself could make such emendations as might be necessitated by the consensus reached on the other principles.

15. The consensus which might now have been reached on the principle of the non-use of force thanks to the United States delegation's concession was even more salutary. Although the formulation did not satisfy everyone, it constituted perhaps the optimum at present available and should be accepted as such on the same understanding which he had suggested in connexion with the formulation of the consensus on sovereign equality. In his delegation's opinion, the draft resolutions submitted by Czechoslovakia and by the forty States did not take sufficient account of the result achieved on those two principles, while the draft resolution submitted by Australia, Canada and the United Kingdom (A/C.6/L.575) perhaps attributed too much finality to it.

16. On the principle of the non-use of force his delegation considered, like the Yugoslav representative, that the study must not result in any attenuation of the compulsory character of the provision. An extensive interpretation of the right under Article 51 of the Charter to individual or collective self-defence would be dangerous and must be rejected. The Charter struck a careful balance between the responsibility

of regional groups and the Organization itself, laying down that force could only be used, in the last resort, by the United Nations or at least with its authorization. His delegation did not agree to proposals seeking to establish a right of States to use force in their international relations whenever, in their opinion, the right to self-determination was involved. That might give rise to dangerous interventions. But, it should be noted that the Charter only prohibited the use of force in international relations and that an internal struggle for independence and secession was not affected by that prohibition. The right to rebel must be accepted, but the claim of outside powers to determine which were "sacred wars" and to give armed assistance to the party rebelling caused uneasiness.

17. Concerning the principle in Article 2, paragraph 4 of the Charter, his delegation considered that the question of whether the term "force" implied physical force only or economic or political pressure as well should be left on the disagreed list. It accepted that point of view regretfully, for it would have preferred to see the view accepted that only physical force was meant in that paragraph. Further, it considered that expressions such as "political or economic pressure" lacked the necessary precision to be used in such a juridical context and might perhaps provoke controversy rather than improve friendly relations. That did not mean that the Charter sanctioned every kind of economic and political pressure. Other principles of the Charter, such as for example the principle on non-intervention, might be found upon analysis to give useful guidance on such pressures.

18. The Swedish delegation greatly regretted that the Special Committee had been unable to reach general agreement on the principle of non-intervention. That failure had been partly due, no doubt, to lack of time, but there had also been disagreement on whether the Charter prohibited any intervention by States other than the forcible intervention covered by Article 2, paragraph 4. Although the Swedish delegation appreciated the point of view of those who considered that the Charter forbade only forcible intervention, it had little doubt that the general principle of non-intervention was inherent in the Charter, no matter whether that principle was viewed as an extension of the principle of self-determination or whether it was viewed as an aspect of the inviolability of the territorial and political integrity of a State. It was to hoped that all the participants in a second session of a Special Committee would be able to deal with every aspect of the principle of non-intervention, for the practical importance of an authoritative clarification and amplification of the content of that principle was beyond doubt.

19. The Latin American republics had long been in the forefront of both the doctrinal development and the conventional adoption of the principle of non-intervention, but formulae which were acceptable on a world-wide basis still remained to be found. The urgent need to find such formulae had been stressed by the Swedish Foreign Minister in his address to the General Assembly on 22 January 1965,1/ in which he had pointed out the serious dangers to peace inherent in continued confusion about what constituted co-operation on the one hand and outside interference on the other. The definition and delimitation of the concept of intervention would also be of practical importance in facilitating desirable programmes of assistance and discouraging abuses in connexion with such programmes, while it would also be a valuable guide to Governments, in the contemporary era of necessarily close international contacts, as to what was and was not permissible for them in their international activities.

20. The Swedish delegation had always taken a keen interest in the development of methods for the peaceful settlement of disputes, and although the results achieved in the discussion of that question in Mexico City had been disappointing, there had been several encouraging developments in the past year.

21. The Swedish Government had always favoured wider use of the judicial method of settling disputes, whether through the International Court of Justice or through ad hoc arbitration tribunals, although it had never held that any State should be forced to submit disputes to judicial settlement. It was therefore happy to note that since the session of the Sixth Committee in 1963 both Nigeria and Kenya had accepted the compulsory jurisdiction of the International Court of Justice, while the Government of Iran was likely to renew its acceptance of such compulsory jurisdiction, and it hoped that the positive attitude of those States would induce others to take a more favourable attitude to the judicial method of settling disputes.

22. The interest of the Swedish delegation was by no means confined to judicial means of settlement, and it therefore welcomed the new method of settling investment disputes provided for in the Convention concluded under the auspices of the International Bank for Reconstruction and Development and the interesting discussions which had taken place in the Third Committee of the General Assembly regarding implementation and enforcement machinery for the International Convention on the Elimination of All Forms of Racial Discrimination.

23. Another encouraging aspect was the continued development of regional instruments for the settlement of disputes. Thus, the Council of Europe was actively continuing its work in that region, while the Organization of African Unity had recently created important machinery for the settlement of disputes on the African continent.

24. The Swedish delegation understood that the item proposed by the United Kingdom regarding the peaceful settlement of disputes was for an inquiry into the reasons for the limited use of the various peaceful methods of settlement and did not suggest an elaboration of the principle; the question of machinery for the peaceful settlement of disputes certainly deserved discussion at greater length than would be possible at a second session of a Special Committee and the question of fact-finding could well be included in such an inquiry. The report of the Secretary-General on methods of fact-finding (A/5694) was an excellent contribution to the Committee's knowledge on that subject but it did not deal with international inquiry as envisaged in certain treaties, and the Swedish

1/ See Official Records of the General Assembly, Nineteenth Session, Plenary Meetings, 1319th meeting.

delegation therefore wished to endorse the proposal by the delegation of the Netherlands that the Secretary-General be asked to complete it in that regard. Member States should also be invited anew to submit comments so that a fuller picture might be obtained of their attitude to the question of fact-finding.

25. As far as future work on the principles was concerned, there seemed to be wide agreement that a Special Committee should be convened for a second session so that it could complete the work on the principles discussed in Mexico City and examine the three principles which had not been discussed there. Some delegations had proposed that the 1964 Special Committee should be revived in an enlarged form, but the Swedish delegation wished to stress that it was not the composition of that Special Committee but its difficult task which had prevented it from attaining the desired results. As far as the Special Committee's composition was concerned, the Swedish delegation could not accept the criteria stated in operative paragraph 3 of draft resolution A/C.6/L.577/Rev.1, for that paragraph seemed to imply that delegations favouring a particular line of thought should be particularly heavily represented on the Special Committee. In the opinion of the Swedish delegation, however, while due regard should be paid to all trends in the international community none should be singled out for special treatment.

26. Regardless of its composition, a second session of a Special Committee would no doubt decide on its own methods of work, but it would be well advised to bear constantly in mind that any formulations which it adopted must be such as might be expected to command the general concurrence of the overwhelming majority of the membership of the United Nations, for while it was generally accepted that international law could not be purely Western international law, by the same token it must not be Eastern, Latin American, African or Asian international law either, but must truly have the support of the international community as a whole, or it was unlikely to be respected or effective. As for the form which should finally be given to the Special Committee's work, the Swedish delegation was not convinced that express instructions to work towards a declaration should be given, for it considered that the real task was to reach agreement in substance and once that agreement was attained the question of form was likely to be easily resolved.

27. The Swedish delegation wished to conclude with some remarks concerning the aim and purpose of the Special Committee's efforts. The representative of the Soviet Union had rightly stressed at a previous meeting that the United Nations was not a super-State and its function was not that of the legislature which could impose new rules of law upon its members. The Charter was a treaty accepted by Members of the United Nations of their own free will, and if any Member felt that certain rules of the Charter were no longer adequate to the needs of the international community, the proper course was to propose amendments in accordance with the prescribed procedure. As the representative of Morocco had remarked at the 883rd meeting, the Committee could not rewrite the Charter under the present item: all it could do was to explain, amplify and elaborate the existing provisions of the Charter. The difference between clarification and revision was not always obvious, but it was none the less vital for that, and if that difference was not respected there was a danger that any rules proclaimed by the Assembly would be ineffective because they would not enjoy universal acceptance.

28. It was essential that States should set aside their own immediate political interests when considering the principles before them, for they were principles by which States must live for a long time to come and they were therefore not proper vehicles for short-term political aims.

29. Whether they concerned matters on which there was a divergence of views or a consensus, it was desirable that the formulations proposed for the principles should be clear, concise and free from danger of misinterpretation. Only if that were done would the principles fulfil their task of preventing conflict, for States would then be given clear notice that a particular action was either permitted or prohibited under a particular principle such as the principle of the prohibition of the threat or use of force or the principle of non-intervention. Clarity of expression was particularly important in the international community, where the guiding principles were subject to self-interpretation. Clarification of the principles would reduce the area of doubt and widen the areas of prohibited and permissible action.

30. Desirable as clarification was, however, it was sometimes found that States preferred to keep the freedom of action that vague and broadly formulated rules gave them and to accept the risk of occasional protests and conflict, rather than be clearly deprived of such freedom of action. Conversely, States sometimes preferred to be able to protest against action on the basis of vague rules rather than clarify such rules and thus become obliged to accept the action in question as legal. Such attitudes by States might limit the Special Committee's possibilities of achieving the progressive development and clarification of the principles in question, but it seemed obvious that international jurists must seek the maximum clearly attainable at any given time if they were to give international law maximum conflict-preventing capacity.

31. In conclusion, the three draft resolutions before the Committee did not seem to be so far apart as to render conciliation impossible, and the Swedish delegation therefore suggested that their sponsors or their representatives should meet to prepare a single draft resolution which could be adopted unanimously by the Committee.

32. Mr. CASTAÑEDA (Mexico) said that there was no reason to be discouraged by the apparent failure of the Special Committee to achieve striking results, for the work carried out in Mexico City would serve as a basis for future action by the United Nations, and the really important thing was that for the first time a group of representatives had carried out a systematic study of the content and scope of the principles which were the corner-stone not only of the Charter of the United Nations but of the whole body of international law, and had striven to adapt them to present-day needs.

33. The principle of the prohibition of the threat or use of force represented the culmination of a long process of evolution, in the course of which, in proportion as the sphere of decision of individual States was reduced, the power to decide questions of war and peace became centralized in the international community. The Charter of the United Nations not only deprived individual States of their right to decide when it was lawful for them to use force in their international activities, but at the same time gave the organs of the international community a virtual monopoly of that right. Thus, the power of imposing sanctions was centralized in the United Nations.

34. That process of centralization was not yet complete, as the United Nations did not have sufficient forces of its own to impose its decisions by military means, and the Charter therefore provided that Member States could in certain circumstances intervene in other States by force at the express request of, and in an auxiliary capacity to, the United Nations, but except in the case of individual or collective self-defence in the event of armed attack no individual State had the right to decide for itself when the use of force was justified: that right was vested, under the terms of the Charter, solely in the Security Council of the United Nations.

35. The Mexican delegation considered that the above process of centralization was the most radical change which had taken place in international relations since the entry into force of the Charter and that the principle of the prohibition of the threat or use of force was the most significant advance which had taken place in international law in recent times. Article 2, paragraph 4, which stated that principle, was therefore the most important provision in the entire Charter.

36. The prohibition of the threat or use of force was, by its very nature, a categorical and unconditional obligation which, unlike certain other provisions of the Charter, left no room for subjective evaluation or argument. Except for individual or collective self-defence against an armed attack, all unilateral use of force by a State was unlawful ab initio, so that there could no longer be any question, as in the past, of using force in answer to such situations as the withdrawal of concessions, the repudiation of debts, alleged danger to the lives or property of foreigners, etc.

37. Except for self-defence, the only other lawful use of force under the Charter was its use in enforcement of coercive measures voted by the United Nations, and to tell the truth even that use was not really an exception, as the United Nations was the representative and guardian of the international community, and any coercive action taken by it could reasonably be considered as collective self-defence on the part of the entire international community.

38. With regard to the use of force, the Charter of the United Nations had completely taken the place of the whole body of international law existing before 1945, as Article 103 of the Charter provided that it should prevail over all other international agreements. Where the Charter was silent, however, certain rules of customary law still held good. That was so, for example, in respect of the requirement that measures of self-defence taken in response to an armed attack should be immediate and in proportion to the seriousness of the attack.

39. In order to safeguard peace, it was essential that the conditions laid down by the Charter regarding the use of force in self-defence should be most carefully defined. Any interpretation of those conditions which reduced the power of decision of the United Nations and increased the competence of individual States would be contrary to everything that the United Nations stood for.

40. The use of force in collective self-defence by regional agencies did not, in the opinion of the Mexican delegation, constitute a separate form of action, as it fell either under Article 51 (individual or collective self-defence by Member States) or Article 53 (use of regional arrangements or agencies by the Security Council for enforcement action under its authority).

41. As for the significance of the term "force" in Article 2, paragraph 4 the Mexican delegation felt that there was no legal reason why the term should not be interpreted to cover other forms of pressure such as economic or political pressure, but it was undesirable that such an interpretation of "force" in Article 2, paragraph 4 should be extended to certain other Articles, such as Article 51, dealing with the lawful use of force in self-defence. It was worth remembering that the loose and indiscriminate use of terms tended to erode their meaning and effectiveness.

42. The application to particular cases of the principle of the prohibition of the threat or use of force naturally gave rise to some legal corollaries. The first of those was in connexion with armed reprisals. For the use of force in self-defence to be permissible under the Charter, such force must, as already stated, be immediately subsequent to and proportional to the armed attack to which it was an answer. If excessively delayed or excessively severe, it ceased to be self-defence and became a reprisal, which was an action inconsistent with the purposes of the United Nations. In the opinion of the Mexican delegation, definition and condemnation of reprisals should be included in any formulation of the principle of the prohibition of of the threat or use of force prepared by the Special Committee.

43. The second corollary was in connexion with the non-recognition of territorial gains achieved by the unlawful use of force. In the opinion of the Mexican delegation, the principle of the non-recognition of such conquests was a general principle of law, and it was thus binding upon all members of the international community. That principle was recognized by treaty in the Americas, and the Mexican delegation considered that it, too, should be included in any formulation of the principle of the prohibition of the threat or use of force.

44. Intervention was the negation of the fundamental rights of the State, of its independence and sovereignty. It was also the most common cause of international conflict. The principle of non-intervention was deeply rooted in international law, but perhaps its most complete formulation was contained in

Article 15 of the Charter of the Organization of American States (OAS).2/However, he would direct his observations to demonstrating that it was quite clearly based on the provisions of the United Nations Charter.

45. It had been established by the United Nations Conference on International Organization that the principle of sovereign equality should be understood to mean, inter alia, that States were equal before the law, that they enjoyed an inherent right to full sovereignty and that the personality of the State and its political independence should be respected. Consequently, in so far as the Charter proclaimed the sovereign equality of States, it prohibited intervention, which was the negation of that sovereign equality. Further, the principle of non-intervention could be inferred from the text of Article 2: paragraph 4 prohibited the threat or use of force, that is, the most serious form of intervention, while paragraph 7 prohibited the United Nations from intervening in matters essentially within the domestic jurisdiction of Member States. Obviously, if the Charter prohibited the Organization from intervening, by analogy and with all the more reason, it prohibited individual Members from intervening. On the other hand, since the Charter did not explicitly define the scope and content of that prohibition, it was the task of the Committee to do so in the light of history, the practice of States and international organizations, existing treaties and the requirements of the international community.

46. He drew attention to the formulation of the principle of non-intervention proposed by Mexico in the Special Committee (A/5746, para. 208). With regard to the question whether the prohibition of the threat or use of force should be included in a definition of non-intervention, there were reasons of substance for distinguishing two facets of non-intervention, namely, the prohibition of the use of force—the use of force constituting the form of intervention par excellence—and the prohibition of other forms of intervention. However, the first prohibition, which had been specifically stated in Article 2, paragraph 4, was governed by a specific legal regime which was quite separate from that applicable to other acts of intervention and had special legal consequences. Moreover, the Assembly itself, by instructing the Special Committee to deal separately with the principle of the threat or use of force and the principle of non-intervention, drew a distinction between the two principles and the Special Committee had quite properly discussed them separately with due regard to the fact that they were closely interrelated. For those reasons, the Mexican delegation had not included the prohibition of the use of force in its formulation.

47. With regard to the use of the words "coercive measures of an economic or political nature" in the Mexican proposal (ibid., para. 208, 2 (1)), he explained that although international relations would be virtually impossible unless States exercised a certain measure of influence or pressure on other States, there were certain types or degrees of pressure which were clearly illegal. For example, it would be illegal pressure for a State to ban the importation of a certain product from one country on grounds of the danger to health while at the same time permitting the importation of the same product from another State in the same ecological zone. The illegality would be all the more obvious if that discriminatory treatment was intended to force the sovereign will of the first State in a matter unrelated to the health regulations invoked, for example, in order to influence its political attitude in an international organization. It might be argued in refutation of the more categorical formulation by Yugoslavia in the Special Committee (ibid., para. 209), that in the entire history of mankind, probably no international conflict had been settled without the application of a certain measure of pressure. The Mexican proposal quite clearly referred to irrefutable cases of illegal pressure and not to the legitimate influence which States normally brought to bear on other States.

48. It had also been argued that the term "illegal pressure" or "illegal coercive measures" eluded definition in legal terms. However, ideas which were even less precise were not infrequently found in law, and particularly, in domestic legislation. For instance, the expression "due process of law", the cardinal element of United States constitutional law, had undergone many changes in meaning in the course of history, while in international law, the term "due diligence" used in connexion with the definition of neutrality had never been elucidated. What was the exact meaning of contra bonos mores, which had been the key phrase in the arbitral judgement on the hunting of seals in the Behring Sea, and of the term ordre public which was of such importance in the French conception of international law? Indeed, even the term "peace-loving State", one of the conditions for membership in the United Nations, was no more precise than the phrase "coercive measures of an economic or political nature". The truth was that the use of approximate or even suggestive terms was unavoidable and indispensable in formulating rules. The difficulties which would be encountered by the organs called upon to apply the term "coercive measures" would be no different and no greater than those encountered daily by tribunals and political organs all over the world. Many legal terms were vague; they should be interpreted in a reasonable way, in consonance with the times, the environment and the prevailing political, economic or other situation. The terms used in the Mexican proposal appeared in multilateral treaties signed by many States which had found no difficulty in accepting them. In any event, the difficulty of defining certain terms should not be invoked to invalidate the principle that certain types of pressure or coercive action were unquestionably illegal and constituted forms of intervention. Unless they were so labelled, the implication was that they were legal.

49. The Mexican proposal prohibited intervention in both internal and external affairs of States. In so doing, it reproduced the terms of article 15 of the Charter of the OAS. It was often difficult to distinguish internal affairs from external matters; many situations which had given rise to intervention had both internal and external aspects which were interrelated, as, for example, the problem of the recognition of

2/ United Nations, Treaty Series, vol. 119 (1952), No. 1609.

Governments (ibid., para. 208, 2 (3)). The proposal placed particular emphasis on the problem of subversion, perhaps the most dangerous form of intervention in the present era. Sometimes it took the form of hostile propaganda, incitement to rebellion or to the change of the established order by violent means. But more frequently, it was effected by means of infiltration, arms shipments, financial aid and the equipment of armed bands.

50. The Special Committee should endeavour to formulate the principle that Member States were obliged to settle their disputes by peaceful means and define the content and scope of that principle. It should not, however, attempt to analyse how each of the means of pacific settlement operated. Negotiation, conciliation and mediation could appropriately be used to alter an existing legal situation, while arbitration and judicial settlement were means of interpreting and applying the law in force. The whole conception of compulsory arbitration and international jurisdiction had changed since the beginning of the present century. At that time, there was widespread faith in compulsory arbitration; indeed, it was regarded as a panacea for settling disputes. While emphasis was placed on the method of settlement, the important question of creating new law as an instrument of social progress was overlooked. It was now recognized that the method of settlement was at least as important as the substantive norms applicable to the dispute. It was therefore not surprising that the new independent States objected to some of the legal norms which had become anachronistic or which they considered unjust because they had been shaped by former colonial Powers and therefore were reluctant to accept compulsory arbitration or the compulsory jurisdiction of the International Court of Justice. Direct negotiation had been the method of peaceful settlement most frequently used in the post-war era, but that did not imply that States should give it preference over other methods. The choice of the means of settlement should depend on the nature of the dispute and the desire of the parties.

51. Mexico had been gratified by the agreement reached by the Special Committee on the principle of the sovereign equality of States and hoped that the Committee's work would serve as a basis for further development of the principle.

52. Mr. POTOCNY (Czechoslovakia) directed his remarks to the three remaining principles enumerated in Assembly resolutions 1815 (XVII) and 1966 (XVIII), namely, the duty of States to co-operate with one another in accordance with the Charter, the principle of equal rights and self-determination of peoples and the principle of fulfilment in good faith of the obligations assumed in accordance with the Charter. He recalled the written comments submitted by Czechoslovakia and the specific formulations it had proposed (see A/5725/Add.3). The three principles, together with the four which had been the subject of study by the Special Committee, constituted peremptory rules of conduct in inter-State relations and the legal basis for peaceful coexistence.

53. Under the Charter, States were obliged not only to refrain from the threat or use of force and from intervention in the affairs of other States, but, positively, to develop and promote friendly relations and to co-operate in seeking solutions to the whole range of problems which beset them. Pursuance of that positive goal was the very essence of peaceful coexistence and ultimately the best guarantee of the maintenance of international peace and security. The conditions of stability and well-being referred to in Articles 1 and 55 of the Charter could only be achieved through international co-operation. The idea of international co-operation was no longer a mere political postulate; it had become a principle of contemporary international law and had been confirmed at the Conference of African and Asian States, held at Bandung; at the First and Second Conferences of Heads of State or Government of the Non-Aligned Countries held, respectively, at Belgrade and Cairo, and at the United Nations Conference on Trade and Development. The object of such co-operation should be the advancement of all nations, improvement of standards of living and assistance by the economically strong to the economically weak and by the former colonial Powers to their erstwhile dependent territories. It followed logically that all States were entitled to equal participation in international co-operation in questions affecting their legitimate interests and should not be excluded on grounds of differences in social and economic systems or in levels of economic development. All available channels should be utilized to strengthen international co-operation: international forums, regional organizations, specialized agencies and bilateral relations. Finally, such co-operation should be developed on the basis of the sovereign equality of the parties, mutual advantages, mutual respect for the interests of others and non-interference in their internal affairs. No discrimination should be exercised against any State on grounds of its particular economic or social system and assistance provided to developing nations should not be made subject to certain political or other conditions. Thus, States should be prohibited from invoking the pretext of promoting co-operation in order to exercise pressure on other States and curtail their right freely to determine their domestic and foreign policy. Economic groupings should be barred from introducing artificial barriers and obstacles to the promotion of international economic relations.

54. The principle of equal rights and self-determination of peoples connoted the right of a State freely to decide its destiny, including its form of statehood, and to choose the system and institutions which it deemed most appropriate. The application of that principle was an essential element of peaceful coexistence among States with different economic, political and social systems. Its violation resulted in explosive situations which jeopardized peace and security, as the Security Council and the Assembly had emphasized in the cases of Southern Rhodesia, Aden and the Portuguese colonies. The principle had been recognized as a binding rule of international law in the United Nations Charter, in the Charter of the Organization of African Unity and in the declarations of various groups of States. More significantly it had been formulated and interpreted by the General Assembly in its resolution 1514 (XV) on the Declaration on the Granting of Independence to Colonial Countries

and Peoples. As the Declaration stated, all peoples had a right to self-determination irrespective of their size or level of economic or cultural development and States were under obligation to assist in implementing their right. Indeed, the principle of self-determination was primarily an expression of the right of peoples to complete independence and freedom; it went beyond mere autonomy and its corollary was the right of secession. It also implied the right of every people freely to pursue its economic and cultural development, to develop its constitutional and political system and to dispose of its natural wealth and resources as it saw fit.

55. Colonialism and neo-colonialism were the negation of the principle of self-determination of peoples and, as the Declaration had proclaimed, those forms of subjugation of one people by another must be unconditionally brought to an end. The colonial Powers were bound to support the accession of colonial peoples to independence, to cease all repressive measures against them, to refrain from any violation of their national unity or territorial integrity and to grant them independence immediately and transfer all powers to them. The cultural, political or other unpreparedness of a territory could not be used as a pretext for delaying the granting of independence. Moreover, Czechoslovakia recognized the right of colonial peoples struggling to attain independence to defend themselves against colonial aggression and, where necessary, benefit from the assistance provided by other States. Indeed, the Assembly itself, by calling upon Member States to grant every possible assistance to the peoples of Zimbabwe and Aden, had also recognized that right (resolutions 2022 (XX) and 2023 (XX)). On the other hand, any assistance provided by colonial Powers for purposes of suppressing national liberation movements constituted a gross violation of the principle of self-determination. Furthermore, all States were bound to refrain from intervening in the internal affairs of the newly independent States, from jeopardizing their independence or imposing unequal economic agreements or aggressive military pacts. The former colonial Powers were under obligation to withdraw their armed forces from the territories of those new States, liquidate their military bases and refrain from concluding unequal treaties under which they would retain their colonial privileges.

56. The principle of the fulfilment in good faith of the obligations assumed under the Charter was actually an application and projection of the principle of pacta sunt servanda. Strict adherence to it helped to strengthen the international legal order, to maintain peace and to promote co-operation. Failure to fulfil international obligations usually resulted not only in the deterioration of relations among parties to a treaty and the undermining of mutual confidence, but to an aggravation of international tensions and possible threats to peace. The example of nazi Germany was ample evidence that systematic violation of and contempt for international obligations was a concomitant of aggression, and several violations of treaty obligations in the post-war period had brought the world to the brink of war. Moreover, recent violations of the principles of the non-use of force and non-intervention made it all the more imperative to include in any declaration of the principles of peaceful co-existence the principle of compliance in good faith with international obligations. However, perfunctory or legalistic compliance which failed to reflect the spirit and substance of those obligations could not be regarded as fulfilment in good faith. The latter meant the carrying out of obligations so as to ensure that other States received the rights and benefits arising from them and did not suffer any damage or handicap. On the other hand, States had a duty to fulfil only such obligations as had been assumed freely and were compatible with the Charter and with general international law. The principle was therefore not applicable to obligations sanctioning aggression, intervention, colonial domination or inequality among States and those obligations should be regarded as null and void. In considering the principle, the Special Committee should take into account the proposals put forward by the International Law Commission in the course of its work on the law of treaties.

The meeting rose at 1 p.m.

Litho in U.N. 77601—April 1966—2,000