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CONTENTS

Chairman: Mr. Edvard HAMBRO (Norway).

AGENDA ITEM 87

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (continued) (A/6799, A/C.6/383, A/C.6/L.627, A/C.6/L.628)

1. Mr. RUDA (Argentina) said that, notwithstanding the complexity of the task entrusted to it, the Special Committee had achieved extremely encouraging results, even though it had not succeeded in reaching agreement on all the principles, including the principle that States shall 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 and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, to which Argentina attached particular importance.

2. At the last session of the Special Committee at Geneva in 1967, five Latin American countries Argentina, Chile, Guatemala, Mexico and Venezuela, desirous of arriving at an acceptable text, had submitted a draft resolution (see A/6799, para. 27) which had been the most complete of all those placed before the Special Committee. They had not simply tried to perform the jurist's task of harmonizing different ideas and preparing a body of eclectic rules, but had attempted to formulate a number of equitable rules, which they had considered fundamental, in order to avoid the recurrence of situations which, as in cases of the threat or use of force, had tragic consequences for the maintenance of international peace and security.

3. To the countries of Latin America, the principle of non-intervention was a vital institution. It had been enunciated in Latin America for the first time in 1826,[1] and it had been reaffirmed in innumerable international instruments, and particularly in article 15 of the Charter of the Organization of American States (OAS).[2] Indeed, the history of Latin America was the history of the principle of non-intervention. General Assembly resolution 2131 (XX) having been adopted without opposition, it might have been thought that the application of that principle would not present any problems. That was not the case, however, and Argentina, like many other countries, had tried to complete the formulation of that principle—an endeavour which had come up against great difficulties, caused not so much by the ideas other delegations had advanced as by the methods they had used to gain acceptance of those ideas. It must be reaffirmed that, in the long run, no obstacle could prevent the formulation of the principle of sovereign equality of States. Resolution 2131 (XX), which was a great gain for the newer States, expressed the feelings of States with a long history of suffering and intervention.

4. It was with that fact in mind that Argentina had joined twelve other delegations in submitting to the Special Committee at its last session a draft resolution (ibid., para. 307) in which the sponsors, expressing their attachment to General Assembly resolution 2131 (XX), had proposed the inclusion of the operative paragraphs of that resolution in the formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State. He would not say more, since that draft resolution reflected his delegation's position. Although there were still great difficulties to be overcome before that principle could be formulated, his delegation was confident that it would be possible, in the end, to prepare an acceptable text.

5. Mr. EL-ERIAN (United Arab Republic) said that the elaboration of the principles of international law on peaceful coexistence proved all to infrequent an opportunity to note a substantial advance in the evolution of international legal thought. It also presented an opportunity to establish a close and permanent connexion between theory and practice.

6. Notwithstanding the perfectly clear mandate given to it in General Assembly resolution 2181 (XX), the Special Committee, because of controversy over difficult procedural questions, had not arrived at a generally acceptable formulation of the seven principles enumerated in resolution 1814 (XVII). Although the work of the Special Committee had some positive

[1] Treaty of Perpetual Union, League and Confederation between the Republic of Colombia, Central America, Peru and the United Mexican States, 15 July 1826.

[2] See United Nations, Treaty Series, vol. 119 (1952), No. 1609, p. 56.

aspects, inasmuch as the Drafting Committee had reached a consensus on the formulation of the principle concerning the duty of States to co-operate with one another in accordance with the Charter (ibid., para. 161) and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter (ibid., para. 285), the concrete results had been somewhat disappointing. The Special Committee had been unable to formulate certain principles or to widen the areas of agreement expressed at previous sessions, and it had not considered the three draft preambles which had been submitted (ibid., paras. 453, 454 and 455). It was particularly disappointing that the Special Committee had been unable to formulate the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples, for those two principles were the arch-buttresses of the present international order and of contemporary international law. One of them defined the constituent elements of the community of nations—a community of peoples based on self-determination and equal rights. The other laid down the basic norm of State conduct. If the principle of equal rights and self-determination of peoples was the basic element in the construction of the community of nations, the principle prohibiting the threat or use of force was the corner-stone of the contemporary international legal order. It safeguarded the territorial integrity and political independence of States. Given the central position which those principles occupied in the international corpus juris and their character as primary norms, their clear enunciation and the regulation of their legal effects and implications were of the utmost importance. The current international situation had given urgency to the task.

7. The principle prohibiting the threat or use of force had been violated in a manner which threatened to undermine the Charter of the United Nations and betrayed the hopes which all peoples had placed in the Organization. Force had been used against the territorial integrity of certain nations and against the right of self-determination of certain peoples in Africa and Asia. Armed force had been used against the territorial integrity of a number of States in the Middle East in flagrant violation of the Charter and the fundamental norms of international law. At present, parts of their territories were occupied by armed forces, illegal territorial claims were advanced, and the authority of the United Nations was opposed and defied. The principle of legality must be reaffirmed and consolidated, and faith in the system of collective security must be restored. It should be borne in mind that the use of force against a State not only violated the territorial integrity of the State which was the victim of aggression but also violated the integrity of the entire international order.

8. It was to be regretted that some delegations still adhered to a rather restrictive and formalistic interpretation of the principle prohibiting the threat or use of force. His delegation believed that the principle must be interpreted in the light of the new international law and in harmony with the spirit and purposes of the Charter of the United Nations. Account should be taken, not only of the Charter, but also of the work of the International Law Commission on the collective responsibility incurred by those committing aggression and on the invalidity of treaties the conclusion of which was procured by the use of force. The principle had also been enunciated in the Charter of OAS, article 15, and in the draft Declaration on Rights and Duties of States (see General Assembly resolution 375 (IV), annex).

9. The principle of equal rights and self-determination of peoples had raised many difficulties of both a theoretical and a practical character. Some representatives, distinguishing between Article 2 of the Charter, on the one hand, and the Preamble and Articles 1 and 55, on the other hand, had argued that only the principles set out in Article 2 were legal principles and that the principles stated in the other provisions were merely goals. That view was not supported, however, by the discussions at the United Nations Conference on International Organization, held at San Francisco in 1945 or by the practice of the General Assembly. The difficulty of defining the notion of "peoples" (see A/6799, para. 194) had also been raised in the Special Committee. However, difficulties of that kind were inherent in legal formulations, and it was not advisable to seek a rigid definition.

10. With regard to the future work of the Special Committee, his delegation had joined other delegations in submitting draft resolution A/C.6/L.628 and Add.1. The Special Committee should continue its work in 1968 and consider on a priority basis, the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. If it had sufficient time, the Special Committee might try to widen the areas of agreement previously expressed with respect to the four principles referred to in General Assembly resolution 2181 (XXI), para. 5. It would be advisable for the Special Committee to abandon the consensus method and to take its decisions by majority vote whenever it was impossible to achieve unanimity. The principle of consensus should serve to stimulate negotiations, and not to prevent any progress.

11. The declaration which was to be prepared on the principles in question would be only a preliminary step, and its adoption should be followed by a study of some of the principles with a view to their codification and development.

12. Mr. PEREZ CADALSO (Honduras) commended the Rapporteur of the 1967 Special Committee on the impartiality and lucidity of the report which had been submitted (A/6799) and the Chairman of the Drafting Committee on the contribution he had made to the preparation of the report. He also paid a tribute to the skill which the Chairman of the Special Committee had shown in the conduct of the Geneva dialogue on the principles under consideration, which had been marked by tolerance and equanimity.

13. The development of the law must, of course, be based on the facts. The less the facts were known, the more time the jurists required for their work. It was true that the seventy years which had elapsed since the first Peace Conference at the Hague in 1899 had been more productive in that regard than all the centuries before, but the contributions to that development had not all been alike.

14. It was undoubtedly the smaller countries, whose only protection was the law, that were mainly responsible for the progress of legal institutions. Their efforts tended to impart to the latter a purity which assured their general and lasting application. On the other hand, the juridical work of the more powerful countries bore the stamp of force and of direct interests. Moreover, those countries reached agreement on the creation of law only in times of upheaval, as was shown by modern history, which extended from the Peace of Westphalia of 1648 to the Treaties of Vienna of 1731 and 1815, and thence to the Treaty of Versailles of 1919 and the San Francisco Charter of 1945. The institutions thus established by those countries without the necessary reflection were intrinsically fragile. However, the advent of international jurisdictions had to a great extent limited the abuses perpetrated by the more powerful States at the expense of smaller countries.

15. He recalled in that connexion the struggles which had been waged by free Latin America from the time when it had been threatened by the Holy Alliance up to the most recent interventions; during that period, there had grown up a doctrine the foundations of which had been laid by such famous jurists and statesmen as José Cecilio del Valle, Juárez, Drago, Barboza and Estrada. The long process of the development of the law in Latin America had made it possible to curb the abusive policies of the great Powers on the American continent. The condemnation of intervention and use of arms in the settlement of disputes had been proclaimed in Central America as early as 1839, and the principles of the equality of States, recourse to peaceful means in the settlement of disputes and compulsory arbitration had been proclaimed in 1842 by the Diet of Chinandega.

16. The work of the 1967 Special Committee had brought out once again the living character of the law and, in spite of some delay by certain countries for which the use of force was convenient, it gave grounds for hoping that a satisfactory formulation of the principles could be arrived at; that would constitute a landmark in the process of codification. In the meantime, it appeared that Latin America would continue to be far ahead of other regions, where the maturing of the relevant elements of law proceeded at a very slow pace.

17. A comprehensive approach to the principles under consideration was necessary if the goal was to be achieved. To envisage the institution of the co-operation of States solely as a duty, and not as a right, was unsound. Similarly, since self-determination of peoples was an individual as well as a collective right, its exercise involved certain duties which must be regulated at the time of its codification. Again, non-intervention was a duty which carried with it the concomitant natural right of States to repel intervention.

18. With regard to the principle concerning the duty of States to co-operate with one another, which must be codified as soon as possible, account should be taken of the fact that it applied not only to States but also to non-sovereign entities such as groups of countries or international agencies. In addition, it was an institution which differed from those governed by the other principles under consideration because, while the latter could be stated in mere declarations, the system of rights and obligations which co-operation imposed on the parties required a whole body of basic rules. In that connexion, his delegation hoped that it would be possible at some future date to establish the obligation of the wealthier peoples to come to the aid of the less privileged peoples and to give some thought to the balance of economic forces; for often co-operation in its present form was manifested in the granting of unconscionable loans, the sum of which was almost entirely absorbed simply by the salaries of the technicians whose employment was prescribed. In any event, there was a basis for the principle of the obligation to provide assistance in the Recommendation adopted by the International Labour Organisation at Philadelphia in 1944.[3]

19. With regard to the concept of force, there should be a condemnation not only of the use of violence by States to satisfy their territorial appetites, but also of the peaceful occupation of foreign territories which the sovereign owner was unable to protect because of its weakness. He cited as an example his own country, which for years had watched the illegal occupation by a foreign Power, terming itself friendly, of some Caribbean islands which were within its sovereign jurisdiction. He also stressed the need to take account of the protean nature of force, which could be exerted through diplomatic and economic pressure and through financial control.

20. With regard to the principle of non-intervention in matters within the domestic jurisdiction of any State, his delegation considered that General Assembly resolution 2131 (XX) represented the greatest step forward which had been taken in the United Nations. It wished to recall the terms of article 15 of the Charter of OAS and to point out that ratification by the United States of that Charter and of the Convention on Rights and Duties of States of Montevideo of 1933[4] had opened an era of good feeling among all the countries of the Americas. The principle stated in resolution 2131 (XX) applied to intervention in the external as well as the domestic affairs of States, for obviously it was possible to intervene in the relations of a State without touching on the domestic domain by, for example, preventing the recognition of a State, cutting its supply lines or exerting pressure on its diplomatic representative abroad to adopt a particular attitude. Similarly, the prohibition covered indirect, as well as direct, intervention and, in particular, pressure exerted through an intermediary or the strategem of having a third party pull one's chestnuts out of the fire, sales of arms to one of the parties to a conflict, or even to both parties, and the political exploitation of the concessions system. The Charter of OAS also prohibited collective intervention.

21. The advances in the law which had been made must not be lost, and his delegation, which was a sponsor of draft resolution A/C.6/L.628 and Add.1, there-

[3] International Labour Conference, Conventions and Recommendations (1919-1949) (Geneva, International Labour Office, 1949), Recommendation 70, p. 561.

[4] See League of Nations, Treaty Series, vol. CLXV, 1936, No. 3802, p. 21.

fore wished to make it clear that the proposals "compatible" with General Assembly resolution 2131 (XX) mentioned in operative paragraph 5 were, essentially, proposals calculated to strengthen that resolution.

22. Mr. SAMMUT (Malta) noted that the results achieved by the 1967 Special Committee in the execution of its mandate were only partial. Although the consensus formulations were satisfactory, they represented a rather limited area of agreement, which would have to be widened in the final formulation of the principles. Since the principles under consideration were an integral part of the purposes and principles of the Charter of the United Nations, close adherence to the letter and spirit of the Charter would ensure better prospects of a codification commanding faithful observance.

23. With regard to the methods of work, which were perhaps partly responsible for the inadequacy of the results achieved, he recalled that the Chairman of the 1967 Special Committee had said that the Committee had devoted much time to questions not directly connected with the items before it, and the representative of Italy had told the Special Committee that too many principles had been studied at once (ibid., para. 481). However, the difficulties of the task were very great, especially in view of the state of international relations, and one should count among the positive results the fact that, with regard to the principle of equal rights and self-determination of peoples, the differences of views on a number of points had been narrowed down. Several proposals concerning the prohibition of the threat or use of force had been facourably received. On the other hand, it was regrettable that no progress had been made concerning the principle of non-intervention in matters within the domestic jurisdiction of any State, because of the different interpretations given to General Assembly resolution 2181 (XXI), operative paragraph 6.

24. With regard to the continuation of the work, his delegation believed that in 1968 the Special Committee should deal first of all with the two principles which had not yet been formulated and then, if possible, with the principle of non-intervention in matters within the domestic jurisdiction of any State. If the Special Committee was unable to complete that task at its next session, it would have to continue work on it at a subsequent session, before seeking to widen the areas of agreement on the principles on which a consensus had already been reached.

25. It was true that the consensus method might produce a text somewhat lacking in clarity, if it was the result of a compromise, but such a text would have a better chance of being faithfully observed than if it were the result of a majority vote. Furthermore, what had already been achieved might be undone if some texts were to be adopted by a majority vote after others had been arrived at by consensus. Given the necessary time and preparation, the Special Committee would undoubtedly be able to reach unanimous agreement on the principles which remained to be formulated. Any undue haste must therefore be avoided and all points of view must be heard. It would be better to have as full a codification as possible of all the principles than texts which left too much latitude for differing interpretations. Consultations should be held before the next session, in order to facilitate the work of the Special Committee.

26. In conclusion, he joined in the tributes which had been paid to the great contributions made by the Chairman and Rapporteur of the 1967 Special Committee and the Chairman of the Drafting Committee.

27. Mr. MWELUMUKA (Zambia) said that despite the hopes that had been entertained at the start of the work on the formulation of the seven principles enumerated in General Assembly resolution 1815 (XVII), not only was the Committee still a long way from adopting a declaration, a matter of priority though it was, but it had not quite succeeded, even with the deliberations of the Special Committee's last session, in widening the area of agreement previously reached, at least as far as the proper formulation of the principles was concerned. His delegation particularly deplored the slow rate of progress as the two principles which had not yet been formulated had a direct bearing on the maintenance of peace and the promotion of the well-being of States. The declaration which was to crown the work was crucial in the light of the frighful erosion of legality throughout the entire international community. If the appeal for goodwill went unheard, the Committee might continue quibbling about the letter of the law and the intentions of the framers of the Charter and the meaning of "force" and "aggression".

28. The need to reflect the realities of the changed international order had been repeatedly stressed. Furthermore, supplementary instruments subsequent to the Charter and, in particular, the Declarations of Bandung in 1955, Belgrade in 1961 and Cairo in 1965 and those of the Latin American States, together with the Charter of the Organization of African Unity and the numerous texts adopted by the United Nations, all constituted the enlightened legal opinion of the entire international community. It was deplorable that progress should now be slowed because some countries opposed the extension of international law to the vital areas of international life by insisting on the narrowest interpretation of the Charter of the United Nations. Those countries might be told that their doctrines had not been the only ones presented at San Francisco and that, in any event, it was the new political realities which in many instances required a liberal interpretation of the Charter.

29. Modest though they were, the results of the Special Committee's 1967 session were welcomed by his delegation, which wished to thank the members of that body. The Special Committee must assuredly continue its work in 1968. The principles still to be formulated included a number of points on which no agreement had been reached—non-recognition of situations brought about by the use of force, the defintion of the word "force", the use of force against colonial peoples and the permissibility of the use of force for self-defence against colonial domination. His delegation hoped that satisfactory solutions would be found so that friendly relations and co-operation might become the rule.

30. Mr. HERRERA (Guatemala) said that the study of the principles concerning friendly relations and co-operation among States was of particular importance as it consisted not only in synthesizing or summarizing the purposes and principles of the Charter, but also in formulating and systematizing the norms of international law which derived directly from that instrument. Though the work of the Special Committee had not fulfilled all hopes, it nevertheless had some extremely positive aspects. The Special Committee had succeeded in formulating four principles and disagreement on the other three was narrowing. The Special Committee must continue its work with a view to drafting a declaration which would present the different views of the modern world.

31. His delegation considered the seven principles to constitute an indissoluble unity of closely interdependent rules. They interpreted or developed the fundamental purposes and principles proclaimed in Chapter I of the Charter and they could not and should not be separated arbitrarily. For example, the texts formulated on the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and on the principle concerning the duty of States to co-operate with one another expressly referred to the sovereign equality of States.

32. The texts of the four principles already formulated, though not entirely satisfactory, were acceptable to his delegation. It considered, further, that agreement should be possible on the principle prohibiting the threat or use of force following the main lines of the draft on the subject submitted by the five Latin American countries (ibid., para. 27). Though fully aware of the difficulties raised by the principle of equal rights and self-determination of peoples, his delegation regretted that it had not been possible to formulate that principle despite the agreement reached on a number of points. It also regretted the fact that the report of the working group on that principle had not been published, as that would have enabled the delegations which had not been represented in the Special Committee to study those points of agreement.

33. His delegation was fully aware of the difficulties which prevented an early formulation of the principle of equal rights and self-determination of peoples; but the fact that there were apparently some areas of agreement made it even more regrettable that the Special Committee had been unable to arrive at any formulation in the case of that principle. In its report it was stated that the Drafting Committee had considered the working group's report (ibid., para. 231). It was unfortunate that that report had not been circulated, since delegations not represented on the working groups and other delegations which were not members of the Special Committee would then have been able to inform themselves fully about those areas of agreement. His delegation urged that, when that principle came to be drafted, particular attention should be paid to the spirit and the letter of resolution 1514 (XV), especially its paragraph 6, which the General Assembly had interpreted on a number of different occasions to mean that any colonial situation, whether actual or artificially created, that partially or completely disrupted the unity and territorial integrity of a country was incompatible with the purposes and principles of the Charter.

34. On that point the Guatemalan delegation agreed with the Minister for Foreign Affairs of Ecuador, who, in referring to that subject, had said in the general debate in the twenty-second session of the General Assembly: "The exercise of the principle of self-determination must not lead to failure to respect the territorial integrity of States. Accordingly, this principle cannot be exercised by local minorities or by territories in respect of which there are disputes of an international nature" (1568th plenary meeting, para. 29).

35. In brief, his delegation armed with the moral authority of its known anti-colonialist stand, took the view that the automatic and indiscriminate application of the principle of equal rights and self-determination of peoples must not be converted into a legal instrument that would be imcompatible with the sovereignty and territorial integrity of States.

36. That principle of non-intervention was linked in more than one respect to the preceding principle. By the terms of resolution 2181 (XXI) the Special Committee was required to consider proposals on the principle of non-intervention in matters within the domestic jurisdiction of any State, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX). As was well known, the Special Committee had been unable to make progress in carrying out that task.

37. His delegation took the view that, in its future consideration of the matter, the Special Committee should examine all proposals compatible with resolution 2131 (XX) and take particular care to incorporate in the statement of the principle, not only the operative part of the resolution but also the various ideas expressed in the preamble to it. It should be possible to make minor drafting changes, especially in the preamble, so as to harmonize the text with that of the rest of the series of articles in the final draft on the principles of friendly relations and co-operation among States. The principle was also of great importance to the Latin American countries, not merely for legal reasons but because of its historical background. The principle of non-intervention set forth in General Assembly resolution 2131 (XX) constituted one of the immutable principles of the foreign policy of his Government, which, in stating categorically that it would respect that principle in its relations with other States, wished to make it equally clear that it would require them to show the same respect for it.

38. In conclusion, he called on the members of the Committee to give unanimous approval to draft resolution A/C.6/L.628 and Add.1 which had been submitted by some sixty delegations, including his own.

39. Sir Kenneth BAILEY (Australia) said that at its 1967 session the Special Committee had been unable to discharge in full the mandate entrusted to it by the General Assembly in operative paragraph 8 of resolution 2181 (XXI). In 1967, the Special Com-

mittee had made some ground only in respect of two of the less controversial principles, namely the duty of States to co-operate with one another and that of good faith fulfilment of obligations, on which a consensus had almost been reached in 1966: the earlier texts had been revised and adopted in 1967 by the Drafting Committee, but not by the Special Committee itself, which had merely taken note of the Drafting Committee's reports (see A/6799, para. 474).

40. As to the other five principles, the Special Committee had been unable to enlarge the area of agreement expressed in the texts adopted in 1966 on the principles concerning the peaceful settlement of disputes[5] and concerning sovereign equality of States.[6] In the case of the principle of non-intervention in matters within the domestic jurisdiction of any State, the Special Committee's failure must be attributed to the fact that some members had interpreted its mandate as precluding any changes in General Assembly resolution 2131 (XX). Discussion of the principle of equal rights and self-determination of peoples had served chiefly to disclose the wide areas of disagreement that existed. Lastly, the working group on the very important principle prohibiting the threat or use of force had succeeded in noting a number of points of agreement and disagreement, but no text had emerged.

41. In view of the unanimous opinion that the Special Committee should be asked to continue its work, his delegation considered that it would be undesirable to fix a session in 1968, since the three outstanding principles were at stake in current international disputes, and the circumstances seemed unpropitious for the dispassionate discussion necessary for the formulation of those principles. Moreover, since the calendar of legal conferences for 1968 was already crowded, there was no real prospect that the necessary preparatory work and the consultations to which many delegations had referred could be carried out.

42. The Special Committee's report prompted further reflection on the functions of the General Assembly in connexion with the codification and progressive development of international law and on the Special Committee's role in that regard. It was true that Article 13 of the Charter assigned to the General Assembly the duty of initiating studies and making recommendations for the purpose, inter alia, of encouraging the progressive development of international law and its codification, but it was clear that as a general rule the General Assembly could not create by resolution binding rules of international law. It had discharged its duties by making recommendations mostly in the form of conventions which it had invited Members to adopt in accordance with their constitutional procedures, but which had sometimes taken the form of declarations recommending to Members the adoption of certain principles of conduct, occasionally followed by conventions, as in the case of the Universal Declaration of Human Rights.

43. Noting that in practice the two elements of "codification" and "progressive development" were inseparable, he said that it would be going too far to contend that the preparation of draft conventions was the only way in which the General Assembly could discharge its mandate in the development of international law, but that it was perhaps the most appropriate way, because it enabled those States which were ready to assume new obligations on the basis of reciprocity to do so without delay.

44. On the other hand, the general or customary law of nations must have the character of universality and it was for that reason that the Special Committee and the General Assembly had more than once emphasized the significance of achieving agreement at every stage in the formulation of the text of the seven principles. That, as the Special Committee had found, tended to be a slow process which might lead to unsatisfactory compromises. Nevertheless, a decision to abandon that process in favour of the ordinary procedures of majority vote would create difficulties of its own, for the existence of any dissent would serve only to emphasize that the text concerned could not be said to represent a practice accepted by all States.

45. Mr. MUSA (Somalia) said it was gratifying that the Sixth Committee now had in its hands the texts of two more principles: that of the duty of States to co-operate with one another and that of good faith fulfilment of obligations. With regard to the former principle, his delegation attached great importance to paragraph 2 (b) of the consensus text (ibid., para. 161), since racial and religious intolerance were today matters of vital concern. Accordingly, they should be mentioned in the declaration of the seven principles, particularly as the international community was still encountering the obstinacy of certain Governments which continued to deny human rights and fundamental freedoms. In connexion with the final sentence of paragraph 3, which called for co-operation in the promotion of economic growth throughout the world, he pointed out that the economic and social imbalance which at present existed did not facilitate the creation of a world in which States could live in friendship and co-operation.

46. The principle of good faith fulfilment of obligations was subject to certain exceptions: for example, a State was not required to fulfil any obligations assumed in violation of the Charter or the recognized rules of international law. Those exceptions were implicitly recognized in the consensus text (ibid., para. 285), which was accordingly welcomed by his delegation.

47. With regard to the important principle prohibiting the threat or use of force proclaimed in Article 2 (4) of the Charter, the Somali delegation, like others, believe that the term "force" should include on the one hand the use by a State of its regular military, naval or air forces, and on the other hand all forms of pressure, including those of a political or economic character. It trusted that the representatives of developing and peace-loving countries in the Special Committee would spare no effort to see that the term was given its wider interpretation. The use of force was permissible only pursuant to a de-

[5] See Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, paras. 248-272.

[6] Ibid., paras. 403-413.

cision by a competent organ of the United Nations, or in self-defence, whether individual or collective, or in the legitimate struggle against colonial domination. The term "territorial integrity" had to be interpreted in the light of circumstances: for example, where a territory was under dispute between two States and one of them refused to comply with Article 33 of the United Nations Charter, the latter State could not invoke the argument of territorial integrity. The case was even stronger if both States had recognized the existence of the dispute and an international organization such as the United Nations had called upon them to settle their differences.

48. As to the principle of equal rights and self-determination of peoples, the Somali delgation supported paragraph 1 of the Czechoslovak proposal (ibid., para. 172), the paragraph 1 of the proposal submitted by the ten non-aligned countries (ibid., para. 177). All the proposals submitted to the Special Committee confirmed the broad scope of that principle, which, in accordance with the preamble to General Assembly resolution 1815 (XVII) and with Article 1 (2) of the Charter, applied not to colonial peoples alone but to all peoples. His delegation called on all the members of the Special Committee to give priority to completing the formulation of the principle of equal rights and self-determination of peoples and the principle prohibiting the threat or use of force; the two were complementary, since on many occasions the use of force had thwarted the application of the former principle.

49. Mr. ALCIVAR (Ecuador) said that the goal to be achieved by the Special Committee's consideration of the seven principles had been indicated in operative paragraph 2 of General Assembly resolution 1815 (XVII), under which the Assembly had decided to undertake that a study of the principles "with a view to their progressive development and codification, so as to ensure their more effective application". The San Francisco Charter had given the juridical principles governing the life of the international community the form of constitutional legal rules, which had subsequently been interpreted by lawyers in the light of legal criteria, giving rise to a doctrine which had often had to be disregarded to allow for what were commonly known as "political realities". It was those realities which had resulted in the adoption of General Assembly resolution 1815 (XVII), and it was only after long and difficult negotiations, due to conflicting political positions, that the Assembly had been able to adopt resolution 1966 (XVIII) establishing the Special Committee.

50. The cause of the Special Committee's failure to achieve any constructive results at its first session, held at Mexico City in 1964, had been the peculiar method of work it had adopted: it had made the formulation of the principles contingent on the unanimous approval of the members of its Drafting Committee. That had given a veritable right of veto to a small number of States; and the result had inevitably been paralysis. Nevertheless, the first session had made it clear, firstly, that the legal principles underlying the Charter were subject to political interpretations which were very dangerous to the small States, and secondly, that a Committee composed of Member States was not an appropriate body for the formulation of draft texts codifying the principles with a view to their progressive development. In addition, it had demonstrated that the task of codification was an urgent one, since the existence of the small countries as sovereign States depended on it. The General Assembly had later asked the Special Committee (resolution 2103 A (XX)) to submit to it a draft declaration on the seven principles, and the delegation of Ecuador wished to stress its view that the proposed declaration would be only the first phase in the codification of the principles.

51. His delegation regretted the fact that the Special Committee had continued in 1967 to follow the consensus procedure. In the final analysis the adoption of the declaration would be a matter for the General Assembly of the United Nations, composed of 122 Member States; the unanimity of the thirty-two members of the Special Committee left entirely out of account the views of the remaining ninety States. Where a consensus proved impossible, therefore, a vote should be taken, for in view of the centralization of power in the legally organized international community the old theory that in international law the majority could not impose its will on the minority was now obsolete.

52. Having studied the report of the 1967 Special Committee, he felt that the agreement reached by the Committee on the formulation of certain principles was remote from the realities of international life, and that there was no reason for optimism as to the future, for a consensus could be achieved only by making sacrifices in the interpretation of principles. With regard to the principle of non-intervention in matters within the domestic jurisdiction of any State, he wished to stress that no formulation would be acceptable unless it clearly enunciated the logical consequences of the propositions set out in resolution 2131 (XX), which was a legal instrument having legal force. On that point the small countries, which had so often been the victims of interventionism in the past, must make no concessions.

53. The principle prohibiting the threat or use of force, which his delegation regarded as the cornerstone of the Charter, should be developed so as to give it a genuine legal content. Article 11 of the Covenant of the League of Nations had completely cut the ground from under the doctrine of bellum justum, thus opening the way to a new legal and moral outlook which saw war as a crime against humanity. The Briand-Kellogg Pact[7] had gone still further, implicitly prohibiting the use of force within the international community. Thus, the prohibition of the use of force had become a peremptory norm of international law. Finally, under the United Nations Charter the centralization of the use of force was absolute, as in the domestic sphere; only the world Organization had authority to use force, within its sphere of jurisdiction, for the maintenance of international peace and security. Consequently, any Member State which employed force committed an unlawful act of aggres-

[7] General Treaty for Renunciation of War as an Instrument of National Policy, signed at Paris, 27 August 1928 (League of Nations, Treaty Series, vol. XCIV, 1929, No. 2137).

sion, unless it had been authorized to do so temporarily in self-defence, solely in order to repel an armed attack, until the Security Council had taken the measures necessary to maintain international peace and security.

54. The declaration to be adopted by the General Assembly on the subject should prohibit absolutely the use of force, even by the United Nations, and should view self-defence, individual or collective, not as an exception to the principle but as a right antedating the adoption of the Charter, which recognized the right only to exonerate from all responsibility any State which exercised it according to the conditions laid down in Article 51.

55. On the express instructions of the Government of Ecuador he wished to state that the principle of equal rights and self-determination of peoples could not be invoked by minorities living in the territory of a State to bring about the dismemberment of that State, and that the right of self-determination could not be exercised by the populations of territories which were the subject of a legal dispute between States. In the first case, respect for minorities was at once a duty and a right laid down by international instruments, and it was the responsibililty of the United Nations to enforce it while protecting the territorial integrity of the State in which the difference arose. In the second case, the dispute related to sovereignty over a given territory, and its settlement could not be left to the population which had been placed in that territory by the State which illegally had possession of it; the issue was a legal one which could only be settled in accordance with the juridical principles applicable to the right of sovereignty.

56. Mr. ROSSIDES (Cyprus) said that his delegation had from the outset attached particular significance to the formulation and progressive development of the seven principles of the Charter. It was only through the institution of a world legal order that international security could be established, rendering disarmament a reliable proposition. That task became particularly urgent in the present period of increasing violence and war in violation of the Charter of the United Nations.

57. The Special Committee's report on its 1967 session gave a clear and comprehensive picture of the work accomplished. The progress had, admittedly, been slow, agreement having been reached on the text of only two of the seven principles and then only in the Drafting Committee. Nevertheless, the discussions on those two principles had been useful in bringing out their various aspects and, to a certain extent, in bridging differences. For example, with regard to the principle of good faith fulfilment of obligations, paragraph 3 of the agreed text (ibid., para. 285), made it clear that international agreements to which that principle applied must be valid under the generally recognized principles and rules of international law; that provision thus interpreted the rule pacta sunt servanda in the light of the Charter principles and in a way complemented the relevant provisions in the draft articles on the law of treaties (A/6309/Rev.1, Part II, Chapter II). Similarly, paragraph 4 brought out the interdependence of two basic provisions of the Charter, Article 2 (2) and Article 103, thereby strengthening their combined effect.

58. With regard to the duty of States to co-operate with one another, the importance of such co-operation in a world of growing interdependence could not be too strongly emphasized. His delegation noted with satisfaction that the agreed text for that principle (see A/6799, para. 161) gave the form of a legal obligation to the duty of Member States to co-operate in the maintenance of peace and in the observance of human rights and fundamental freedoms; on the other hand, it regretted that paragraph 3 of the text, regarding co-operation in the economic, social and other fields, was in the nature of a single exhortation; if it was not possible to give it a legal content, it would have been preferable to omit it from a text which formulated legal obligations stemming from the Charter principles with a view to their codification.

59. His delegation regretted that, in spite of its efforts, the Special Committee had not been able to formulate the fundamental principles concerning non-intervention in matters within the domestic jurisdiction of any State, concerning prohibition of the threat or use of force, and concerning equal rights and self-determination of peoples. His delegation recognized the political difficulties involved, but wished to point out that political events were transient, whereas legal questions were of a permanent nature. If the relevant work was to be completed in 1968, the present difficulties would have to be overcome. He therefore appealed to the members of the Special Committee to find a way of overcoming their difficulties by means of mutual concessions, particularly on matters of detail, and to spare no effort to submit a draft declaration on the seven principles to the General Assembly at its twenty-third session.

The meeting rose at 6.45 p.m.

Litho in U.N. 77601—September 1968—2,050