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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/L.627)

1. Mr. BENJAMIN (United States of America), introducing draft resolution A/C.6/L.627, said that, in preparing its draft, his delegation had sought to take into account all the views expressed so far. The draft resolution was largely self-explanatory.

2. Except for a few minor changes, the preamble was virtually identical with that of resolution 2181 (XXI). The most important provisions of the text were those of operative paragraphs 3, 4 and 5. In drafting operative paragraphs 3 and 4, his delegation had taken into account the fact that the Special Committee might be unable to hold an extended session in 1968. It had also taken into account the Czechoslovak delegation's suggestion that the 1968 session of the Special Committee should concentrate on 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 of equal rights and self-determination of peoples. It was with that in mind that the United States was proposing that priority should be given to the formulation of those two principles and that other matters should be considered only if time permitted.

3. His delegation had also sought to take account of the various views which had been expressed with regard to the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter. It believed that little would be gained by any attempt to find generally acceptable words to express the different views concerning the treatment to be given to that principle, considering the recriminations and frustrations which had arisen in the past, and it had merely provided that it should receive different treatment from the principles listed in paragraph 3. His delegation would like to state in that connexion that it shared the view of the Swedish delegation that there existed a basis for agreement on the formulation of that principle.

4. The provisions of paragraph 5 attempted, firstly, to build on the considerable achievements previously realized, and, secondly, to ensure internal consistency. In seeking to widen the scope of the agreement which had already been reached, care must be taken not to undo what had been accomplished.

5. His delegation would consider carefully any suggestions members of the Committee might make concerning its draft resolution.

6. Mr. TABIO (Cuba) said that the great majority of the States Members of the United Nations had long been seeking to codify the rules of the United Nations Charter which related to principles concerning friendly relations and co-operation among States, with a view to the assumption by all States of specific legal obligations reflecting the development of international law. However, that effort had met with resistance from imperialist forces which were determined to prevent any positive formulation that might jeopardize their interests. Confronted by imperialist aggression, the peoples looked to the United Nations to prohibit war and any use of force in relations between States, in accordance with the purpose for which it had been established.

7. Since the 1959 revolution, the Cuban people had had to withstand every form of economic and military aggression. Unquestionably, the world had not yet found that peace for which the peoples yearned. However, the United Nations Charter must not be held responsible for that situation. The first prerequisite for the effectiveness of the Charter was that all States should respect the obligations arising out of the perfectly clear rules which it laid down concerning the maintenance of international peace and security. The failure of the United Nations to achieve the purposes proclaimed in Article 1 (2) of the Charter was due to the fact that the imperialist States were determined to maintain absolute control over the weaker States, in total disregard of the principles of sovereign equality of States and of equal rights and self-determination of peoples.

8. At the present stage of historical development, it was necessary to accept as a fact the existence of States, large and small, which must establish among themselves friendly relations based on the principle of sovereign equality of States. Internally, sovereignty meant that the authority of the State was not subordinate to any other authority; in international relations, the principle of sovereign equality of States meant that they had the sovereign right to determine their reciprocal relations and were strictly equal, so that no State, acting individually or with others, could lawfully claim superiority or authority of any kind over any other State. The concepts of sovereignty, independence and self-determination were inseparable from the notion of the State; they were different aspects of one and the same principle, namely, that a State did not recognize any authority superior to its own.

9. To the principle, proclaimed in 1789, that sovereignty resided essentially in the nation had been added, since the October Revolution, the principle that all peoples possessed the right of self-determination. That was an inalienable right, which in turn provided a basis for the just struggle which must be waged to ensure the complete freedom of nations. The present era marked a decisive stage in the movement for the liberation of peoples subjected to colonialism or to neo-colonialism, which was the final phase of imperialism, and it should not be forgotten that the principle of equal rights and self-determination of peoples implied, in particular, the freedom of every State to adopt whatever political and economic system it chose. With regard to the formulation of that principle, the question was whether, when imperialism opted for violence, the peoples could be denied the right to resort to armed revolutionary struggle, even though it was argued by some that express recognition of the right to take up arms in self-defence against colonial domination would be a return to the idea of a just war and would be contrary to the prohibition of the use of force laid down by the Charter.

10. The principle prohibiting the threat or use of force was unquestionably the most important rule of contemporary international law, since it excluded from international law the use of force and, in particular, any war of aggression, which henceforth became an international crime. Only the right of self-defence against an armed attack was still recognized as legitimate, in accordance with Article 51 of the Charter. At first sight, the statement of that principle as set forth in Article 2 (4) of the Charter did not require further amplification.

11. However, developments which had occurred since the adoption of the Charter made it necessary to state the content of that principle more clearly, especially as the aggressors were trying to find formulae which would allow them to act with impunity. His delegation wished to state in that connexion that, in its opinion, any action by a regional agency aimed at instituting coercive measures or the use of force against a Member of the United Nations constituted a flagrant violation of the Charter and, consequently, an international crime. The only body which could implement such measures, as a sanction, was the organ invested with such powers by the States which made up the international legal community. Any other coercive measure applied by a State or a group of States against another State in violation of that principle was not a sanction, but a crime.

12. The collective measures which the United Nations might take, under the terms of Article 1 (1) of the Charter, were described in Articles 41, 42 and 45 of the Charter. They were of two kinds; those which did not involve the use of force and those which included the use of armed force, but in either case they were coercive measures.

13. It should be noted that only the Security Council had the power to determine the existence of the offence—in other words, the threat to the peace, breach of the peace, or act of aggression—and to decide on the sanction to be applied. Consequently, any coercive measure taken by a State or a regional organization without the cognizance of the Security Council constituted a violation of the principle proclaimed in Article 2 (4) of the Charter.

14. It was very clear from Article 51 of the Charter that force could not be used in exercise of the right of self-defence, except against armed aggression. Thus, the Treaty of Rio, called the "Treaty of Reciprocal Assistance," 1/ conflicted with the United Nations Charter, since it introduced new factors, such as any fact or situation that might endanger the peace of America. In view of that conflict, the Charter must prevail, in accordance with Article 103 of the Charter. Similarly, measures of reprisal could not be regarded as an exercise of the right of self-defence and should be condemned, because they were contrary to the spirit and the letter of the Charter.

15. His delegation attached great importance to the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, in connexion with which the aim was to widen the area of agreement already expressed in General Assembly resolution 2131 (XX). It wished to explain its views on that matter, particularly as paragraph 327 of the Special Committee's report (A/6799) referred to "repeated acts of intervention and aggression" committed by a nearby Caribbean country, which in fact was Cuba. That accusation was one episode in the general strategy of aggression against Cuba which was being carried out with the active collaboration of the Organization of American States.

16. In order properly to understand the terms "non-intervention" and "intervention", it was necessary to study the history of the Latin American countries, which had constantly sought to resist the policies of intervention applied by the old imperialist Powers of Europe and continued by the new imperialist Power—the United States. The imperialist States had distorted the idea of non-intervention to the point where some jurists now viewed it, not as a general and absolute principle, but as simply a limitation on an alleged right of intervention.

17. The United States had not only used its economic and military power to dominate Latin America but

1/ Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro, 2 September 1947 (United Nations, Treaty Series, vol. 21 (1948), No. 324, p. 77).

had also employed diplomatic means to consolidate its domination; to that end, it had set up the so-called Pan American system, distorting the ideas of Bolívar, who had envisaged a confederation of the Latin American States which had then recently become independent. The establishment of the Organization of American States (OAS) in 1948 had been a new stage in United States interventionism, as OAS was simply the tool of a policy designed to safeguard the security of the United States. The expulsion of Cuba from OAS in 1963, the application of illegal economic and political sanctions against Cuba, and the standing threat of armed aggression against it had only served to confirm the objectives of that policy. It was therefore understandable why Cuba attached so much importance to the practical application of the principles concerning friendly relations among States, and to the principle of non-intervention in particular. His Government, whose foreign policy was dedicated to the defence of those principles, considered that their codification would constitute an important step towards the liberation of peoples and towards world peace and security, and it urged that the task should be undertaken immediately

18. Mr. VIRALY (France) said that his delegation was grateful to the Special Committee for the results it had achieved at its third session at Geneva in 1967 and took pleasure in stressing the distinguished role played by its Chairman and Rapporteur and the Chairman of its Drafting Committee. Those results proved that there had been no justification for the pessimism which had been prompted by the extraordinarily difficult and ambitious undertaking involved in formulating seven principles which, by reason of their scope, variety and complexity, affected the entire international legal order and touched on the most politically sensitive areas of international relations, in which the vital interests of States and peoples were most directly concerned.

19. A consensus having been achieved on four of the seven principles, it was clear that despite strong differences of view the participants' sense of responsibility and determination to reach agreement had prevailed. His delegation had some reservations concerning the formulations already drafted, which assuredly could be further improved without prejudice to the positions that had been expressed. Nevertheless, it approved of the texts on which agreement had been reached at Geneva, namely, those relating to the principle that States should fulfil in good faith the obligations which they had assumed in accordance with the Charter and the principle of the duty of States to co-operate with one another in accordance with the Charter. It believed that, by preferring a text which, although not entirely satisfactory to it, was at least accepted by all the Members of the United Nations to a version that might be perfect in its eyes but would be unacceptable to even a minority of States, it was making a useful contribution to the advancement of international law, and it hoped that that view would be understood and shared by other delegations. It was in that spirit that his delegation approached the most important problem confronting the Committee, namely the completion of the preparatory work on the declaration provided for in General Assembly resolution 2181 (XXI).

20. While it was evident that in order to reach that goal, it was necessary to continue to use the services of the Special Committee, it was equally certain that a way must be found to strengthen the Special Committee's capability of reaching agreement. In that connexion, the ruling consideration was the nature of the undertaking—the preparation of a declaration which, according to resolution 2181 (XXI), "would constitute a landmark in the progressive development and codification" of the seven principles.

21. However, codification and progressive development were two substantially different operations. Codification—an official statement of existing law—added nothing to the force of the law, its aim being only to make the knowledge of the law more readily available and that was why there could be, and had been, private codifications. On the other hand, the aim of development of law—even progressive development—was to improve the existing law in the light of the needs of society, and it required preparatory work which was perhaps even more difficult than that required for codification, but in addition it presupposed a political choice concerning orientation and methods of improvement. While codification could be effected merely by a General Assembly resolution or declaration, the second operation called for the use of instruments or methods capable of creating new law. The General Assembly did not have that power, and indeed the principle of sovereign equality of States, as embodied in the Charter, stood in the way of attributing such power to it. It was therefore right to call the future declaration a "landmark", as was done in the resolution he had mentioned.

22. That landmark in the development of the principles governing friendly relations and co-operation among States would be important inasmuch as it would express, not a mere political recommendation, but a recognition of those principles by all Member States in a formulation on which they clearly intended to confer a legal character—as had not always been the case—and inasmuch as it would thus help a practice to become general and to be eligible for transformation into custom in the sense of Article 38, paragraph 1 b, of the Statute of the International Court of Justice.

23. To that end, the declaration must be the end-product of sufficient juridical work to justify the commitment of States and must be the expression of a real consensus of the United Nations. In the United Nations, the majority could do almost everything—even violate the Charter—but it certainly could not prevent certain States from existing or from having their own opinions. Any declaration of legal principles which would not command unanimous, or almost unanimous, support would mean, in law, only that there was open disagreement among States concerning the existence or the content of the principles. Instead of constituting a landmark in development, it might cause a step backwards. No State could accept having legal conceptions which it deemed contrary to its vital interests and to those of the international community imposed on it, but neither could any State presume to impose its own conceptions on other States. It would be best, without taking a decision in favour of either the method of majority or the method

of unanimity, to consider the results which each might bring.

24. His delegation hoped that the capabilities of the Special Committee would be strengthened, since the three principles remaining to be formulated were, of course, the ones which presented the most difficulties. It was essential that the preparations for the next session of the Special Committee should be made with the greatest care, either through consultations among the members of the Special Committee or by other means, so that at the opening of its fourth session the Special Committee would find a new situation in which the difficulties had been clarified and the possibilities of agreement enlarged. In view of the important tasks awaiting the legal departments of Governments in 1968, the preparations for the fourth session would be jeopardized if that session were to begin too soon.

25. Moreover, the Special Committee should concentrate on a limited number of questions, in order to reach agreement more easily. On the basis of the experience of the previous sessions, he considered that the main objective should be the formulation, as a matter of priority, of the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. Those two principles had been the subject of thorough discussions at Geneva which, despite differences of view, had made it possible to lay down some lines on which agreement might be sought. The consultations which should take place before the next session would undoubtedly enable the Special Committee to reach a successful conclusion.

26. His delegation was pleased to note that there were points in common between its position and the views stated by the representatives of Cameroon, Czechoslovakia and Sweden. Its views also accorded in several respects with the proposals submitted by the United States of America in draft resolution A/C.6/L.627, to which it would certainly give careful consideration.

Election of a Vice-Chairman to replace Mr. Seaton (United Republic of Tanzania)

27. Mr. SEATON (United Republic of Tanzania) said that, having been appointed to a new post in his country, he would be unable, to his great regret, to continue to serve as Vice-Chairman of the Committee. He wished to thank the members of the Committee for the confidence they had shown in him.

28. Mr. GONZALEZ GALVEZ (Mexico) commended Mr. Seaton on the way in which he had performed his duties and said that he deeply regretted his departure. He nominated Mr. Mwendwa (Kenya) to replace Mr. Seaton.

29. Mr. BENJAMIN (United States of America), Mr. YASSEEN (Iraq), Mr. OGUNDERE (Nigeria), Mr. KHLESTOV (Union of Soviet Socialist Republics), Mr. EL-ERIAN (United Arab Republic), Mr. ENGO (Cameroon), Mr. Krishna RAO (India), Mr. MAR-PAUNG (Indonesia), Mr. DARWIN (United Kingdom) and Mr. SAMATA (United Republic of Tanzania) joined in congratulating Mr. Seaton had supported the nomination of Mr. Mwendwa.

30. The CHAIRMAN thanked Mr. Seaton on behalf of the Committee for the valuable contribution he had made to its work.

31. He invited the Committee to elect a new Vice-Chairman.

Mr. Mwendwa (Kenya) was elected Vice-Chairman by acclamation.

32. Mr. MWENDWA (Kenya) expressed his deep regret at the departure of Mr. Seaton and thanked the members of the Committee for electing him to the office of Vice-Chairman.

The meeting rose at 12.30 p.m.

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