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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):
(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. STANKEVICH (Byelorussian Soviet Socialist Republic) said that the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States and their incorporation in an instrument of international law such as a declaration would forge an important weapon in the fight for world peace, and the General Assembly had obviously been guided by the same idea when it had set up the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.

2. Small though the sum of the achievements of the Special Committee might seem at first sight, they gave hope for the future. It had very quickly become clear, however, that the members of the Special Committee were approaching the matters before them in two different ways: the vast majority genuinely wished to achieve the codification of the principles under consideration, but a very much smaller number had striven by every means to safeguard for their countries the right to use force to intervene in the domestic affairs of other countries. Those members had sought every kind of pretext to avoid accepting the principles of the prohibition of the threat or use of force, of the peaceful settlement of disputes and of non-intervention in matters within the domestic jurisdiction of other States, and at the same time they had deliberately tried to slow down or prevent any efforts to develop or codify those principles, although they knew that they were already an accepted part of international law and recognized cornerstones of world peace.

3. Some idea of the extent to which the views of those delegations which stood in the way of the progressive development and codification of the principles under consideration were rejected could be gathered from the fact that all but one member of the Special Committee had supported the draft consensus on the prohibition of the threat or use of force (See A/5746, para. 106); the dissident voice was, of course, that of the United States delegation. How any country could oppose the principle of the prohibition of the threat or use of force in view of the binding obligation not to use or threaten force laid down in Article 2, paragraph 4 of the United Nations Charter might seem difficult to understand, but the fact was that some countries had never heeded the provisions of the Charter regarding the unlawfulness of the use of force and were wary of any new provision which might reinforce those provisions and make it more difficult to use force for such convenient purposes as the repression of colonial peoples.

4. On 19 November 1965 (877th meeting) the United States representative on the Sixth Committee had dramatically announced that his delegation, after due reflection, had decided that it could now accept paper No. 1 (See A/5746, para. 106) which it had refused to endorse in Mexico City, and a number

of Western delegations, prominent among them the United Kingdom delegation, had made touching statements hailing the achievement of what they called unanimous agreement on the principle in question.

Mr. Flitan (Romania), Vice-Chairman, took the Chair.

5. What those Western delegations had deliberately overlooked in their rapture, however, was that paper No. 1, submitted to the Special Committee by its Drafting Committee, was only part of the proposed formulation of the principle of the prohibition of the threat or use of force, and that a number of absolutely vital proposals and amendments were contained in annex A to that paper (see A/5746, para. 106), concerning which no general agreement had yet been reached. The attitude of the Western Powers to paper No. 1 was typical of their attitude to the principles in general, and was further exemplified by their attempts to restrict the interpretation of the term "force" to straight forward military force so that even if naked armed force were outlawed they would still have at their disposal such other forms of pressure as economic blackmail, etc.

6. Thus, in view of the foregoing, the Byelorussian delegation considered that it was essential, in spite of the agreement achieved on paper No. 1 in the Sixth Committee, that the whole principle of the prohibition of the threat or use of force should be resubmitted to the revived Special Committee so that the latter could arrive at a generally satisfactory definition of the principle which would take into account not only paper No. 1 and annex A, but also any additional points which might arise in the course of discussion.

7. The Byelorussian delegation considered that not only must international law be developed so as to take account of the changes which had taken place in actual life, but its provisions must be brought to the notice both of Heads of State and of every individual citizen, so that a spirit of attachment to law might grow up in relations between States and peoples. That was particularly important in the present era of the downfall of classical and neo-colonialism and the emergence of many newly independent States. The tension which reigned at present in the world made it all the more necessary that the Special Committee should continue its efforts to prepare a declaration stating, within the bounds of the Charter of the United Nations, the theoretical and practical principles of friendly relations and co-operation among States which had received general acceptance in the world.

8. In paragraph 23 of the Special Committee's report (A/5746) it was stated that some members of the Special Committee considered that the Committee's functions should be limited to commenting on and explaining the four principles which the Assembly had asked it to study. The Byelorussian delegation could not agree with those views, however, and it considered that the only authority on the terms of reference of the Special Committee should be General Assembly resolution 1966 (XVIII), which called upon the Special Committee to study and make recommendations on the principles.

9. The Byelorussian delegation considered that the principle of the prohibition of the threat or use of force should include a provision declaring unlawful all foreign military bases which were unacceptable to the inhabitants of the countries in which they were situated, for the codification of the principles under consideration should also help the peoples of the world to rid themselves for ever of a foreign yoke.

10. One of the main reasons for the increase in international tension at the present time was the practice of intervention in the domestic affairs of other countries. The Byelorussian delegation therefore considered that the principle of non-intervention was one of the most vital of all the principles from the point of view of the safeguarding of international peace and security. There could be no justification on economic, ideological or any other grounds for intervention in such countries as the Dominican Republic, Viet-Nam, etc. It was for each individual nation to decide what it wanted from the future and how best to achieve it. That cardinal principle of international life had been emphasized repeatedly at the Conference of African and Asian States, held at Bandung in 1955; the two Conferences of the Heads of State or Government of the Non-Aligned Countries, held respectively at Belgrade in 1961 and at Cairo in 1964, and at other conferences of the non-aligned countries. In the view of the Byelorussian delegation, it was already firmly established in international law and should be clearly stated in the General Assembly's eventual declaration.

11. In conclusion, the Byelorussian delegation wished to stress that as no nation had suffered more from the Second World War than Byelorussia, it fully supported the Czechoslovak proposal (See A/5746, para. 27) to outlaw war propaganda.

12. Mr. SAGBO (Dahomey) said that in including the question of the principles of friendly relations and co-operation among States on its agenda, the General Assembly had shown its great interest in peaceful coexistence, a matter which was of particular importance in the present era, marked as it was by the birth of many new States and by the consequent revolutionary changes in the structure of the international community together with the recent enormous scientific and technological advances. There could not be the slightest doubt, therefore, that the principles under consideration constituted the very foundation of peaceful coexistence between States.

13. The meaning of the word "force" had been much discussed. The delegation of Dahomey considered that the term must be interpreted in the light of the events which had taken place since the drafting of the Charter. It was practically impossible to specify all the cases in which the use of force was unlawful but it would be quite wrong to restrict the meaning of "force" to armed force, for that would leave the door open to all kinds of abuses arising out of the disparity between powerful, highly-developed States and the many small, weak, newly independent countries which were particularly vulnerable to such veiled forms of force as economic pressure. Force, of no matter what kind, could only be lawful when used either in individual or collective self-defence, in accordance with Article 51 of the Charter, or under

regional arrangements or by agencies, in accordance with Article 53.

14. The delegation of Dahomey considered that the principle of the peaceful settlement of disputes was the corollary of the prohibition of the threat or use of force. Article 33, paragraph 1 of the Charter of the United Nations placed a wide range of methods of peaceful settlement at the disposal of Member States, and the delegation of Dahomey thought that it would be invidious to single out one or more of those methods as being specially desirable: it should be left to the parties to each dispute to decide which method was most suitable in their particular case.

15. It was regrettable that few States had accepted the compulsory jurisdiction of the International Court of Justice and that fewer still had accepted it without reservations. It was to be hoped that more and more States would recognize the compulsory jurisdiction of the Court as provided in Article 36, paragraph 2 of its Statute. At the same time, however, it was important not to forget the very useful facilities for the peaceful settlement of disputes offered by various regional organizations, such as the Organization of African Unity. Such facilities were, it was true, open only to parties situated in the same geographical region, but they had the great advantage of being better adapted to the realities of that region than more universal facilities.

16. In conclusion, as far as the principle of non-intervention was concerned the delegation of Dahomey considered it to be no less important to international peace and security than the other principles considered. Although the Charter did not lay down that the principle of non-intervention must be observed by Member States, the delegation of Dahomey considered that Article 2, paragraph 7 of the Charter, which applied expressly to the United Nations itself, applied a fortiori to the Member States of that organization, for it was inconceivable that the Charter, the aims of which included the maintenance of international peace and security, should leave the way open, even implicitly, to unauthorized intervention, which was universally recognized as one of the most fundamental causes of international tension.

17. Mr. B. K. P. SINHA (India) thanked the Mexican Government for its hospitality and the Secretariat for its co-operation during the Special Committee's Mexico City session.

18. He said that any definition of the principle of the non-use of force must take into account the right of colonial peoples to use force, if necessary, as a means of achieving their independence. That right had been reaffirmed in the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) and should be explicitly recognized in any definition of the Charter principle. Moreover, the term "force" should not be narrowly construed: it should be interpreted to mean more than armed force. Finally, in any definition of the principle, due weight should be given to the rule of the sanctity of boundaries, a basic rule recognized by the Second Conference of Heads of State or Government of the Non-Aligned Countries at Cairo in 1964 and by the second Summit Conference of the Organizations of African Unity 1964 and implicit in the Charter of the United Nations.

19. In studying the principle of non-intervention, due attention should be given to two crucial aspects, namely, the right of peoples to develop their own political, economic and social systems freely and the duty of States to refrain from subversion and other pressures, including economic pressure, against other States. The declaration adopted at the Second Conference of Heads of State or Government of the Non-Aligned Countries in 1964 (See A/5763) should be used as a model for the formulation of the principle. In making that suggestion, he did not wish to underestimate the contribution of Latin American jurists to the question of non-intervention; indeed, many of the Afro-Asian formulations had been based on Latin American texts. With regard to subversion, the Sixth Committee might well follow the example of the Organization of African Unity (article III of its Charter) and explicitly condemn subversive activities.

20. In addition to emphasizing the importance of the principle of the peaceful settlement of disputes in maintaining peace and security, he urged that due regard be paid, in formulating the principle, to the related principles of sovereign equality and non-intervention. The parties to a dispute should be free to select the means of peaceful settlement they considered most appropriate; they were under no obligation to give preference to any particular method. Negotiations for a peaceful settlement should be conducted on the basis of the sovereign equality of the States concerned.

21. India had been gratified by the progress achieved by the Special Committee in its definition of the principle of sovereign equality. But it regarded the work on that principle as incomplete and looked forward to its further elucidation.

22. In evaluating the report of the Special Committee (A/5746), it should be borne in mind that the General Assembly clearly expected the Committee's efforts to culminate in an amplification and more precise statement of the principles of international law concerning friendly relations and co-operation among States. Although the Committee had not yet achieved that objective, it had succeeded in dispelling the mist that surrounded the principles and clearing the air. It had helped to delineate the areas of agreement and disagreement. Its work represented a good start in an undertaking in which spectacular advances could not be anticipated, for the definition of each of the principles depended on the formulation of the others. It was not surprising, therefore, that there were still many points to be solved even with regard to the principle of sovereign equality, on which the most substantial progress had been made, and that, despite the encouraging statement made by the United States representative at the 877th meeting, much more work would have to be done on the principle of the non-use of force.

23. India had co-sponsored draft resolution A/C.6/L.577 and considered that further work on the four principles and on the remaining three principles enumerated in operative paragraph 5 of Assembly

resolution 1966 (XVIII) should be entrusted to an enlarged Special Committee which would be more representative of the present United Nations membership. He hoped that the sponsors of the other two draft resolutions (A/C.6/L.575 and L.576) would withdraw their proposals and support the text submitted by the non-aligned countries (A/C.6/L.577), thus ensuring its unanimous adoption.

24. The Committee should give careful consideration to the fact that the Second Conference of Heads of State or Government of the Non-Aligned Countries, held in Cairo in 1964, at which forty-six Members of the United Nations were represented, had recommended the adoption by the United Nations General Assembly of a declaration on the principles under study as an important preliminary step to their codification (See A/5763). Indeed, adoption of a declaration embodying the seven principles at the twenty-first session of the Assembly would have great probative value. The Special Committee should be instructed to take full account of that recommendation in its future work.

25. The principles represented the very core of international law and the foundation of an organized world community. The United Nations had begun to be concerned with them as early as the twelfth session when India had joined with Yugoslavia and Sweden in submitting a resolution on peaceful and neighbourly relations among States (resolution 1236 (XII)). Since that time, the drastic changes in the world order, the emergence of new States and their desire to ensure the strict observance of those principles as expressed at Bandung in 1955, at Belgrade in 1961 and at Cairo in 1964 made it imperative that the work should go forward as rapidly as possible.

Mr. El-Erian (United Arab Republic) resumed the Chair.

26. Mr. ANDRIAMISEZA (Madagascar) considered that the work of the Special Committee represented significant progress towards the objectives laid down in General Assembly resolutions 1815 (XVII) and 1966 (XVIII). In the short time at its disposal, the Committee had effectively analysed the components of principles which constituted the very foundation of contemporary society, undaunted by the complexity and difficulty of its task and by the diversity of the opinions which it would have to reconcile. As its report showed, unanimous agreement could only be reached on certain limited points. Indeed, even those members of the Committee who had agreed in principle on certain formulations had made their final agreement subject to reservations and consultation with their Governments. Yet, the method of consensus had been the only possible procedure for ascertaining universal acceptance of the rules of law which the Committee had endeavoured to define. The Committee had not been more successful because the causes of the divergencies of opinion went deeper than terminology; they arose from differences in conception and interpretation which would have to be reconciled before there could be any hope of improving inter-State relations. That did not mean that the Special Committee had failed. On the contrary, it had been extremely valuable in revealing the areas of agreement, the centre points of stubborn opposition, the obstacles to be overcome and the gaps to be bridged. It would compel Member States to rethink certain aspects of the principles which they had hitherto been content to leave vague. Moreover, the difficulties were not insurmountable, as had been demonstrated by the recent acceptance by the United States of the Committee's draft on the non-use of force. Indeed, given a universal will to reach agreement, a greater measure of flexibility and readiness to make concessions, all issues could be solved. It was in the interest of all States to press for that goal because the future of the United Nations and the maintenance of peace and security were at stake.

27. Madagascar had co-sponsored draft resolution A/C.6/L.577 because it supported the enlargement of the Special Committee for purposes of continuing the work begun in Mexico. The new members would introduce new ideas and represent new trends and the new Committee would have the benefit of the Mexico City experience as recounted in the report (A/5746). Moreover, the draft resolution did not deny that substantial results had already been achieved on the principles of sovereign equality and the non-use of force; it merely asked the Committee to proceed from that point of departure to delve even more deeply into the legal implications of those principles.

28. The draft resolution introduced by his own delegation (A/5757) had evoked generally favourable reactions and he had heard no opposition to it. He would have preferred to have the views of more members of the Committee, but most speakers apparently felt that it should be referred to the new Special Committee. He had no objection to that procedure, but felt that it would not be contrary to established practice if the Sixth Committee were to vote on the text before transmitting it to the Committee for a closer study of its scope and content. Draft resolution A/5757 reproduced statements of principle which had already been embodied in a declaration by the Organization of African Unity, but had not yet been set out in legal terms. The Sixth Committee should ultimately approve such a statement. The question of methods of fact-finding should also be referred back to the new Special Committee for futher study.

29. The delegation of Madagascar expressed appreciation to the Mexican Government for the facilities it had provided for the Special Committee's first session. It hoped that no effort would be spared to reach agreement on the seven principles which the Assembly had instructed the Sixth Committee to draw up as rules of international law.

30. Mr. MELO (Chile) said that with regard to the principles themselves, it was sufficient to say that they were the corner-stones and pillars of modern international law.

31. Seldom had so difficult a task been entrusted to a United Nations organ. Although the apparent outcome of the Special Committee's discussions had been an agreement to disagree, it had nevertheless provided a rich fund of material on which to draw for further discussion. Optimism as to the future successful completion of the Committee's work should not, however, lead to an underestimation of its dif-

ficulty. As the French representative had pointed out in Mexico City, there was agreement on the principles constituting lex lata, which were set forth in the Charter; but the matter was quite different when proceeding to lex ferenda, which those principles might become after their detailed analysis, in fact their vivisection by the Special Committee. In the attempt to give their component parts more authority, there was a risk of limiting and emasculating them and of making them subsidiary concepts. His delegation considered, therefore, that it would be prudent to follow the ancient maxim "festina lente". Time at the current session of the General Assembly was already running out and the only thing the Sixth Committee could profitably do was to decide to continue the task with another Special Committee.

32. The task of the Special Committee it was desired to set up would have the same limits as those laid down in resolution 1966 (XVIII). It would have to consider the principles of international law (a) in accordance with the Charter, (b) with a view to the progressive development and codification of international law and (c) with a view to submitting its conclusions and recommendations. When that resolution stated "in accordance with the Charter" it clearly indicated that the Special Committee should base itself on the terms of the Charter. It should not go beyond the Charter, for to do that would be to modify it and that, as was well known, could only be done in accordance with the provisions established in that instrument. To go outside the Charter, by way of interpretation, might be to set out upon the path towards lex ferenda. But the Committee could not ignore, either, that during the last few years international law had undergone a remarkable evolution and therefore it could not be criticized if it formulated ideas on the fringe of the Charter. Those ideas could not be considered by the General Assembly although they might form a valuable contribution to the progressive development of international law.

33. The second term of reference of the Special Committee's work, that it should lead to the progressive development of international law and its codification seemed to him to contain a contradiction. To codify was to systematize, to confer characteristics of permanency on a body of law; whereas the idea of progressive development contained a suggestion of flexibility, of conformity with the variable characteristics of international life. In any case, the Special Committee must bear in mind the progressive development and codification of international law by means of—and that was its third term of reference—the presentation of conclusions and recommendations. A declaration, which some members of the Committee desired, was not called for in resolution 1966 (XVIII); it would perhaps not be sufficient and could only be accepted as a step on the way to the progressive development and codification of international law. In any case, whatever document was produced as a result of the Committee's deliberations, it must be firmly based on strict, legal logic. Arguments based on circumstances should have no place in it, for they amounted to politics and politics were not recognized by authority as a source of international law. But the influence of politics in the formulation of law could not be ignored. Yet if politics were allowed to dominate the Committee's work it would be difficult to reach useful and durable conclusions.

34. Special importance should be given to the composition of the new Special Committee. The valuable work and experience of the former Special Committee should not be lost and therefore his delegation considered that it should be maintained and expanded by the addition of other countries to give it a desirable equilibrium. Then it would be able to reach a consensus more truly representative of the various tendencies characterizing the different legal systems current in different regions of the world.

35. It should next be asked whether the work done in Mexico City should be considered to be definitive. Although the Special Committee had reached unanimity on the principle of the sovereign equality of States, there was no agreement on certain aspects of the principle and a new Committee might wish to examine them afresh. It would be still more necessary to reconsider the principle concerning the threat or use of force, despite the statement by the United States representative (877th meeting).

36. The opinion of those who did not wish to reopen discussion of such a difficult subject was understandable, but it should be remembered that it would not be sufficient for any document to be based on a vote, even though unanimous, of a drafting Committee. The decision must be made by the General Assembly itself. And taking into account the possibility that there might be circumstantial reasons for rejecting the principle, in his opinion a General Assembly resolution need not necessarily be adopted unanimously provided that its legal basis was sufficiently solid.

37. In conclusion, he wished to stress the fundamental importance of the agenda item under discussion and the need to reach positive conclusions as soon as possible. It was in the interests of all that that should be done, even though it appeared that the smaller countries attached more importance to it. Therefore a new Special Committee should not only continue to study the principles discussed in Mexico City, but also the three other principles enumerated in resolution 1966 (XVIII), paragraph 5, and probably the subject suggested by Madagascar. Perhaps it would be necessary to indicate certain priorities and in that case his delegation would like preference to be given to the study of the principle of non-intervention which was the basic moral law of any international system.

Organization of work

38. The CHAIRMAN pointed out that the Committee was behind schedule in its debate on agenda item 90. Of the many members still wishing to speak, some would be speaking for the second time on the remaining three principles enumerated in paragraph 5 of General Assembly resolution 1966 (XVIII), others would be speaking for the first time and he requested them to include in their statements their comments on those three principles. A third group of members who had already spoken about the first four principles might wish to comment on those three also. He suggested, in order that the discussion of agenda

item 90 might be terminated by the end of the week and, if possible, be represented by an agreed text of a draft resolution, that the list of speakers on the remaining three principles should be closed at 6 p.m. on Wednesday, 1 December.

It was so decided.

39. Mr. BELAUNDE (Peru) proposed that the sponsors of the three draft resolutions already submitted (A/C.6/L.575, L.576 and L.577) should co-operate to produce a single text on which the whole Committee, laying aside political conflicts, could agree. That would facilitate the presentation of a report to the General Assembly, which need not be taken as a definite statement on the principles, but might confer greater authority on the new Special Committee.

40. Mr. MELO (Chile) supported the Peruvian representative's proposal and suggested that a small working group should draft a single resolution.

41. The CHAIRMAN said that he would lend his good offices to that end and would ensure that any group who so wished would be represented in the working group. He would inform the Committee further on the subject.

The meeting rose at 12.55 p.m.

Litho in U.N. 77601—April 1966—2,000