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CONTENTS

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

AGENDA ITEMS 90 AND 94

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (continued) (A/5725 and Add.1-7, A/5763, A/5865; A/C.6/L.537/Rev.1 and Corr.1 and Add.1; A/C.6/L.574-L.577/Rev.1; A/C.6/L.578):

(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. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that since the Ukrainian delegation had already made known its views on the four principles discussed by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in Mexico City, he would confine his remarks to the three principles enumerated in paragraph 5 of General Assembly resolution 1966 (XVIII) and to the draft resolutions before the Committee (A/C.6/L.575, L.576, L.577/Rev.1 and L.578).

2. The progressive development and codification of the three principles enumerated in paragraph 5 of resolution 1966 (XVIII) was of the greatest importance, and success in that task would do much to promote the creation of a climate of stability, mutual confidence, and firm, friendly relations throughout the world. The duty of States to co-operate with one another was laid down in Article 1 of the United Nations Charter and enlarged upon in Articles 55 and 56, and detailed arrangements for the establishment of international co-operation in the economic field had been worked out at the United Nations Conference on Trade and Development in 1964.

3. Sound and healthy relations between States and the proper development of international co-operation presupposed observance of the principles of equality and mutual benefit, respect for each other's interests, and non-intervention in the affairs of other States and peoples. They also presupposed the right of every State, regardless of its social system, to participate in the solution of international problems that concerned its own lawful interests in the relevant multilateral negotiations of the international organizations. If international economic relations were to be developed and strengthened, it was essential that discrimination against certain States because of their social and economic system should cease and that the barriers raised against certain States by closed economic groupings should be eliminated.

4. The enunciation of the principle of equal rights and self-determination of peoples, which was laid down in the Charter of the United Nations and confirmed and amplified in General Assembly resolution 1514 (XV) on the Declaration on the Granting of Independence to Colonial Countries and Peoples, was one of the most significant achievements in the progressive development of international law. That principle was now a binding rule of international law which gave every nation the right to self-determination, the right to the free choice of its social and political systems, and complete authority over its natural riches and resources. Colonialism and neo-colonialism were a contradiction of the very basis of present-day international law and must be eliminated without further delay, and in all colonial territories which had not yet received complete independence suitable conditions must be created for the rapid transfer of all power to the people in accordance with their freely expressed will. All States were under an obligation to facilitate,

by every possible means, the achievement of freedom and independence by all subject peoples, all of which had the inalienable right to throw off the colonialist yoke by any means they chose.

5. The principle that States should fulfil in good faith the obligations assumed by them in accordance with the Charter was one of the oldest and most important principles of international law. The strict observance by States of their international obligations was one of the most important prerequisites for the creation of mutual confidence, international peace and co-operation, and the establishment of conditions under which justice and respect for the obligations arising from treaties and all sources of international law could be maintained was one of the four basic objectives of the United Nations.

6. At the same time, however, it had to be borne in mind that the duty to fulfil obligations in good faith applied only to obligations which were entered into freely and which did not contradict any peremptory rules of international law. Obligations which violated those rules, such as unequal treaties imposed by powerful imperialist countries on weaker countries, were null and void and the countries on which they had been imposed had every right to repudiate them.

7. Such were the Ukrainian delegation's views on the three principles not dealt with by the Special Committee at its first session. The Ukrainian delegation, which assumed that the Special Committee would be revived, considered that it should consider at its second session the seven remaining principles enumerated in General Assembly resolutions 1815 (XVII) and 1966 (XVIII) and should submit to the twenty-first session of the General Assembly a comprehensive report on those principles, including a draft declaration.

8. With reference to the draft resolutions before the Committee, the Ukrainian delegation had noticed that certain members of the Committee clearly did not wish to be bound by rules which would prevent them from carrying on policies based on the threat or use of force. Those members had therefore opposed the codification of the most vital principles of peaceful coexistence, which ruled out the threat or use of force, although in the face of the overwhelming support for those principles by the rest of the members of the Committee they had been obliged to disguise their real views to some extent. That certain delegations did indeed hold such views was clear from an analysis of the statements and proposals made by the United Kingdom and United States delegations in the Special Committee, and it was equally clear to those who had attentively followed the present debate in the Sixth Committee that the same attitude persisted there also. That attitude ran like a silver thread through the statements and proposals made by the United States delegation and the delegations of several other Western countries, and it was in no way covered up by the United States delegation's tactical manœuvre of announcing that it was now ready to accept the text of paper No. 1 (see A/5746, para. 106) which it had rejected in Mexico City.

9. It had to be pointed out clearly that the United States delegation's ostensible agreement with the text of paper No. 1 was really extremely relative, and all members of the Committee would remember that the United States representative, when stating his agreement with the text, had entered a most substantive reservation stating that, in the view of the United States delegation, the prohibition should not apply to a party which crossed a frontier and exercised force lawfully in conformity with the Charter, particularly if that party was exercising the right of individual or collective self-defence. Likewise, the representative of the United Kingdom had entered reservations regarding paragraph 2 (a) and paragraph 3 of section I of paper No. 1.

10. The proposal made by the United Kingdom delegation in the Special Committee (ibid., para. 29) that the use of force should in certain circumstances be lawful not only when carried out in accordance with a decision of the Security Council, as laid down in the United Nations Charter, but also when carried out in accordance with a decision of the General Assembly or under the direction of certain regional agencies, was a most dangerous attempt to widen the notion of the lawful use of force and would open up wide possibilities for the arbitrary use of force in international relations. The United Kingdom proposal was all the more disquieting because its advocates freely admitted that it was impossible to enumerate in an exhaustive manner all the possible circumstances in which force might be used under it.

11. The real motives behind the United States delegation's fine gesture in ostensibly accepting paper No. 1 were made clear by the proposals, put forward by the delegations of the United States and several other Western countries, that the principles of the sovereign equality of States and of the prohibition of the threat or use of force should be considered as fully discussed and requiring no further consideration by the Special Committee. Nothing could really be further from the consideration by the Special Committee. Nothing could really be further from the truth, for paper No. 1, for example, did not deal at all with the prohibition of economic, political or other forms of pressure or the prohibition of war propaganda, an omission which many delegations rightly intended to rectify when the principles in question were discussed further.

12. Draft resolution A/C.6/L.575 was unacceptable to the Ukrainian delegation because it attempted, in operative paragraph 1, to rule out any further consideration of the principles of the sovereign equality of States and the prohibition of the threat or use of force, it attempted to restrict the Special Committee's terms of reference to the study of the principles under consideration, and the formulation of recommendations on them, and it spoke of "the second session" of the Special Committee, whereas in reality the Special Committee had already ceased to exist and it would have been much better to call for the establishment of a new Special Committee of a more representative character.

13. The Ukrainian delegation supported the Czechoslovak draft resolution (A/C.6/L.576), which, in its opinion, best defined the most desirable future programme of work on the codification of the principles

of peaceful coexistence and called for the submission by the Special Committee of a comprehensive report, including a draft declaration, on all seven of the principles. Draft resolution A/C.6/L.577/Rev.1 also contained a number of useful proposals, and the Ukrainian delegation therefore shared the view of the representative of Ghana that the sponsors of that draft resolution and the Czechslovak delegation should discuss the possibility of combining the two drafts.

14. Mr. KANE (Senegal) said that in spite of all the progress made in science and all the achievements of mankind, States had not perfected their relations with each other to such a high degree as their capacity to destroy each other. It was unthinkable that relations between States should still be based today on the law of the jungle, where the small were the constant and easy prey of the great. Justice, equality and mutual respect must prevail in international relations.

15. For many centuries past, men had made war and peoples had hated each other because of the lack of mutual understanding and respect in the world. Europe alone, for example, had experienced 187 wars since the dawn of the Christian era. How much richer human civilization would be if it had not for so long been torn and saddened by war and conflict! The present division of countries and even of continents was the result of a lack of understanding for which war was to blame. It was therefore easy to appreciate that, as the representative of Brazil had pointed out at the 881st meeting, the survival of the human race depended very largely on the relations which States would maintain with each other in the future.

16. The members of the Sixth Committee were gathered together to define and accept the principles which should form the foundation of friendly relations between their countries, and although they had different backgrounds, different ideologies and different levels of economic and social development they were all united by the desire to think ahead, with a view to ensuring the future of the human race, in common terms of friendship and brotherhood, and in the conviction that they must strive, in the words of the Federal Chancellor of Austria at the 1386th meeting of the General Assembly, "to make the day approach on which the principle of the rule of law will be regarded as a categorical imperative in international relations by all peoples, without exception and irrespective of the social system under which they live." Those who took rigid or dogmatic positions on any of the principles under consideration probably did not sufficiently understand that aspect of the problem, and the question which all members of the Committee should put to themselves at the end of the present debate was "What concrete steps had been taken to bring about the progressive development of international law and civilization as a whole?".

17. It was against that background that the Committee should consider the work of the Special Committee on four of the principles of international law concerning friendly relations. Instead of embarking on another debate on the substance, it should confine itself to evaluating the work accomplished and determining the obstacles to further progress. Those who had expressed the view that few positive results had been achieved during the Mexico City session should recognize how widely divergent the views of all the participants had been at the outset. On some points at least, representatives might not have had an opportunity to give full expression to all their objections and opinions, with the result that they had found themselves unable to join in the consensus. Moreover, the work of the Special Committee had been hampered by a long-standing division of opinion concerning the task entrusted to it by the General Assembly: one group felt that it should be confined to a study of certain fundamental principles embodied in the Charter with a view to their progressive development and codification; the other group considered that the Special Committee should go beyond the confines of the Charter and take into account the new principles which had emerged in the past two decades. Consequently, the first group had argued that whenever agreement had been reached in the Special Committee, it had been because the Committee had dealt with the lex lata, whereas whenever it had sought to break new ground or deal with the lex ferenda, a consensus had eluded it. Thus, the Special Committee had failed to clarify the distinction between the rules of law and political conceptions. On the other hand, it should continue to apply the method of consensus in its future work because international law could not be produced by majority votes if it was to be universally acceptable and if it was to meet the needs of all States in the world of today. The law which the Committee sought to develop was to be applicable not to the man of the seventeenth century, as the Brazilian representative had pointed out at the 881st meeting, but to all men and nations seeking to live together in peace, freedom and equality.

18. As stated in the excellent report submitted by the Rapporteur of the Special Committee (A/5746), almost full agreement had been reached in Mexico City on the principle of the non-use of force. The crux of the problem had been the definition of the term "force" and of specific cases of the lawful use of force. He was gratified to note that at the 877th meeting, the United States representative had accepted the Mexican draft of the principle. It remained for the Committee, now that there was full agreement on the substance of the principle, to find an appropriate way of registering that consensus. He was also gratified that the Special Committee had agreed unanimously on the elements of principle D, namely the sovereign equality of States, set out in paragraph 339 of its report (A/5746). That stage represented an important gain, although there were still numerous points on which no agreement had been reached. The principle of sovereign equality had been proclaimed for the first time in the Four-Nation Declaration on General Security of the Moscow Conference of 1943, incorporated later in the Dumbarton Oaks proposals and then embodied in Article 2, paragraph 1 of the Charter. It had been restated in connexion with the International Trusteeship System in Article 78. Since 1945, it had been set out in numerous bilateral and multilateral instruments and should be regarded as a peremptory norm of contemporary international law. Just as the equality of individuals and races should be recognized in human relations, so the sovereign equality of States should govern inter-State relations. Not only did the Charter

of the Organization of African Unity reaffirm it, it emphasized its importance in its article 5, which stated that all Member States enjoyed the same rights and had the same duties. Senegal could not accept any final formulation which failed to state that territories under colonial rule were not an integral part of the metropolitan State. On that point, it supported the idea contained in the Czechoslovak proposal (see A/5746, para. 27). Sovereign equality of States should be construed to mean legal equality, irrespective of size, wealth, economic resources, military power, political and social structure level of development and geographical situation.

19. The principle of the peaceful settlement of disputes as stated in the Charter was a legally binding obligation for all States members of the international community. If that premise was accepted, it should not be difficult to find a universally acceptable formula. He enumerated the various instruments which proclaimed the principle of peaceful settlement and pointed out that the young African States had demonstrated the importance they attached to it by signing a protocol on mediation, conciliation and arbitration which was to form an annex to the Charter of the Organization of African Unity. The protocol had given formal expression to the spirit which had motivated the African States in establishing an ad hoc conciliation committee in 1963 to deal with the border dispute between Algeria and Morocco. Senegal had been a member of the earlier group and was now represented on the Commission of Mediation, Conciliation and Arbitration set-up by the Assembly of Heads of State and Government of the Organization of African Unity, which had met in Accra in October 1965. Since the purpose of formulating the principle of peaceful settlement was to restrain States from resorting to war as an instrument of national policy (jus belli), every effort should be made to widen the range of means of pacific settlement. While the United Nations Charter clearly left the parties to the dispute free to choose whatever means they deemed most appropriate, a distinction could be made between negotiation, conciliation and mediation into which States voluntarily entered and arbitration and judicial settlement, under which they accepted the ruling of a third party. However, the most important factor in the peaceful settlement of disputes was the will of the parties to enter into talks, to reconcile their differences and to reach a negotiated solution. Without it, no settlement machinery, whether optional or compulsory, could produce positive results.

20. The principle of non-intervention was a corollary of other principles embodied in the Charter. It had been proclaimed in the Covenant of the League of Nations and in various other pre-war multilateral conventions and reproduced in detailed form in both the Charter of the Organization of American States [1] and the Charter of the Organization of African Unity. Opinion had been divided in the Special Committee regarding the extent to which the United Nations Charter defined the principle of non-intervention. In the view of the Senegalese delegation, Article 2, paragraph 7 prohibited intervention not only by the United Nations, but by any Member State, in matters essentially within the domestic jurisdiction of another State. The only exceptions were intervention authorized by decision of a competent organ of the United Nations as specified in the Charter and intervention made necessary by the non-observance or violation of human rights. The principle of non-intervention could not be invoked to justify apartheid, the denial of self-determination to colonial peoples or in any circumstances in which the dignity of the human person was under attack.

21. The terms of reference of the Special Committee should be renewed and broadened so that it could continue to work for agreement on those principles on which there had been no consensus and on the other principles enumerated in the relevant Assembly resolutions. It should also consider the question of methods of fact-finding and the item submitted by Madagascar (A/5757 and Add.1). The results of its work should take the form of a declaration. Its membership should be enlarged: an injection of new blood might well help it to reach agreement on all the points still in dispute.

22. Mr. EL SADEK (Libya) said that although despite its efforts the Special Committee had produced in Mexico City nothing more than partial agreement on the principle of the sovereign equality of States, it had done valuable work. Its report (A/5746) provided a full account of the many difficulties which still had to be overcome before it could successfully carry out its terms of reference. The work should be continued by a new Special Committee whose members would be selected on the basis of equitable geographical distribution and fair representation of the principal legal systems and bearing in mind the new trends of the international community which had resulted from the emergence of the new independent States. In formulating the legal norms deriving from the principles of the Charter, the new Committee should give due weight to the great changes which had characterized the past two decades. If it should agree to embody those norms in a declaration, it might be well advised to take as a model the declaration adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held in Cairo in 1964 (see A/5763) which reflected the views of forty-five Member States of the United Nations. It was essential, however, that the principles proclaimed in any declaration should be stated in clear terms in order to avoid misinterpretation.

23. In declaring the principle that States should refrain in their international relations from the threat or use of force, the term "force" should be understood to mean not only armed force, but any other form of pressure, including economic and political pressure, directed against the territorial integrity or independence of a State. On the other hand, the use of force pursuant to a decision by a competent organ of the United Nations acting in accordance with the Charter, the use of force in the exercise of the right of self-defence against foreign aggression and the use of force in exercise of the right of peoples to defend themselves against colonial domination should not be regarded as unlawful.

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

24. It was the view of the Libyan delegation that all Member States were bound by the Charter to settle their disputes by peaceful means. However, no definition of the principle of the peaceful settlement of disputes should prevent the States parties from choosing freely the means which they considered most appropriate.

25. The principle of the sovereign equality of States stated in Article 2, paragraph 1 of the Charter had already become a general rule of international law. Indeed, it was the oldest and most fundamental principle of international law and its application was essential to the establishment of friendly relations and co-operation among States. It connoted the right of every State freely to determine its political and constitutional system, to develop its economic and social structure and to follow the domestic and foreign policy of its choice.

26. The principle of non-intervention was a logical corollary of the principle of the sovereign equality of States. The latter would be meaningless if States were permitted to intervene in the internal affairs of other States. The Special Committee, in giving further study to that principle, should take into account the views expressed in the Sixth Committee.

27. The Libyan delegation considered the three remaining principles, enumerated in paragraph 5 of General Assembly resolution 1966 (XVIII), of great importance for the development of friendly relations and would comment on them in due course.

The meeting rose at 12.5 p.m.

Litho in U.N. 77601—May 1966—2,000