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CONTENTS



*Chairman:* Mr. José María RUDA (Argentina).

## AGENDA ITEM 71

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/5470 and Add.1 and 2, A/C.6/L.528, A/C.6/L.530, A/C.6/L.531 and Corr.1, A/C.6/L.535) (continued)

1. Mr. NINCIC (Yugoslavia) stated that there was no need to stress the importance of studying the principles of international law concerning friendly relations and co-operation among States—the principles of peaceful coexistence. That importance reflected the increasing headway being made by the policy of coexistence, which was now coming to be acknowledged as the expression of the profound realities and compelling needs of the times, and as the only alternative to an all-devastating war. That policy was beginning to yield practical results, such as the treaty banning nuclear weapon tests in the atmosphere, in outer space and under water signed at Moscow, 5 August 1963. The Sixth Committee had undertaken to work out the principles upon which to base international relations which, as President Tito had recently stated before the General Assembly (1251st plenary meeting) would be more constructive and more humane—the kind of relations for which the world was striving. That was a task in which all countries, great or small, whatever their social system or level of development, had a vital stake. By the same token, it was the greatest single contribution the Sixth Committee could make to the growth of international law along the lines indicated by the Charter and in accordance with the requirements of a changing world. Since 1960, up to which time the Sixth Committee had done so little to develop international political co-operation and to encourage the progressive development of international law and its codification, the General Assembly had become increasingly aware of the broader context within which international law was now evolving and of the mutual impact of international law and international realities; at the same time it had recognized its responsibilities in that field. It had successively adopted resolutions 1505 (XV) and 1686 (XVI), and then 1815 (XVII), which had led to the present debate and had been hailed as an initial step towards a peaceful world and as a document whose historical significance could only be compared to that of the declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)). By setting forth the task of the Sixth Committee and clearly defining its terms of reference, that resolution had marked the end of the first stage of the Sixth Committee's efforts to work out the fundamental principles of international law, a necessary preliminary to the building of a progressive and peaceful world.

2. The Sixth Committee's task consisted of three parts so closely interlinked that they formed a whole: the study, progressive development and codification of the principles. The study would have to be conducted with that basic aim in view, and the aim would, in its turn, have to be considered with due regard to the need to ensure that the principles were more effectively applied. The question which immediately arose was why the codification and progressive development of the principles of international law concerning friendly relations and co-operation among States, that was to say the principles of coexistence, were at the present time essential to their more effective application. Those principles were already expressed or implied in the Charter of the United Nations, the principal sponsors of which had been States with different social systems and different levels of development. The Charter approached the problem of peace and war in a comprehensive and dynamic manner, which was the essence of the philosophy of peaceful and active coexistence. However, the Charter could not provide for all details of the practical implementation of that approach; nor could it anticipate the extent and shape of the changes which would take place throughout the world and their effect on the conditions in which the basic principles of the Charter would have to be put into effect. The need, in applying the essential principles of the Charter, to allow for new and changed conditions was what had called for their creative elaboration. Indeed, that process of creative elaboration had been taking place all the time through resolutions, declarations, law-making treaties and bilateral and multilateral documents which sought to enunciate the principles of coexistence. That the General Assembly had not yet given that vital task the attention which it required was probably due to the general circumstances which had so far attended many of its activities and did not favour efforts to work out norms which were only too clearly at variance with the prevailing trends in international affairs.

3. It had been argued at the debates which had preceded the adoption of resolution 1815 (XVII) that the codification of principles already set forth in the Charter would either be superfluous or amount to a surreptitious revision of the Charter. That line of reasoning tended to overlook the nature of the Charter, which was above all a living document, and the circumstances in which the principles had been embodied in it. The claim had also been made that to codify those principles would deprive them of all flexibility

and consequently arrest their growth. Those who held that view had obviously failed to grasp the essence of peaceful coexistence. They were unaware of the profoundly dynamic nature of its principles and their over-all impact upon the growth of international relations and of international law. The more fully, therefore, those principles concerning friendly relations and co-operation among States were worked out in the light of changing conditions, the more effective their impact would be.

4. As for the actual progressive development and codification of the principles listed in resolution 1815 (XVII), it was appropriate to study what methodology should be used by the Sixth Committee, and the final form in which the results were to be expressed.

5. Basing itself on the definitions of the terms "progressive development" and "codification" in Article 15 of the Statute of the International Law Commission (see General Assembly resolution 174 (II)) the Sixth Committee would have to formulate the principles of coexistence with an eye to fostering the development of State practice in accordance with the principles in areas where such practice was lacking, and to systematizing the relevant rules of international law in areas where the practice of States and of international organizations was more current. The results of the Committee's work should be embodied in a single document, for the principles which the Committee had to study were so closely interrelated that to formulate them in isolation would be to divorce them from the context where they naturally belonged, thus depriving them of part of their substance. There was no need to show the interdependence, for instance, of principles such as prohibition of the threat or use of force and peaceful settlement of disputes, sovereign equality and non-intervention. Furthermore, it must be remembered that the system the Committee had in mind would necessarily consist of "prohibitive norms" and of co-operative, active and positive norms, which, being complementary, should be embodied in a single document. Concerning the nature of that document, the Yugoslav delegation had already expressed its preference for a declaration, which would give the principles the desired legal and moral weight.

6. The study to be undertaken would have to be searching and by no means purely academic. The Sixth Committee would have to determine the substance and scope of the principles in the light of the Charter, of developments in international relations and international law, and of the mutual interrelations of the principles themselves. It was unfortunate that only four of the principles were to be studied; but that handicap could be overcome by treating them as a whole and striving persistently for practical results.

7. It was in the light of those general considerations that his delegation would examine each of the principles on the Committee's agenda. There seemed to be no immediate necessity to decide whether a certain hierarchy existed among the principles. Circumstances tended to place greater or lesser emphasis upon some of them, but not to the detriment of others. Thus the prohibition of the threat or use of force in international relations, which now occupied first place, resulted from the evolution of the concept jus ad bellum under the pressure of events and the terrifying advance in military technology. Prohibition should be carried even further than Article 2, paragraph 4 of the Charter provided. It should be made clear that the word "force" applied, not merely to military force in the habitual sense, but to force in any form, including its economic and political manifestations. The definition of the threat of force should also cover direct or indirect means of pressure aimed at the territorial integrity or political independence of a State, and should more particularly include the arms race. The sole exceptions to that absolute prohibition of the threat or use of force in international relations were those expressly provided in the Charter, which should be interpreted strictly.

8. The principle of the peaceful settlement of disputes was the natural corollary of the prohibition of the use of force. The obligation was accordingly as sweeping as the prohibition, States being merely left the choice of what peaceful means they desired to apply in a particular case. The choice depended on the nature of the dispute and the international context in which it had arisen. States were now more inclined to resort to diplomatic rather than to judicial means of settling disputes involving their major interests. That fact should encourage international jurists to establish a more clearly defined legal framework for the settlement of disputes by diplomatic means, and a political climate which would encourage States to place greater reliance on judicial settlements. It was therefore essential to provide that the means chosen for the peaceful settlement of a dispute should be compatible with other principles of coexistence, such as sovereign equality, and devoid of any element depriving it of its peaceful character, such as any form of pressure. It should also be made clear that disputes should be settled in their early stages, before they assumed exaggerated proportions.

9. The principle of non-interference in the domestic affairs of a State was inherent in the very spirit of the Charter and was an essential feature of any system of coexistence. Its importance was obvious at a time when States with different social systems existed side by side and the face of the world was being transformed by the struggle of hitherto dependent peoples for emancipation. Nowadays it was interference to attempt to prevent nations from exercising their right to self-determination and their right to development along lines of their own choosing. Such policies were a direct threat to internatiomal peace. It was therefore natural that the principle of non-interference had been written into a number of important multilateral instruments, such as the Charter of the Organization of American States, the Declaration contained in the final communiqué of the Bandung Conference of African and Asian States, 1955, and the Declaration of Heads of State or Government of the Non-aligned Countries, issued on the occasion of the Belgrade Conference in 1961. Needless to say, the principle was quite distinct from the domestic jurisdiction clause in Article 2, paragraph 7 of the Charter.

10. The principle of the sovereign equality of States should be construed as signifying the right of all States, irrespective of their size and form of government, their economic or social systems or their level of development, to political and economic equality in the community of nations. They should therefore be able to participate on an equal footing in international life, more particularly in the creation of norms of international law, and should be given every assistance to achieve such equality, particularly in the economic field. The economic aspects of sovereignty thus acquired a particular significance in the contem-

porary world and called for efforts to develop international law in that field.

11. Mr. TABIBI (Afghanistan) said that, if the world wished to be spared an atomic war, the nations should base their policies on non-intervention, respect for international sovereignty and the territorial integrity of States, the settlement of international disputes by peaceful means, the elimination of colonialism in all its forms, and respect for the right of peoples to self-determination, both political and economic. Afghanistan favoured any measure designed to achieve those aims. His delegation was convinced that, through friendly relations among nations and respect for the principles of international law and the United Nations Charter, a peaceful world could be built and mankind could be saved from atomic annihilation. The rule of law was of prime importance for the protection not only of the small countries which did not possess the atomic bomb, but of the large Powers which did possess it. Jurists were therefore bound to make their contribution by formulating sound principles in order to strengthen friendly relations among States. The international climate had considerably improved since the seventeenth session of the General Assembly, and the Sixth Committee ought to seize that opportunity and work for mutual understanding by formulating those essential principles of law of which humanity stood in such need. The jurists should show the politicians that the theory that force of arms and atomic stockpiles were the sole protection of States was wrong; they should emphasize that the only real protection for mankind lay in respect for law and peaceful co-operation. They should, however, make the law more adaptable and, taking into account the changes which had taken place in the world, prepare sound, stable and flexible rules for the peaceful conduct of relations between States. Previous efforts to ensure peace did not meet the requirements of the present day. The Covenant of the League of Nations, the Briand-Kellogg Pact,1/ and then the United Nations Charter had been prepared to meet the needs of their time, and could not be regarded as immutable instruments. The horror of the Second World War had induced the Allies to adopt the principles of the Atlantic Charter on which the founders of the United Nations had based its own Charter, an instrument which derived its force from general international law. Most of the principles it set forth were in the nature of basic directives to guide the United Nations and its Members. Their acceptance by 111 nations had set positive international law on a very high universal plane.

12. The United Nations Charter was very different from the Covenant of the League of Nations, because in the meantime destructive weapons had emerged which had given the concepts of war and peace a different content. Mindful of that development, the draftsmen of the United Nations Charter had entrusted the General Assembly with the duty of encouraging the progressive development of international law and its codification, to supplement the provisions of the Charter relating to the maintenance of friendly relations among States.

13. Since the establishment of the United Nations, however, the world community had clearly evolved. The Charter reflected the view of some fifty nations, most of them European or Latin American. The Organization now had 111 Members, and the recently-emancipated countries of Asia and Africa were in the majority. The Charter was admittedly universal, but not universal enough to reflect the ideas of the new Members. Those who held that the provisions of the Charter were immutable forgot the profound changes, particularly the emancipation of the colonies, which had occurred in the world since its signing and had affected the general principles of international law. The Charter must be adapted to the needs of the nuclear age and to the ideas of the new Member States.

14. At the Bandung Conference in 1955 and the Summit Conference of Independent African States held at Addis Ababa in 1963, the nations of Asia and Africa, most of which had been absent from the United Nations Conference on International Organization held at San Francisco, had adopted principles which in their view met the needs of the times and would make it possible to apply the Charter more effectively.

15. Another factor to be borne in mind was the increasing role of the non-aligned countries, especially since the Belgrade Declaration of 1961, which had aroused a world-wide response and which was certainly in accordance with the principles of the Charter. The policy of "active non-alignment" had created an atmosphere conducive to coexistence and favourable to a policy of international co-operation. As President Tito of Yugoslavia had pointed out in his statement to the General Assembly on 22 October 1963 (1251st plenary meeting), the meaning of the term "non-aligned countries" had undergone a change both qualitatively and quantitively, for the number of countries striving for peace was constantly growing and the polarization of the forces of peace and of the forces of cold war was speeding up in all countries. Non-alignment was therefore developing into an increasingly broad and active participation in the struggle for the triumph of the principles of the Charter.

16. His Government consequently welcomed the Sixth Committee's efforts, over the last two years, to formulate the principles of the coexistence of States; as it had indicated in its reply to the Secretary-General (A/5470), it was prepared to support any formulation in conformity with the provisions of the Charter, the Bandung Declaration of 1955, the Belgrade Declaration of 1961 and the Addis Ababa Declaration of 1963. It further believed that the study of the principles of co-existence was consonant with Article 13 of the Charter and should make it possible to take account of the profound changes that had taken place since the inception of the United Nations. As to the approach to such a study, the General Assembly had already decided in its resolution 1815 (XVII) to give priority to four fundamental principles.

17. The first principle—namely, that States should refrain from the use of force—was comparatively easy to codify because aggressive war had already been condemned in a number of instruments and by mankind in general. What was needed now was to formulate that principle in the light of the present situation. The Charter did not fully cover all forms of the threat or use of force. For example, it contained no provision safeguarding the right of free access to the sea for land-locked countries, which now represented one-sixth of the nations of the world. An economic blockade would be just as dangerous to such countries as the threat or use of force. Hence the study and formulation of that principle would serve the cause of peace, for

1/ 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, No. 2137).

the question was not merely a political or economic matter but a legal one as well.

18. The second principle—that States should settle their international disputes by peaceful means—was also important and was closely linked to the first. There was no lack of material on the subject, and the International Law Commission could be of assistance. It seemed necessary in the interests of peace to codify that branch of international law and to amend Article 33 of the Charter in order to meet the needs of the times.

19. The third principle—non-intervention in the domestic affairs of States—was the subject of many resolutions and decisions of the United Nations and of many treaties. However, Member States placed various interpretations on Article 2, paragraph 7 of the Charter. It was high time to put an end to those differences. On the other hand, the principle of sovereign equality of States was not in dispute and was recognized in every international agreement and treaty. The formulation of that principle, which was the cornerstone of the coexistence of States, should give rise to no difficulty.

20. In his delegation's view it would be wise after the general debate, to appoint a working group, on the basis of balanced representation, to formulate the four principles preparatory to the drafting of a comprehensive document embodying all the principles of international law governing friendly relations and co-operation among States. Once the results of the Committee's work on the four principles in question had been adopted, other principles should be selected for study. In his view the most urgent consideration should be given to the principle of self-determination, which was regarded by some as a political principle but which had been recognized by the Charter as a right and as universally binding. The emancipation of colonial peoples had placed that right on a firm footing, and the 1960 Declaration on the granting of independence to colonial countries and peoples had given it new impetus. It was true that that right was recognized in Chapters XI, XII and XIII of the Charter, but political self-determination was not enough if it was not supported by economic self-determination: in other words, by the recognition of the national sovereignty over natural resources.

21. The Committee might also study the principles of economic co-operation among States, of respect for human rights, and of the elimination of colonialism in all its forms. His delegation considered that the principles of the Charter should be studied not in order to amend them, but in order to reaffirm and perfect them. In that spirit it had taken part in the discussion and had submitted a draft resolution at the seventeenth session and it intended to do the same at the current session.

22. Mr. BERNSTEIN (Chile) said that his country regarded respect for the principles of the Charter as a rule of international relations. No country, large or small, could afford to disregard the grave dangers to which peace was exposed when friendly relations and co-operation among States were lacking. At the seventeenth session his delegation had been one of the sponsors of the proposal leading to the adoption of resolution 1815 (XVII), in which the General Assembly had resolved to undertake a study of the principles of international law concerning friendly relations and co-operation among States, beginning with the study of four principles which had an important bearing on the progressive development of international law. However, although the intention was clear, opinions differed regarding the right approach. He did not agree with those who thought the Committee should confine itself to a purely academic discussion of those four principles. The study in question should contribute to the progressive development and codification of international law. Nor did he think that a declaration of principles should be formulated at the outset; it would be better to see what came out of the exchange of views on the subject.

23. The study was beginning under favourable auspices. Indeed, even at a time when the cold war had produced an ominous stalemate, the Sixth Committee, aware of the ephemeral nature of international crises, had continued its work on co-operation among States and had adopted a draft resolution which had become resolution 1815 (XVII). Events had proved it right. In his view, the Committee should eschew the easy way out—that of leaving it to the International Law Commission to draft the four principles. In the first place, the Commission's agenda was already very heavy; in the second place, the four principles had political connotations which could not be disregarded, and the decision to be taken was not a purely technical one, but one which the members of the Sixth Committee—as representatives of Governments—would be in a better position to take.

24. In his opinion, the idea of splitting the four principles into two groups was perfectly sound; there was a connexion between sovereign equality and non-intervention, and between the prohibition of the use of force and the obligation to settle international disputes by peaceful means. It was a matter, not of amending the provisions of the Charter, which constituted the legal setting within which relations between States had to develop, but only of trying to make them more effective. The Charter differed from the Covenant of the League of Nations in that its Preamble contained an affirmation of faith in the sovereign equality of nations large and small. That meant something more than mere legal equality, and something newer. It did not only connote equality before the law, but also affirmed that States existed as sovereign entities. Other international instruments had dwelt on that question at greater length; one such instrument was the Charter of the Organization of American States, which was also based on the principle of the equality of its Member States. Articles 6 and 7 of that Charter in particular reflected the convictions of the Latin American States regarding the importance of that principle and of its legal consequences. One logical consequence of the principle of sovereign equality was that all States enjoyed the same rights and had equal capacity in their exercise. In the modern world the ideal of marginal States, barred from the enjoyment of certain rights, was quite unacceptable. In the seventeenth and eighteenth centuries and even at the beginning of the nineteenth, a line had been drawn against nations which were "outside Christendom" and did not belong to the "family of nations". Needless to say, the law of nations had not applied to relations between countries with different cultures and legal systems, and the history of the period afforded abundant examples of intervention, the use of force, and acts of pillage against nations or groups not protected by international law. But now all nations, regardless of their level of development, should enjoy the rights of independent countries.

25. The principle of sovereign equality also meant that all States were subject, on the same terms, to the obligations of international law. The developed countries must not use their power to evade their obligations; on the contrary, their privileged position made it their duty to comply even more strictly with the rules of international law.

26. The principle of sovereign equality meant not only that all States enjoyed the same rights but that each State exercised those rights on the same terms, whatever the relative power of the States concerned at a given time. Indeed, the rights inherent in statehood were vested in every State merely in virtue of its existence as a subject of international law. In practice, the value of those legal principles clearly depended very much on the development of international law in such fields as the prohibition of the use of force and the peaceful settlement of disputes.

27. A corollary of the principle of sovereign equality was the right of every State to participate in the solution of international problems. In an interdependent world it could not be otherwise, for the repercussions of economic depressions, population pressure and poverty were not halted at the borders of small countries. In addition, all States should participate on equal terms in formulating and amending the rules of international law. To be truly universal, international law must meet the needs of all States, including new States, and its universality could best be assured in the process of formulating the law.

28. The principle of non-intervention proclaimed in Article 2, paragraph 7 of the Charter derived directly from the principle of the sovereign equality of States. Intervention had been defined as intervention by one State in the internal or external affairs of another State in order to force the latter to do as the former wished. It was no more or less than a usurpation of power. Chile, like all Latin American countries, was deeply attached to the principle of non-intervention. He outlined the efforts made by the Latin American countries since 1928 to isolate, formulate and codify that principle. The Montevideo Convention of 1933 on rights and duties of States stated that no State had the right to intervene in the internal or external affairs of another. The same was true of the Inter-American Conference for the Maintenance of Peace, held at Buenos Aires in December 1936, which had decided that, if that rule was violated, there should be consultations between the Contracting Parties to seek methods of peaceful adjustment. Article 15 of the Charter of the Organization of American States 2/ provided that no State or group of States had the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State, and that that principle prohibited not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements. The principle of non-intervention had been reaffirmed by the Fifth Meeting of Consultation of Ministers of Foreign Affairs, held at Santiago in 1959, and draft articles dealing with that principle would be submitted to the Inter-American Conference to be held at Quito in 1964. In the view of the Chilean delegation, the principle of non-intervention prohibited intervention by a State in the internal or external affairs of another State even at the request of an established government.

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

29. He was grateful to the representative of Czechoslovakia for his contribution to the debate, for having taken into account certain comments made by the Chilean delegation at the seventeenth session, and, in particular, for having included in the principle of non-intervention the prohibition of intervention in a State's external affairs. At the current session, the Committee would be considering only four principles; it might set aside for consideration at subsequent sessions the principles stated in operative paragraph 1 (e), (d) and (g), of General Assembly resolution 1815 (XVII).

30. The expression "peaceful coexistence" was a controversial term but he had no qualms about using it, since he gave it an etymological meaning: peaceful coexistence meant living together in peace. The United Nations Charter was a universal declaration of principles designed to govern relations of friendship and co-operation among States, irrespective of their economic systems.

31. The Government of Chile had always shared that view, and he quoted in that connexion the words of President Alessandri in welcoming President Tito on his arrival in Chile on an official visit, in which President Alessandri had emphasized the importance of relations of friendship and co-operation between two States with different economic and social structures.

32. He was convinced that the legal principles proclaimed in the Charter concerning the promotion of friendly relations and co-operation among States could and should be developed.

33. Mr. URIBE (Colombia) felt that there was a close connexion between justice and peace, between the rule of law and security; that explained why the United Nations had such a great and difficult role to play. There could be no doubt that, in pursuance of its Purposes, the United Nations was at liberty to formulate existing customary rules and to establish new legal principles, subject of course to the limitations imposed on its competence by the Charter.

34. In his delegation's view, it was necessary to draft a universal treaty on the pacific settlement of disputes, which would codify the customary rules and formulate such new rules as were needed to strengthen international law and order. For the Latin American countries that need was met by the Pact of Bogotá of 1948. The Committee should try to lay the foundations for a universal statute of peace, as a logical sequel to the prohibition of the use of force against the territorial integrity or political independence of any State. Such a statute would provide an opportunity to improve the machinery of conciliation and to act on such suggestions as that put forward by the Netherlands representative at the 803rd meeting regarding the establishment of a specialized fact-finding centre. It was not by the reiteration of theoretical principles that international law could be developed, but by the creation and improvement of institutions capable of applying it. It was therefore necessary to extend the compulsory jurisdiction of the International Court of Justice and to improve and speed up arbitration procedure. The signature in Moscow of the treaty banning nuclear weapon tests in the atmosphere, in outer space and under water had created a situation particularly favourable to the development of the principles of international law and to drawing up a universal statute of peace. The statute might embody many of the rules which had been formulated, since the entry into force of the Charter, to strengthen international

security—for example, some of the recommendations and resolutions of the General Assembly.

35. The question of aggression should not be dropped either. It might be re-examined in connexion with possible violations of the principle of non-intervention.

36. In his opinion, the study of the principles of international law concerning friendly relations and co-operation among States should not be left to the International Law Commission, which already had a very heavy work programme. The detailed study of those principles should be carried out by working groups set up by the Committee itself. The representative of Ecuador had put forward some very useful ideas in that connexion.

37. He reaffirmed his country's attachment to the great principles of international law which ensured the reign of justice and peace.

The meeting rose at 1.10 p.m.

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