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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, A/C.6/L.537) (continued)

1. Mr. YASSEEN (Iraq) said that before commenting on the four points at issue he would explain his view of the Sixth Committee's task in that matter and how it should carry it out.

2. Under operative paragraph 2 of General Assembly resolution 1815 (XVII), the Sixth Committee had been instructed to codify international law and ensure its progressive development in a specific sector. At the seventeenth session, the delegation of Iraq and other delegations had pointed out that by establishing the International Law Commission, the General Assembly had not renounced the powers conferred upon it by Article 13 of the Charter, and that the International Law Commission was merely a subsidiary body of the General Assembly. In matters of a primary political nature such as the question of the principles of international law concerning friendly relations and co-operation among States, the Sixth Committee, whose members were both representatives of their Governments and jurists, was the organ most competent to give effect to Article 13. As both a technical and a representative body, it was well placed to take account of the constant changes in international life.

3. General Assembly resolution 1815 (XVII) laid the foundation for a broad programme of work. The words "in accordance with the Charter of the United Nations" did not mean that the Committee was only to examine those principles explicitly stated in the Charter; it merely meant that it was to study those principles which as the logical and sometimes necessary consequences of the provisions of the Charter were implicitly contained in that document. The codification and progressive development of international law did not consist of reproducing principles which had already been proclaimed, but of stating explicitly those principles which had been implicitly admitted and of discerning and defining the trend of their development. Much had happened since the signing of the Charter in 1945. The discoveries of nuclear physics had changed the technique of war. The structure of international society had changed entirely as a result of the large-scale emancipation of peoples. The area of relations between States had become much wider. In the course of those eighteen years, the principles governing friendly relations and co-operation among States had constantly been applied or invoked. With the passage of time, it had been possible to lay bare the ideas which those principles contained in germ. After noting certain aspects of the development of the international community, Sir Humphrey Waldock had concluded that "as a result of these and other developments, the United Nations and the Charter have acquired a significance in relation to the international legal order which was not yet fully apparent in Brierly's lifetime" (Preface to the sixth edition of J. L. Brierly's The Law of Nations, 1/ p. viii). The task was to ascertain the significance of international developments and also to fill certain gaps in order to establish, so far as possible, a co-ordinated system. Having been asked to undertake a task of codification and progressive development of international law, the Sixth Committee could not regard the drafting of a declaration as the final purpose of its work. His delegation felt that the preparation of such an instrument, which presupposed a preliminary synthesis, could be accepted only as one step towards codification.

4. The Committee had to decide on a method of work if it was to succeed in that difficult task. It should be guided by the methods used by the International Law Commission and other bodies such as the Institute of International Law and the International Law Association, taking into account the particular working conditions of the General Assembly and the Sixth Committee. The codification and progressive development of international law was a technical undertaking that required thorough studies and extensive research in its initial stage which could not be effectively carried out by so large an organ as the Sixth Committee. Like most scientific institutions, the Institute of International Law assigned committees, presided over by rapporteurs appointed by the Institute, to study the topics it decided to take up. Most of its plenary meetings were devoted to the examination of the reports submitted by those rapporteurs. The International Law Commission appointed special rapporteurs to study subjects on its agenda, and had sometimes set up sub-committees to perform specific tasks. The Commission's debates usually centred on the reports submitted by the special rapporteurs. In addition the Commission set up at each session a drafting committee whose main function was to give final form to articles proposed or passages suggested.

5. It was clear that the codification and progressive development of international law involved certain

1/ Oxford, The Clarendon Press, 1963.

preparatory and drafting work which could not be effectively accomplished except by a single individual or a small group. In the Sixth Committee, it was really essential to use the working group method, as the Czechoslovak delegation proposed in its working paper (A/C.6/L.528). Whether there should be one or more working groups and whether they should meet only during Assembly sessions or also between such sessions were practical questions of detail. The main thing was that each group should represent not only the principal legal systems and forms of civilization, but also the major political and social systems, and that the results of its work should be submitted to the Sixth Committee for discussion.

6. The working group should begin by making an analysis, examining the views of Governments and, if the Committee wished, consulting the practice of the United Nations. It should indicate the points on which there was general agreement and those which lent themselves to controversy. During the debate in the Committee, compromises could be reached on points of difference. The working group might then be asked to draw up provisional draft articles based on the suggestions made by the Committee at the various stages of its discussion. If the idea of establishing a working group was acceptable, it might be given effect without delay, particularly as many Governments had communicated their views either in writing or through their representatives.

7. Before reviewing the four principles to be discussed at the current session, he noted that it would be useful to add other principles as early as possible without altering the order of priority already established. That would emphasize the wide scope of the task undertaken and the serious efforts required for its accomplishment. In the opinion of the Iraqi delegation, the principle of the sovereign equality of States, which had been formulated rather belatedly, was of capital importance. It was the very foundation of international organization, as it should be of the relations among States. It had emerged only recently because the international legal order had been constructed pragmatically, in response to the needs, the possibilities and the existing conditions of international life. Some principles had emerged as a synthesis of rules already in force, which had become entrenched in the course of time, but certain fundamental principles had not been consolidated until long after others which might be derived from them, and the chronological order in which they had been recognized was not always a valid criterion of importance. To turn first to the principle of the sovereign equality of States, all vestiges of inequality should be abolished. The new States had yet to be liberated from certain servitudes such as unequal treaties, unfair concessions, de facto privileges and the existence of military bases. As a remedy for such situations, Wolfgang Friedmann, a professor at Columbia University, referred to the possibility of invoking the principle of unjust enrichment, which was generally recognized in internal law and might be regarded as a general principle of law within the meaning of article 38 of the Statute of the International Court of Justice "The uses of general principles in the development of international law", an article published in The American Journal of International Law, April 1963, pp. 297-298. But it would be simpler and more logical to seek a remedy to unequal situations imposed before independence in the fundamental principles of the sovereign equality of States by interpreting the latter in a manner more consistent with the purposes of the Charter. The study of the principle might lead to the preparation of a body of rules condemning all situations, de facto or de jure, which were incompatible with the sovereign equality of States even when they had been forced upon those States before their accession to independence.

8. The principle of non-intervention was a consequence of the principle of the sovereign equality of States and constituted, in negative form, a ratification of the independence and self-determination of peoples. Whether in internal or external affairs, there was intervention on the part of a State as soon as it encroached upon the jurisdiction of another State. As the representative of Chile had stated (804th meeting) it was actually a "usurpation of power". He (Mr. Yasseen) commended the Latin American countries upon their efforts to define and codify the principle of non-intervention. The inter-American experience would surely make it easier to define a criterion for intervention, a criterion suitable for inclusion in an instrument more general in scope than an inter-American document. When it came to examine the principle of non-intervention the Sixth Committee should also take up the question of the legal sanctions applicable to intervention. Should the privileges acquired as a result of intervention be recognized? Should treaties concluded as a result of intervention be regarded as valid? The existence of legal penalties would make it possible more effectively to enforce the principle of non-intervention.

9. The principle of the pacific settlement of disputes was stated in Article 33 of the Charter. General international law did not oblige States to adopt certain methods of settlement of disputes in preference to others, and Article 33 of the Charter confirmed that position. It would indeed be difficult, even in purely legal disputes, to ask States to undertake in advance to have recourse to a judicial settlement. Certain rules of international law were still too uncertain, and the international judicial system was not yet sufficiently representative of the main legal systems and the main forms of civilization. Progress in the codification of international law, however, would certainly have the effect of encouraging States to have recourse to judicial settlements and even to accept, in some degree, the compulsory jurisdiction of the International Court of Justice. The study of the principle of the pacific settlement of disputes should cover the various methods of settlement. It was eminently desirable to establish rules which would guarantee the effective functioning of those methods in accordance with the principles of sovereign equality and non-intervention. The Institute of International Law had already done work on those lines; it had adopted a resolution on conciliation at its 1961 session and, at its last session held at Brussels in September 1963, had decided to set up a commission on Commissions of Enquiry.

10. Paragraph 4 of Article 2 of the Charter, which forbade the threat or use of force by Members of the United Nations, was the culmination of a long process of evolution. The interpretation of that principle gave rise to many controversies. In order to interpret that principle, and indeed, generally speaking, any legal principle, it was necessary to take into account the other legal provisions which were in force on the same subject and which might have some bearing on the principle. In order to determine the exact scope of the principle of the prohibition of the threat or use

of force, it was of course necessary to turn to Article 51 of the Charter, which recognized the inherent right of self-defence. On the other hand, however, there was no need to take account of provisions which did not affect the principle to be interpreted, such as those of Chapter VI of the Charter, relating to the pacific settlement of disputes, or those of Chapter VII, concerning United Nations action with respect to threats to the peace, breaches of the peace, and acts of aggression. In particular, there were no grounds for claiming that the prohibition expressed in Article 2, paragraph 4, of the Charter should be made subject to the decisions of the Security Council. If the threat or use of force were not sufficiently serious to justify intervention by the Security Council, it none the less constituted the threat or use of force within the meaning of Article 2, paragraph 4, and other sanctions could be applied in order to ensure respect for the principle. It was, moreover, clear that the normative development of international order could not be linked to a corresponding development of institutions. He did not share the views of the United Kingdom representative (805th meeting) on that point. It would also be advisable to make clear the exact meaning of the word "force". In the opinion of the delegation of Iraq, it was not simply a question of armed force. The fact that the world "force" was not qualified in the relevant paragraph and the progressive development of the international community justified a wider interpretation which should also cover economic or political pressure when such pressure reached a certain degree of gravity. Certain questions of principle also needed to be cleared up. Could a State which unleashed an armed conflict in violation of the Charter expect to have the rules of the law of war applied to it, and if so, to what extent? Here, too, the question of legal sanctions arose. What action should be taken with respect to advantages acquired through the threat or use of force? The preparation of detailed rules enabling those various questions to be solved would be in accordance both with the letter and the spirit of the Charter and with the requirements of international security.

11. Mr. PLIMPTON (United States of America) said that the United States delegation welcomed the consideration by the Sixth Committee of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, and believed that such consideration should be thorough, careful and objective. He proposed to deal separately, in the course of the debate, with each of the four principles covered by the agenda item before the Committee. The statements of his delegation would be tentative and might raise more questions than answers. The principles in question were too large and complex to be dealt with summarily or superficially. Before examining the first principle, he wished to describe the general attitude of the United States delegation towards the agenda item as a whole.

12. General Assembly resolution 1815 (XVII), which was at the origin of the debate, made the following points clear. First, the expression "progressive development of international law" did not have, in that resolution, the technical sense which it had in article 15 of the Statute of the International Law Commission. Plainly, in describing the Charter and its principles as of paramount importance in the progressive development of international law, and in deciding to study certain of those principles, the General Assembly had spoken in a general manner and, unlike the Statute of the International Law Commission, had not called for the "preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States". Secondly, the General Assembly had not employed the term "codification" in resolution 1815 (XVII) in the same technical sense as the Statute of the International Law Commission, which spoke of "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine". The four principles before the Committee were principles to be found in the Charter. Those principles could not be set down more precisely in a fashion which would be binding on the States Members of the United Nations except by their amendment, that was to say, by amendment of the Charter. The Charter could only be amended, however, as provided in Chapter XVIII. To be sure, the General Assembly and other United Nations organs could, by action within their competence, authoritatively interpret the Charter. Such a practice was highly relevant to the study of the principles of friendly relations which the Sixth Committee had undertaken. The United States delegation looked forward to making such contribution as it could to the examination of that practice and to the interpretation of the principles in question, but it did not regard resolution 1815 (XVII) as a mandate for the reformulation of the Charter's principles. According to operative paragraph 3 of that resolution, the Committee's task was to study the principles listed in that paragraph and to decide what other principles should be given further consideration with, as paragraph 2 stated, a view to their progressive development and codification so as to secure their more effective application. If that study was conducted fully and in depth, in a professional manner and a progressive spirit, as suggested in document A/C.6/L.531 and Corr.1, it would make a positive contribution not only to international understanding, but also to the progressive development of international law. It need not entail the preparation of new codes or declarations relating to the four principles before the Committee, as those principles would have to be analysed within the framework of the Charter, in which they were already embodied. What was needed was not an attempt to rewrite the Charter nor to restate, by way of recommendation, what the Charter contained by way of obligation, but to illuminate the subjects under study with a careful exposition of Government views and a thorough examination of the practice underlying those views. That would lead to a greater understanding and a better application of the law of the Charter.

13. The Charter was a constitution which was admirably adapted to changing demands. Any attempt to codify its growing law might result more in ossification than in codification and progressive development. What was required was that the principles of friendly relations be put into practice. What was needed was not manifestos, but a greater will on the part of States to give full effect to the obligations which they had accepted in the Charter, and the Charter afforded an array of institutions and methods through which they could do that. In the study of the principles of friendly relations, it would be desirable to give particular attention to the existing procedures and agencies for the pacific settlement of disputes, thus

shedding light on the institutions which already existed and practices which States had so far followed. Additional means could also be suggested, as the representative of the Netherlands had done at the 803rd meeting of the Committee.

14. The United States delegation wished to recall, in connexion with the consideration of the principle that States should 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, that the first notable limitation on the use of force in international law was as recent as 1907, when the Hague Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts had been concluded. At that time also the Convention for the Pacific Settlement of International Disputes had been concluded. The Covenant of the League of Nations a decade later had been much more far-reaching, both in its limitations on the use of force and in the institutions which it had established in order to give effect to the principles set forth. Resort to war had been carefully limited, but it had not been altogether excluded. Moreover, resort to war and resort to force were not the same thing. War could be prohibited while the use of force in international relations was permitted, as the Corfu case had shown. The authors of the Pact of Paris of 1928 [2/] had sought to go beyond the limitations placed by the Covenant on resort to war, but they had not been clear as to the use of force not regarded as war.

15. Article 2, paragraph 4, of the Charter constituted a great advance over those important precursors. Yet, the true defect of the Covenant of the League and of the Pact of Paris had been not textual but contextual: too many States, including powerful States, had been unwilling to fulfil the obligations set forth in those instruments. From the text of Article 2, paragraph 4, of the Charter it would immediately be seen that, instead of merely placing restrictions on the right to wage war, the Charter concerned itself with the use of force and even the threat of using force. Taken together with the positive obligations of Article 2, paragraph 3, the prohibition of paragraph 4 was comprehensive and compelling.

16. There was some question, however, as to the exact meaning of the term "force". Lauterpacht had held that the expression was used in its ordinary connotation as referring to armed force as distinguished from economic or political pressure, and had cited to that effect the Preamble to the Charter, which stated that: "armed force shall not be used, save in the common interest". The General Assembly, at its fifth session, when it had adopted a series of resolutions which were landmarks in the history of international peace-keeping, apparently had arrived at a like interpretation. In its resolution 378 (V) on "Duties of States in the event of the outbreak of hostilities", it had reaffirmed "the Principles embodied in the Charter, which require that the force of arms shall not be resorted to except in the common interest, and shall not be used against the territorial integrity or political independence of any State". At the same session, however, in resolution 380 (V) on "Peace through deeds", it had condemned "the intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force". It had solemnly reaffirmed that, "whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign Power, or otherwise, is the gravest of all crimes against peace and security throughout the world". By holding that the fomenting of civil strife in the interest of a foreign Power constituted aggression, the Assembly had implied that such action might constitute a threat or use of force.

17. If the prohibition on the threat or use of force went beyond the threat or use of armed force directly and openly applied, what lesser measures of coercion might "force" be deemed to include? It had been suggested in the course of the discussion that the term might include economic pressure. In that regard, it was pertinent to note that at the United Nations Conference on International Organization, held in San Francisco, Brazil had submitted an amendment to Article 2, paragraph 4, under which the prohibition in that paragraph would have expressly referred to "economic measures". The Brazilian amendment had been rejected by a large majority. [3/] The representative of Afghanistan had spoken of the refusal of a border State to accord a landlocked State access to the sea; was that too a use of force? The matter of access to the sea was, of course, one of great importance, but it was not at all certain that it came within the scope of Article 2, paragraph 4. All the foregoing showed that the meaning of the term "force" was not altogether clear. He wished to state that the comments he had made did not commit his Government to any particular construction of the term, but rather suggested that the question should be studied carefully by the Committee.

18. A second question raised by the text of Article 2, paragraph 4, was the meaning of the phrase "in their international relations". Apparently, the prohibition of the threat or use of force applied to disputes between State and State, and a State accordingly could apply force in the event of a civil war and might put down a revolt which broke out within its territory. But the question raised by that prhase did not stop there, for there might evidently be a question about what was a State's territory. A group or community might claim international personality or statehood and consequently might assert that any threat or use of force against it would be "international" and thus subject to Article 2, paragraph 4. That problem, in turn, was linked with the prevailing system of determination, under international law, of whether "international relations" existed between communities. Recognition of a State was not a centralized process. As long as that was the case, the application of Article 2, paragraph 4, might raise difficulties, like those with which the United Nations had grappled, with some success in 1947 in the case of Indonesia.

19. A third question which the text of Article 2, paragraph 4, posed was whether the prohibition of the threat or use of force "against the territorial integrity or political independence of any State" meant that the use of force was permitted in other cases. The proceedings of the San Francisco Conference and the works of some jurists seemed to indicate that that was not the case. That phrase had been inserted at San Francisco in order to give smaller States an express

2/ 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).

3/ See United Nations Conference on International Organization, Commission I, 5 June 1945, vol. 6, pp. 334, 335, 339, 340.

guarantee of their territorial integrity and political independence. It clearly was not designed to permit a State to use force against another State on the plea that it was not using force against the territorial integrity and political independence of that other State. If State A could penetrate the territory of State B and be heard to contend that its penetration was lawful under Article 2, paragraph 4, since it had not meant permanently to interfere with State B's territorial integrity and political independence, the value of Article 2, paragraph 4, would be in doubt. Yet, the question was difficult, for it had been contended that action which was genuinely in self-defence could not, by definition, be directed against the territorial integrity and political independence of another State.

20. It was clear that the injunction in Article 2, paragraph 4, to refrain from the threat or use of force against "any State" applied to "any State" and not merely to States Members. Thus, States which were not Members of the Organization but nevertheless were governed by the provisions of Article 2, paragraph 6, of the Charter, received the protection of Article 2, paragraph 4. A further question arose then: were non-member States not only the beneficiaries of, but bound by Article 2, paragraph 4? In the view of his Government, they were, because of the principle of reciprocity. They were so bound, further, because the principles of Article 2, paragraph 4, had by now achieved status in general international law; because Article 2, paragraph 6, provided that the Organization should ensure that States which were not Members of the United Nations should act in accordance with the Principles of the Charter so far as might be necessary for the maintenance of international peace and security, and because the international interest in the maintenance of peace and security clearly required that they should be so bound. It should be added that in practice they had always been treated as bound by that paragraph. The phrase "any State" raised an additional question: could one State, by denying the statehood of another entity, be free to attack it? The history of the United Nations indicated that, in practice, the international community would not permit as attacker, by withholding recognition from its victim, to evade the prohibition of Article 2, paragraph 4.

21. The final phrase of Article 2, paragraph 4, prohibited the use of force "in any other manner inconsistent with the Purposes of the United Nations". In that regard, the Purposes stated in Article 1, paragraph 1, were particularly pertinent. The final phrase of Article 2, paragraph 4, thus emphasized the legality of force as an element of "effective collective measures" adopted in accordance with the Charter. Such effective collective measures were those which the Security Council might take under Chapter VII, particularly Article 42, those which the General Assembly might recommend under Articles 10 and 11, and those which regional agencies might take under Chapter VIII. Moreover, by the terms of Article 51, nothing in the Charter impaired the inherent right of individual or collective self-defence against armed attack. He did not propose to discuss those articles and chapters, although they were closely connected with Article 2, paragraph 4. He would simply say that his delegation had heard with much interest the careful and discerning statement of the United Kingdom representative (805th meeting), and that in its view no attempt at distortion could detract from the clarity and thoughtfulness of that statement.

22. He did not propose to analyse the Czechoslovak formulations with respect to Article 2, paragraph 4. The Czechoslovak draft resolution[4/] confirmed his delegation's scepticism about the desirability and practicality of "codification" and "progressive development" in the case of the legal principles stated in that paragraph.

23. In order to understand the rules governing the use of force among States it would be useful to examine the various classes of situations in which those rules might be brought into play. The Committee need not concern itself with such cases as the invasion of a State by armed forces or the naval or aerial bombardment of a city, which were obvious violations of the Charter and presented no difficulties of interpretation. It was a different matter when a foreign force had ensconced itself in the territory of another State with that State's consent and the consent was subsequently withdrawn. It might well be that the refusal to withdraw those troops would constitute a threat of force in violation of Article 2, paragraph 4, and a threat to the territorial integrity and independence of the State thus occupied. It would seem immaterial that the foreign military presence was not a part of a plan aimed at supplanting the constituted Government or supporting territorial claims. The experience of the United Nations tended to confirm those conclusions, inter alia in the case which Iran had brought before the Security Council in 1946 and which happily had been resolved by negotiation.

24. A second type of case to be considered was the presence in a State's territory of a foreign armed force which did not recognize the authority of that State. That would presumably constitute a threat to the State's political independence and territorial integrity. It might not always be clear, however, that what was involved was a threat of force "in ... international relations" within the meaning of Article 2, paragraph 4. It would be necessary to establish that the intruders were agents of a foreign State, or to impute responsibility for their acts to a foreign Government. The Committee would recall, for example, the case of the Chinese irregular troops who had retreated into Burma at the time when the Government of the Republic of China had withdrawn to Formosa, and of whose presence Burma had complained at the eighth session of the General Assembly in 1953. Although the Government of the Republic of China had exercised only limited control over those troops and had disavowed them, the General Assembly had found that their presence infringed the territorial integrity of Burma, implicit in that finding was the view that, until those irregular troops unequivocally repudiated any relationship with the Government of the Republic of China by refusing to be evacuated, that Government retained responsibility for their acts.

25. Article 2, paragraph 4, might also be violated when one State furnished assistance to armed groups in revolt against the Government of another State or provided "volunteers" to fight under the insurgent command, since the responsibility for an act was shared among all those who knowingly participated in its execution. The United Nations had confronted such a situation, for example, in the case of the armed guerrillas who had been armed, trained and given

[4/] Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 75, document A/C.6/L.505.

refuge by certain of Greece's northern neighbours. The Security Council, after examining the complaint filed by Greece late in 1946, had appointed a Commission of Investigation which had confirmed the Greek Government's allegations, but the Council had been unable to act for lack of unanimity among its permanent members. The matter had then been placed before the General Assembly which, in resolution 109 (II), had recorded its judgement that the acts complained of constituted a threat to the territorial integrity and political independence of Greece and had called on the neighbouring States involved to do nothing to aid the Greek guerrillas.

26. The number of armistice and cease-fire lines drawn under United Nations auspices bore witness to the energy with which men had striven to vindicate a concept of international order in situations of local violence. The 1948 hostilities in Kashmir and the Palestine war had marked the beginning of what might be called the international law of the cease-fire line, which superimposed on the basic obligations of States to refrain from the threat or use of force a legal régime springing from the exercise of the Organization's peace-keeping powers.

27. The threat of force, as well as the use of force, was proscribed, for a State which chose a policy of force could, by making a threat, infringe the provisions of the Charter even before any force had been used. In relations between individuals it was relatively easy to decide whether a threat was serious, especially if it was part of an effort to achieve a particular objective and if the person making the threat showed his intention and capacity to carry it out. Those considerations were also relevant in relations between States, although the question was then more complicated. It should be possible under certain circumstances, taking into account a State's past record of conduct and knowing whether it was committed to a programme of remaking the world in its own image or whether its statements were made purely for domestic consumption, to arrive at a considered judgement as to whether that State was guilty of making a threat of force within the meaning of the Charter.

28. The threat to a State could also take very subtle forms calling for the gradual refinement of legal standards of international practice. Thus the presence of an overwhelming foreign military force, even beyond the frontier, could, in a weaker State, strengthen the hands of representatives of the foreign State if they were seeking to effect political change by circumventing constitutional processes. It could also benefit a power-seeking minority group which would otherwise be incapable of upsetting constitutional processes. Such a presence could forestall the enforcement of the law against acts of violence committed on political opponents, or disrupt the normal functioning of a Government in order to destroy it. In such circumstances there was clearly a threat to the political independence of a State. The Security Council had had the chance to express its views on matters of that sort, for example on the complaint lodged by Czechoslovakia in 1948, [5] in which it had been alleged that an internal minority group had been able to seize power and suspend the operation of constitutional and parliamentary institutions, only through the actual and promised assistance of representatives of a foreign Government within Czechoslovakia. On that occasion the Council had been unable to act because of the exercise of a double veto, but what was important for the present discussion was that the majority of the Council had clearly been of the view that the case involved the threat of force in international relations and that the Council should immediately exercise its investigative authority.

29. The history of the threat or use of force since 1945, and especially the cases which had concerned the United Nations, thus offered the Committee invaluable instruction for the purposes of its present task. In principle Article 2, paragraph 4, covered a wide range of prohibited acts, but the diversity of the acts which had brought that provision into play had gone beyond what the framers of the Charter could have specified. The response of the United Nations, in the encouraging number of cases in which it had been able to act effectively, had inevitably been tailored to fit the particular problem, and the decisive element had often been the ingenuity with which the procedures available under the Charter had been applied in a novel situation.

30. The failures of the United Nations or of international law had rarely been due to lack of clarity in the legal obligations of the parties under Article 2, paragraph 4. They had been due rather to weakness of resolve by particular States, in particular circumstances, to support any system of law whatsoever among States. If a more detailed code had been written into the Charter it would very likely have failed to provide for the unanticipated situations which Article 2, paragraph 4, as it now stood, covered adequately. The framers of the Charter had wisely considered that, instead of promulgating rules which the rapid development of international relations would soon render irrelevant, it was better to establish a basic standard of conduct which might be enriched through experience but which would be stable enough to be applicable over many generations. What was most needed was the vigorous and astute application, to each new disruptive situation, of the peace-keeping powers which the Charter had placed in the hands of the Organization. Correspondingly, States must honour, in good faith, the standards of the Charter in their individual actions. In conclusion, the real innovation of twentieth-century international relations lay not so much in treaty obligations as in the existence of international institutions to implement those obligations. It was the practice of those institutions in implementing the basic obligations of international law that was vital both for the effectiveness of those obligations and for the study of them. The Sixth Committee could help to remove the difficulties of applying the principles of the Charter concerning friendly relations and co-operation among States by dispassionately examining not only what the Charter said but what the practice under the Charter had been. States had in the United Nations machinery through which they might not only implement their treaty obligations but also define and adjust their relationships. It was to the preservation and promotion of the Organization that their best efforts should be dedicated.

31. Mr. PECHOTA (Czechoslovakia) said that the United States representative had given a completely distorted account of events in Czechoslovakia after the Second World War. The peaceful change of Government which had taken place in Czechoslovakia by the will of the Czechoslovak people in 1948 had provided the United States with a pretext for starting hostile

[5] See Official Records of the Security Council, Third Year, Supplement for April 1948, document S/718.

activities against Czechoslovakia and for interfering in its internal affairs. He did not wish, however, to follow the example of the United States representative and embark upon an argumentation which did not serve the purpose of peaceful existence.

32. Mr. MOROZOV (Union of Soviet Socialist Republics) declared that the crux of the matter was whether an agreement on the problem under examination would be reached at the present session. At the beginning of his statement the United States representative had said that the United States was keenly interested in the problem, and had stressed its importance. Unfortunately, no serious attempt to solve the problem could be found in the rest of his statement. As for the United States representative's allegations concerning the events which had taken place in Czechoslovakia, he would only say that the facts referred to by the United States representative were capable of an entirely different interpretation. It was desirable to keep the discussion clear of any arguments likely to create an atmosphere unfavourable to the solution of the problem under examination; otherwise the Committee would be constrained to give up the idea of friendly relations altogether and would even be unable to draft a declaration.

33. Furthermore, the Czechoslovak draft resolution was a practical document which would make it possible to codify international relations; yet the United States representative had refused to discuss its specific provisions, which had been endorsed by other representatives. The USSR delegation would like to know why the Czechoslovak proposals did not suit the United States representative.

34. The United States representative had based his statement on false premises and had concluded it by drawing an unwarranted distinction between the international obligations which States should assume and the manner in which they should discharge those obligations. It would be a methodological error to overlook the connexion between those two factors. Respect for those obligations was the key problem. Consequently a more precise formulation was needed, such as that proposed in the Czechoslovak draft resolution. It would be a mistake to discard the documents before the Committee without discussing them in substance. The proposed provisions might not be perfect in wording but every effort should nevertheless be made to improve them. He hoped therefore that the United States delegation would agree to examine them, and that the obstacles created by the United States attitude could be overcome.

35. Mr. PLIMPTON (United States of America), replying to the Czechoslovak representative's remarks, referred representatives on the Committee to the records of the Security Council's debates, in which the facts were clearly set forth.

36. As to the comments made by the USSR representative, who had invited him to comment on the draft declaration submitted by the Czechoslovak delegation at the seventeenth session, he regarded that text as a collection of more than one kind of questionable provision: first, pious generalities and empty words; second, principles which were already more clearly and felicitously stated in the Charter, and third, politically partisan assertions with which many Members could not agree. The principles embodied in the Czechoslovak draft declaration were at best couched in such general terms that they represented no advance on the Charter and solved no problems. There was no point in repeating the principles of the Charter in a slightly different form. The Committee would be wasting its time in discussing such "principles" when some of them, such as the principles of prohibition of the threat or use of force, prohibition of weapons of mass destruction; general and complete disarmament and prohibition of war propaganda, were already being studied in detail by the Conference of the Eighteen-Nation Committee on Disarmament or had already appeared in General Assembly resolutions. Furthermore, certain of the so-called principles neither reflected existing international law nor were acceptable as a statement of proposed new law. Among such so-called principles was the proposal to outlaw the first use of nuclear weapons; it was possible that such weapons would be the only effective means of self-defence against aggression in the form of a massive attack by conventional forces. What the Committee should be doing was not merely repeating or distorting the Charter but seeking means of implementing it more effectively.

37. It was undesirable to spend time trying to define the word "force"; it would be more useful to examine what could be done when someone threatened to use it or did unlawfully employ force. The problem was that, despite the provisions of the Charter, some countries continued to use force contrary to the Charter. Means must therefore be found to prevent the threat or use of force by any State.

38. Mr. MOROZOV (Union of Soviet Socialist Republics) noted with satisfaction that the United States representative was at last taking up the Czechoslovak draft Declaration in specific terms. That representative had acknowledged that no one disputed most of the principles embodied in the draft Declaration, but found fault with them for repeating provisions of the Charter or of resolutions. The process of codification, however, consisted precisely in starting from existing documents and systematizing the elements of international law they contained. Codification entailed the collation of data from different sources. It was understandable that the proposed provisions should give rise to discussion but, since the United States representative had recognized that they were not inherently bad, the Committee now had a basis on which to study them.

39. U HLA MAUNG (Burma) reserved the right to reply to certain remarks by the United States representative concerning the presence of Chinese forces in Burmese territory.

The meeting rose at 1.15 p.m.

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