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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. MONOD (France) said that the topic under discussion was of paramount importance, because it concerned four of the fundamental principles of the Charter, because of its political and legal scope, and because of its possible consequences, immediate and in the future, on the Organization, the solidarity of its Members and their comprehension of their rights and duties. The discussion would be greatly clarified if the somewhat over-simplified and, in his delegation's view, entirely false notion of two opposing parties—the static and the dynamic, the progressive and the conservative, the bold and the timid, the rich and the poor, the weak and the strong—was discarded. The discussion, precisely because it was concerned with friendship and co-operation among States, should permit a broad and sincere confrontation devoid of all sectarianism. The aim of all was to further the cause of law, as a permanent and universal factor. His delegation did not contend that the ideological positions arising from the events of the last eighteen years should be forgotten or ignored. On the contrary, those who attempted to deduce new rules of international law from those events could not evade the necessity of evaluating their political substance. It did assert, however, that such a task would be destined to failure and sterility if it was not performed with scrupulous objectivity.

2. The Committee's terms of reference had their origin in Article 13 of the Charter, which required the General Assembly to initiate studies and make recommendations for the purpose of promoting international co-operation in the political field and encouraging the progressive development of international law and its codification. but General Assembly resolution 1815 (XVII) did not impose any obligation on the Committee other than to undertake a study of the four principles mentioned in operative paragraph 3. The Committee was therefore free to decide what

effect should be given to that study and it was not committed to a specified line of action either as regards the progressive development of international law or its codification. He did not interpret the resolution as implying a mandate to restate the principles of the Charter.

3. His delegation considered further that according to its terms of reference the Committee should be concerned with progressive development rather than codification. General Assembly resolution 1815 (XVII) mentioned both, but that might be explained by the fact that the study requested of the Committee came under Article 13 of the Charter. Operative paragraph 1 of the resolution referred only to progressive development, and it was clear from the comments of Governments and from the discussion in the Committee that the principles before the Committee were not yet ripe for codification, as that term was defined in article 15 of the Statute of the International Law Commission. Thus, the only form which the results of the Committee's study could take was a recommendation tending to broaden existing international law by means of treaties or conventions. His delegation could not in any case support a procedure which would incorporate in a draft resolution, and still less in a declaration, any provisions proclaiming new rules of international law or elaborating and stating the existing rules. The General Assembly had no authority under the Charter to elaborate rules of international law indirectly through a resolution; it was not an international legislator. On that point his delegation shared the view of the Italian delegation (802nd meeting). It could not agree with the Hungarian representative (806th meeting) that there were already legal precedents of some kind which would permit the General Assembly by means of a declaration, which meant by means of a resolution, to legislate as it were in the first degree. A resolution of the General Assembly would become potential international law, which would subsequently be transformed by a convention into a universal and compulsory rule. The danger of that procedure was that it blurred the distinction between a General Assembly resolution and a rule of international law.

4. The four principles for consideration by the Sixth Committee were taken from the seven fundamental principles enunciated by Article 2 of the Charter. Thus, if the recommendations adopted by the Committee at the conclusion of its study of those principles added new elements and were not restricted to an interpretation compatible with the provisions of the Charter, the procedure of Article 13 could not be followed, for that Article contemplated only recommendations for the development or codification of international law and not the revision of the Charter. If the study effected by the Committee disclosed gaps in the Charter, those gaps would have to be filled by the amendment procedure set out in Article 108. Of course, it might be contended that the four principles listed in General Assembly resolution 1815 (XVII) should

be treated as general and independent principles of international law. Admittedly the principles had been listed in an order different from that of Article 2 of the Charter, and the wording of some had been slightly altered. Nevertheless, the Committee was acting in the domain of the Charter, and it did not have a free hand. If, for example, the Committee's work led eventually to a draft treaty on friendly relations among States, that document would be, in a sense, a revised and corrected version of the Charter. The principles of prohibition of the threat or use of force had been presented in the Czechoslovak draft resolution^{1/} in the very words of Article 2, paragraph 4, of the Charter; if the "formulations" of that principle were embodied in a convention, there could be no doubt that they would, in fact, be embodied in the Charter itself. Thus, the object of the Committee's work imposed limits beyond which it could not go.

5. In the preamble to resolution 1815 (XVII), the General Assembly had stressed the great political, economic, social and scientific changes that had occurred in the world since the adoption of the Charter and the vital importance of the Purposes and Principles of the United Nations "and of their application to present-day conditions". The relation of cause and effect between the preamble and the operative part of the resolution had not been questioned. Indeed, the point had scarcely been raised in the discussion; apparently, the necessity of adjusting positive international law and the Charter itself to the changes which had occurred in the world during the last eighteen years had been accepted by many delegations without further consideration. That, however, was the very core of the problems. So long as contemporary events had not been analysed and understood, so long as the attitude of States and of the United Nations under the pressure of those events had not been studied and understood, so long as there had been no determination as to whether those events had entered a quiescent period or were still evolving, the Committee would not have a sound and real foundation on which to undertake its development or rather readjustment of international law. Jurists, politicians, and many ordinary citizens could readily understand the connexion between scientific progress and the development of law, as exemplified by the emergence of air law, the law of outer space, the law of communications and the law of atomic energy. On the other hand, an evaluation of the political, economic and social changes in the present day world in relation to changing international law was an infinitely more difficult and complicated task.

6. His delegation believed that the events which had changed the face of the world in the last two decades had influenced the evolution of the law, and it was entirely convinced of the necessity of that evolution. But the relationship between the events and the law and, more precisely, the moment when the law ceased to be in harmony with events, still had to be established. Thus, the emergence of many new States was certainly an event of great importance but it was necessary to determine whether the numerical increase in the number of States had modified or shattered the classic rules of international law concerning relations among States, and whether the substance of the principle of sovereign equality of States had been changed by that fact. A vast amount of careful examination would have to be done before those questions could be answered. The same questions could

^{1/} Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 75, document A/C.6/L.505.

be raised concerning the threat or use of force, non-intervention, and pacific settlement of disputes.

7. The "formulation" by the Czechoslovak representative of the corollaries of the four principles was actually an attempt to answer the question concerning the relation between events and law. But the proposed "formulation" had not clarified or still less developed the principles of the Charter; on the contrary, it had introduced grave elements of doubt and controversy. Thus, the introduction of general and complete disarmament as a corollary of the prohibition of threat or use of force was a flagrant confusion of a legal principle and a political aim. General, universal and controlled disarmament was an aspiration of all peoples and Governments and a fundamental objective of French foreign policy, but as the conditions in which disarmament could be realized had not yet been determined, there was no rule of law on that subject. In his delegation's view, the Czechoslovak proposal would retard the progressive development of international law, for the law was weakened when it was supplemented by notions foreign to the law.

8. The principle of non-intervention in matters coming within the domestic jurisdiction of a State merited an exhaustive study by itself. One of the most remarkable phenomena of the present age was the awakening of national consciousness arising at least in part from the accession to independence of new States, at the very time when the international domain was constantly expanding. A conciliation of those two trends, which although they appeared contradictory were parallel and complementary, was now being sought. The risk involved in attempting codification in the midst of that evolution was evident.

9. Many of the "formulations" proposed by the Czechoslovak representative with respect to the principles of non-intervention and sovereign equality were debatable, and others were restatements of already accepted principles. The French delegation like the Swedish delegation (806th meeting) was sceptical as to the usefulness of the restatement method. The method might even be dangerous, since being fragmentary and incomplete, it tended to restrict the scope of the great principles of the Charter and to distort their meaning. The "formulation" proposed by the Czechoslovak representative for the principle of peaceful settlement of disputes was a particularly striking illustration of that danger. To say that disputes between States must be settled "in particular" by direct negotiations was not only an assertion so obvious that it did not need to be reaffirmed since all disputes were at the outset the subject of bilateral discussion, but also a restrictive conception of the settlement of disputes and a limitation on the scope of Article 33 of the Charter. That statement constituted a progressive regression—rather than a progressive development—of international law.

10. The advocates of accelerated codification had also mentioned the Declaration contained in the final communiqué of the Bandung Conference of African and Asian States, the Declaration of the Heads of State or Government of the Non-aligned Countries, issued on the occasion of the Belgrade Conference, and the Charter of the Organization of African Unity. Those texts were certainly highly important, but they were very recent, and it was doubtful whether their political consequences could be weighed and evaluated in 1963 with sufficient certainty to support the assertion that those texts had already created rules of international law. In

those instruments it was necessary to distinguish matter which was declarative of existing international law and particularly of the Charter but in addition a thorough study must be made of the provisions that concerned more especially the relations of the new Asian and African States among themselves and with other States. Such a study could not be carried out in the midst of events the evolution of which could not be foreseen. He agreed with the Belgian representative (807th meeting) that such a study would at all events be necessary.

11. The great regional agreements and the agreements concluded under the auspices of the specialized agencies could themselves be the subject of several studies. They had great importance for the development of international law, but again a distinction should be made between what certain writers called general international law and universal international law. The Chilean (804th meeting) and Mexican (806th meeting) representatives, who had given interesting accounts of the elaboration of the regional agreements of the American States, had stressed the connexion of those agreements with the general system of the United Nations Charter, but they had not said that the application of the Charter of the Organization of American States required a new examination of the principles of the United Nations Charter.

12. The establishment of the European Economic Community was also important, but six years after its creation there had been no attempt to define the permanent effect which it might have on international law. His delegation thought that the Netherlands proposal (803rd meeting) concerning fact-finding warranted careful study.

13. Referring more particularly to certain aspects of the principle of the peaceful settlement of disputes, he thought that it was paradoxical that the States which were so eager to proclaim their attachment to the rule of law were reticent about submitting their disputes to an international court. Admittedly, with some exceptions, a whole category of disputes—differences which were exclusively or essentially political and disputes which affected the vital interests of States—would escape judicial settlement and even arbitration, until the relations among nations had been profoundly transformed. There was, however, a whole category of disputes involving very diverse economic interests and, generally, those listed in article 36 of the Statute of the International Court of Justice, which could be subjected to judicial settlement; by adopting a more liberal policy in that regard, Governments would make a great contribution to the construction of international law by means of judicial decisions, the most valuable material of all.

14. It was regrettable, therefore, that only thirty-seven of the 111 States Members of the United Nations had accepted the Optional Clause recognizing the compulsory jurisdiction of the International Court of Justice. There were also the question of reservations to the acceptance of the Court's jurisdiction. While it was still not possible to envisage an abandonment of such reservations, a reconsideration by Governments of their reservations and the adoption of more liberal reservations would be an important contribution to the building of international law. In that connexion, the French Government in 1959 had withdrawn its reservation of national jurisdiction as understood by the Government itself in favour of the more liberal clause of domestic jurisdiction as determined by international

law. The whole question had been considered by the Institute of International Law, and the report of Mr. Jenks at the Amsterdam session in 1957 and the resolution adopted at the Neuchâtel session in 1959 should some day be considered by Governments. States, of course, did not like to be judged or condemned; that, as Professor C. de Visscher had said, was a phenomenon of political psychology. Consequently, in the present state of the world States could not be asked to submit their political disputes to a judge. None the less, there were frequently international disputes involving difficult points of law which were often a cause of tension among States; and bilateral negotiations could very well fail because each party was convinced of the legal soundness of its position. Those were the disputes in which international judicial settlement was specially appropriate, and in that area a liberalization of the attitude of States was desirable and possible.

15. At the 805th meeting, the Ceylonese representative had ascribed the reluctance of countries to take their disputes before the Court to the fact that the judges of the Court came mainly from one of the two great ideological blocs in the world. The French delegation thought that the representative of Ceylon was mistaken since two judges from Socialist countries which had not, moreover, accepted the compulsory jurisdiction clause were members of the Court. Their impartiality had never been questioned. It would be difficult to cite a single case in which a decision of the Court had been influenced by considerations outside the law. A judge belonging to one of the new African States had just been appointed to the Court. As to the Indonesian representative's remarks (809th meeting) about the expression "the general principles of law recognized by civilized nations" in Article 38, paragraph 1c, of the Statute of the International Court of Justice, he suggested that the paragraph should be construed as referring at the minimum to the rules common to all nations which were Members of the United Nations.

16. His delegation had not undertaken a detailed study of each of the four principles (although it agreed that that was the best manner of making clear the legal substance of the principles), because it considered that the juridical analysis of such important principles was entirely inadequate. The Committee had been requested by the General Assembly in resolution 1815 (XVII) not to study the general principles of the Charter which were already perfectly well known, but to consider those principles in the light of the political changes in the contemporary world in order to decide if it was necessary or possible to find new principles capable of being developed or codified. That study would require considerable work, which very few delegations had as yet had the time to undertake. His delegation also felt that the problem before the Committee concerned not the development of the law in force but the application of that law. The Committee should determine first how the principles of the Charter were applied in relations among States. Only then would it be possible to determine whether the conduct of States in their relations with one another was influenced by the inadequacy or obscurity of the existing rules and to decide whether such rules should be supplemented or corrected.

17. To sum up, his delegation did not favour the method of stating subsidiary principles or corollaries of the principles of the Charter. That procedure would weaken the Charter, especially when the statements

referred to transitory or changing situations and, above all, to political or ideological notions foreign to international law. His delegation was also opposed to the method of annotating a general text by special commentaries which might restrict or even distort its meaning. The Charter should remain intact. His delegation also did not favour a restatement of principles which were already accepted by international law.

18. Subject to that reservation, his delegation was not opposed to the progressive development or codification of the principles of international law—even those stated in the Charter—provided that such development or codification was based on the validly and unanimously expressed consent of the States Members of the United Nations. It thought, however, that that result could not be achieved without thorough studies re-

lating both to the way in which Governments had interpreted and applied the Charter and to the meaning and evolution of the political events which had occurred since the adoption of the Charter. The Sixth Committee's role at the present session might be to prepare for that study and to determine its objects and limits. The Secretariat might then, on the bases suggested by the Committee, undertake further consultations with Governments. That would require much time and effort, but without that effort nothing worth while could be accomplished. In conclusion, his delegation was convinced that if the spirit and intentions of the Charter were always respected by all States, it would be unnecessary to add anything to that text.

The meeting rose at 4.5 p.m.