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

1. Mr. TUKUNJOBA (Tanganyika) declared that Tanganyika believed in the intrinsic worth of Article 2, paragraph 4, of the Charter, which condemned the use of force in international relations. If nations resorted to the threat or use of force, the weak and poor countries would be conquered by the strong and rich countries, the dignity of their peoples would be impaired and their hope of advancement would be frustrated. Therefore disputes between States should be settled by peaceful means as provided in Article 33 of the Charter. The proven non-juridical method of direct negotiation worked successfully in practice, for it gave each of the parties to a dispute the opportunity to appreciate the weight which the other party attached to a given point of difference and, provided that the negotiations took place in a spirit of give and take, it was usually easy to reach a compromise. His delegation also found great wisdom in the regional arbitration procedure provided for by Article 52 of the Charter, for it meant that the arbitrators had first-hand knowledge of the causes of the dispute without being involved themselves so that their competence and impartiality were assured. He shared the view of the Swedish representative (806th meeting) that States should make wider use of the International Court of Justice when their differences could not be settled by non-juridical methods.

2. The principle of non-intervention in the domestic affairs of States and the principle of the sovereign equality of States took on growing significance as the interdependence of States increased. The rules and norms of international law must develop accordingly, so as to ensure the smooth progress of international co-operation. Because they had discovered that two world wars had been caused by greed and self-aggrandizement, the drafters of the Charter had proclaimed tolerance and condemned war. In order to refrain from the threat or use of force, which in the nuclear age would wipe out mankind and its cultural and scientific heritage, States must be tolerant of the social, economic and political systems of others. Each State must solve its own problems in the light of the circumstances obtaining in its own territory; there could not be a single solution applicable to all countries because politics, economics and law did not obey the rules of arithmetic. There was no point in trying to impose an economic system or an ideology by force of arms or by reprisals of any kind, for only intrinsic worth could make them acceptable. His delegation therefore appealed to the big Powers to practise tolerance and thereby to promote friendly relations among the States of the world. It supported the Czechoslovak draft Declaration of principles of international law concerning friendly co-operation among States.1/ Some delegations had criticized the draft declaration as being worded in unduly general terms, but that was not a serious fault, for it was always possible to proceed from the general to the particular.

3. It was necessary that certain acts should be clearly defined and labelled as contrary to peace and security. He did not believe that the rules of international law should be stated vaguely. In that connexion it was relevant to consider the question of nationalization of foreign property. The doctrine of act of State, which prevented the courts of a State from challenging the validity of sovereign acts of other States, should never be weakened or abandoned; it was especially pertinent at a time when the nationalization of such property was going to occur with increasing frequency. However, while nationalization was justified, it must be accompanied by adequate compensation. It was in the interest of all countries to adopt a modus vivendi which satisfied the needs of the developing countries while allaying the fears of investors from the developed countries. His Government had recently enacted legislation to that end, providing for impartial third-party arbitration. It considered that such measures reconciled the principle of non-intervention in the domestic affairs of States with the principles of peaceful co-existence and co-operation.

4. As to the principle of the sovereign equality of States, some States had used Article 2, paragraph 7, of the Charter as a pretext to keep the United Nations from investigating allegations that they oppressed their peoples. That argument ran counter to the provisions of Article 1, paragraph 2, which provided for "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". In order to prevent any further use of Article 2, paragraph 7, as a pretext, that provision should be revised so as to permit the United Nations to intervene on humanitarian grounds when allegations of oppression and denial of the right of self-determination were received by the Secretary-

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

General. Perhaps the practice of sending fact-finding missions would furnish a solution. Some representatives had contended that the device of sending volunteers to participate in military or para-military operations in the territory of another State constituted the use of force and infringed the sovereign equality of States. That argument was valid only if the State in question did not deny its nationals the right of self-determination; it was untenable if the volunteers assisted a people to fight for the recognition of their rights.

5. He urged delegations to show the good will and spirit of co-operation which had animated the African nations at the Summit Conference of Independent African States at Addis Ababa in 1963.

6. Mr. LACHS (Poland) said that, although the debate had been very interesting and instructive, it was not the task of the Sixth Committee to engage in a theoretical exercise. The Committee was under specific instructions from the General Assembly through various resolutions, particularly resolution 1815 (XVII), to study the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations and for a clearly defined purpose: namely, the progressive development and codification of those principles so as to secure their more effective application. The Sixth Committee was part and parcel of the General Assembly, a political organ of a political Organization which existed to implement the principles of the Charter, using for that purpose many instruments including that of jurists—the law. Incidentally the jurists should seek to persuade the representatives on other Committees to give the law a more prominent place in their deliberations.

7. In order to achieve the objective laid down in resolution 1815 (XVII), the Committee should first make clear where it stood. It had a unique function to perform in establishing a close and permanent connexion between theory and practice and in seeing to it that legal rules and principles did not fall behind the times. Law must be deeply rooted in life; otherwise it became divorced from reality and lost its effectiveness. The time had come to bring it up to date. That was a most important consideration in determining how to deal with the problem under discussion. Some delegations had retraced the history of the principles in question and had attempted to define their real meaning; others had examined them separately, although they were obviously interconnected; still others doubted the possibility of reaching generally agreed conclusions in a short time. That was scarcely surprising, for the difficulties predicted were the logical consequence of the approach which some had suggested. If the problem was approached from a different angle, those difficulties would disappear. If the Committee acted on some of the suggestions advanced during its meetings—those of the Swedish representative for example—its proceedings would merely duplicate those of the International Law Commission.

8. In his delegation's view, that was not what the Committee was called upon to do. It would be ill-advised to follow that path. It should elaborate the principles in question with an entirely different objective in mind. The first thing to do was to determine what that objective was. Resolution 1815 (XVII) was perfectly clear: the Sixth Committee was to make recommendations (last preambular paragraph) relating to the principles of international law concerning friendly relations and co-operation among States and the duties deriving therefrom, so as to ensure the progressive development of international law and to promote the rule of law among nations (operative paragraph 1). The next question to consider was how that should be done. Among the many resolutions adopted during the eighteen years of the Organization's existence, some—such as the 1948 Universal Declaration of Human Rights (resolution 217 (II)) and the 1960 Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV))—embodied general statements of position. Those two resolutions were landmarks in the history of the Organization. Neither constituted a detailed commentary on the Charter; neither was meant to cover all the issues involved; but each laid down a series of essential elements of rights and duties closely linked with the subject with which it dealt, and both took into account the changes which had taken place since the Charter was drafted. They did not twist the Charter, nor did they amount to amendments; but they interpreted the relevant provisions of the Charter so as to keep them abreast of developments in the world they were meant to serve. The Charter made no provision for that process of interpretation; that was the task of the General Assembly.

9. The Declaration on the granting of independence to colonial countries and peoples offered an interesting illustration which could be of assistance to the Committee in its present work. It summed up a series of other resolutions and specified three elements of the right to self-determination: the subjective element, the objective element and the time element. It eliminated all the ambiguities left by Chapters XI, XII and XIII of the Charter. It interpreted the principle of self-determination of peoples in keeping with the changes which had taken place since 1945; it enriched the Charter, not by revising or amending it, but simply by interpreting it.

10. His delegation considered that the Committee should apply a similar procedure to the item now before it. He agreed with the United States representative (808th meeting) that in resolution 1815 (XVII) the General Assembly had used the expression "progressive development of international law" in a general sense and had not employed the term "codification" in the same technical sense as the Statute of the International Law Commission. The United States representative had also been right in submitting that the General Assembly and other United Nations organs could authoritatively interpret the Charter by action within their competence: a view which had always been upheld by the Polish delegation. He regretted, however, that the United States representative had departed from that premise by stating that what was needed was not manifestos but a greater will on the part of States to give full effect to the obligations they had accepted in the Charter. That was certainly nothing to quarrel with, but it was beside the point. What mattered was to make it easier for States to apply the principles of international law. The Committee could do that by interpreting those principles in the light of the changes which had taken place in the world, and to which the representative of Afghanistan had rightly referred (804th meeting). No one, of course, would wish to recast the principles of the Charter or presume to do better than its authors. The aim of the present debate should be, not to stress differences, but to seek common ground and to make the principles in question more specific. Very

useful suggestions had been made to that end by the representative of Chile (804th meeting), in connexion with the principle of non-intervention, and by the representatives of Mexico (806th meeting) and Ceylon (805th meeting).

11. What was needed was to extend and deepen the meaning of the principles in question. To take an example: when the principle of sovereign equality, inherited from the past, had been embodied in the Charter, hardly any attention had been paid to the economic aspects of the problem, which had since become of decisive importance. Nowadays there could be no political independence without economic independence. It was true that the United Nations had taken an important step towards the recognition of such economic factors by adopting resolution 1803 (XVII), in which the General Assembly had confirmed the right of peoples to permanent sovereignty over their natural wealth and resources and had declared that the exercise of that right must be furthered by the mutual respect of States. The problem of disarmament could be cited in the same connexion. Some representatives had argued that disarmament was not a principle of law. It was difficult to see how the problem could possibly be evaded, however, in any study of Article 2, paragraph 4, of the Charter. Indeed, the signatories of the Charter had undertaken in Article 26 to formulate plans for the regulation of armaments, and the Member States had adopted several resolutions to that end. Moreover the quantity and quality of modern armaments had created an entirely new situation which the law could not ignore.

12. Therefore the Committee should not hestitate to draw up, on the basis of the fundamental principles of the Charter, a declaration of the principles which should govern friendly relations and co-operation among States. It should have no fear that in so doing it might be acting too hastily or producing a document of little value. What would really be unfortunate would be that the Committee should prove incapable of carrying out that task, and that it should have to be taken over by non-jurists, as had happened with other issues in the past. That would deal the Committee's prestige a serious blow, whereas by finding the proper solution to the problem now before it the Committee would regain its rightful place among the organs of the United Nations.

13. All too often the law had not kept in step with life and its rules and had been swept aside by history. Now, as never before, international law had a vital part to play in relations among nations in spite of the many attacks to which it was exposed. Some jurists denied the existence of universal international law or spoke of the need to establish what they called inter-bloc law. He believed in an all-embracing system of international law with a firm basis not only in the facts of history but also in man's growing consciousness. The Committee, then, should build on those strong foundations, and, in so doing, not only confirm the principles of the Charter but also pave the way for new principles which would put the value of law in international relations beyond question.

14. Hence the Committee's task was clear and called for unanimous agreement. The Committee should draw up a document embodying all the essential principles of international law which were capable of promoting friendly relations and co-operation among States. Those principles should be flexible enough to remove differences and to ensure the peaceful coexistence of States. If international law was developed in that spirit, the time would come when a violation of the rights of other States would not bring the law-breaker the advantages he expected but would, on the contrary, imperil his own vital interests.

15. As to the procedure to be adopted, he favoured the establishment of a working group to prepare a draft for submission to the Committee. It would be desirable to have that document ready by 1965, in time for the Organization's twentieth birthday; the Committee could leave itself free to go more deeply into those principles at a later date and to draw them up in more detail in the form of a treaty or code.

16. Mr. EL-ERIAN (United Arab Republic) said that the task before the Committee was one of the most important and challenging it had ever been called upon to perform. Happily, it was taking up that task in auspicious circumstances. Since the adoption of resolution 1815 (XVII) a number of international developments, particularly the conclusion at Moscow of the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, and the adoption of resolution 1884 (XVIII) concerning general and complete disarmament, had led to a relaxation in international relations. On the regional plane, the Addis Ababa Conference had culminated in the adoption of the Charter of the Organization of African Unity and of a number of resolutions designed to consolidate African unity, to foster co-operation among African States, and to promote the attainment of independence by all the peoples of Africa.

17. In the field of international law, an increasing interest was being taken in the legal principles of peaceful coexistence. In addition to the work of the International Law Association, it was worthy of note that the Eighteenth Plenary Assembly of the World Federation of United Nations Associations had adopted a resolution (see A/C.6/L.535) largely inspired by General Assembly resolution 1815 (XVII).

18. As to the circumstances in which the present item had been placed on the Sixth Committee's agenda, it would be recalled that, at the General Assembly's fifteenth session, some representatives had expressed anxiety at an apparent decline in the importance of the Sixth Committee, and of law, in the activities of the United Nations, and that it had seemed necessary to make law a more effective instrument in promoting international peace and co-operation. The discussions which had taken place in both the Sixth Committee and the International Law Commission in 1960 and 1961 had made it clear that the Committee could play a constructive role without duplicating the work of the Commission. It had also become clear that the Sixth Committee was the most appropriate body to formulate the general principles of international law which were explicitly or implicitly embodied in the Charter of the United Nations.

19. It was therefore in the light of those origins that resolution 1815 (XVII) should be interpreted. It related not merely to a technical study of the principles, but also to a study with a certain objective, namely their progressive development, codification and more effective application, taken not separately but as a complete whole.

20. For the definition of the scope of the study certain basic factors should be borne in mind, above all the establishment by the Charter of a new international legal order. In the preface to his book, The Common

Law of Mankind. 2/ Professor C. Wilfred Jenks observed that the international changes which had taken place since the Second World War had subjected the inherited law to a severe crisis of growth, but had established the elements of a more comprehensive universal legal order than could have been imagined before. Under the pre-Charter system, force had been recognized as a prerogative of sovereignty; the Charter had set up a new international order in which the use of force in international relations was prohibited and which was based on the idea of collective security, responsibility and interests. The fundamental elements of the new international legal order established by the Charter, included first, the maintenance of peace based on freedom, justice and stability; secondly, the universal character of the family of nations; thirdly, equal rights for all peoples; and lastly, international co-operation.

21. A second factor to be considered was that the Charter, as a law-making treaty stating the principles which governed friendly relations and co-operation among States, had introduced new concepts into traditional international law. It had replaced fragmentary and mainly prohibitive rules by an integrated system of more positive standards which might be called the law of the United Nations.

22. The third basic factor was the need for the elaboration and enunciation of the principles in the light of the development of the United Nations and other international organizations and of events of the last eighteen years. The General Assembly had provided a number of interpretations of the fundamental provisions of the Charter, such as the Universal Declaration of Human Rights, resolution 1803 (XVII) on permanent sovereignty over natural resources and resolution 1514 (XV) on the granting of independence to colonial countries and peoples. The formulation of the principles of international law governing friendly relations among States had certainly been influenced by the Declaration contained in the final communiqué of the Bandung Conference of African and Asian States, which set forth ten principles relating, more particularly, to the problem of disarmament, the prohibition of nuclear weapons, the use of atomic energy for peaceful purposes, the need to raise peoples' living levels, and the right to self-determination. Similarly, in the Declaration of the Heads of State or Government of the Non-aligned countries, issued on the occasion of the Belgrade Conference in 1961, the non-aligned countries, noting that there were crises during the transition from an old order based on domination to a new order based on co-operation between nations, and that social changes often resulted in a conflict between the old established order and the new emerging nationalist forces, had considered that a lasting peace could be achieved only in a world where the domination of colonialism and imperialism had been radically eliminated and that for that purpose a policy of peaceful coexistence should be practised. Similarly, the signatories of the Cairo Declaration of 1962 had recognized that, in order to ensure lasting peace in the world, the developing countries should have the maximum opportunities and facilities to take the fullest advantage of their resources, and had invited participating countries to co-operate closely in the United Nations and other international bodies with a view to ensuring economic progress and strengthening peace among all nations. In his statement at the Cairo conference, the President of the United Arab Republic had said that the co-operation of all States was essential for the advancement of mankind and for world peace. In the Charter of the Organization of African Unity, adopted at Addis Ababa in May 1963, Member States solemnly affirmed certain principles, including the sovereign equality of all Member States, non-interference in the internal affairs of States, respect for the sovereignty and territorial integrity of each State and its inalienable right to independent existence, and the peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration (article III).

23. Before reviewing the four principles to be considered at the current session he stressed that, like the principles of the United Nations Charter in general, they were interdependent. The Charter was not a peace treaty or a holy alliance between a few States in order to impose a certain territorial settlement or to suppress change. It established a new international order valid for all peoples and capable of establishing a peace based on freedom and security throughout the world. The advent of an era of peace had been one of the oldest dreams of mankind. Several writers and philosophers, including the Abbé de St. Pierre, William Penn and Kant, had drawn up proposals for a perpetual peace. The Covenant of the League of Nations, the Briand-Kellogg Pact of 1928 3/ and the Convention on Rights and Duties of States of 1933 4/ marked stages along the road towards prohibition of the use of force. The Stimson doctrine advocated the principle of the non-recognition of territorial changes obtained by force. The same idea had been incorporated in the draft Declaration on the rights and duties of States drawn up at the first session of the International Law Commission.

24. At the current stage of the debate he would merely make some brief remarks on the principles under discussion. Later they would require more searching study.

25. The first principle, according to which States were to refrain from the threat or use of force, should be interpreted in the spirit of the United Nations Charter and not in accordance with traditional international law. The Sixth Committee should not retreat from the achievement recorded at San Francisco in 1945, and he accordingly reserved the position of his Government on the views expressed by the United Kingdom representative at the 805th meeting regarding certain lawful uses of force.

26. Although the principle of non-interference had been part of international law since the nineteenth century, some States had not hesitated to intervene in the affairs of other States on the pretext of protecting the rights of aliens or for other reasons. A distinction should be made between the principle of non-interference by one State in the domestic affairs of another State, and the principle set forth in Article 2, paragraph 7, of the Charter prohibiting the United Nations from intervening in matters essentially within the domestic jurisdiction of a State. The former principle had much wider scope.

27. The principle of the peaceful settlement of disputes followed from the prohibition of the use of

2/ London, Stevens and Sons Ltd., 1958.

3/ 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, 1929, No. 2137).

4/ League of Nations, Treaty Series, vol. CLXV, 1936, No. 3802.

force. The Charter established a carefully balanced system for the peaceful settlement of disputes. The substantive development of international law generated confidence which in turn promoted the strengthening of the institutions of pacific settlement of disputes. That correlation was recognized in paragraph 7 of the joint statement of agreed principles for disarmament negotiations.5/ Closely related to the subject of the pacific settlement of disputes was the problem of the equitable adjustment of situations which in the words of Article 14 of the Charter might "impair the general welfare or friendly relations among nations".

28. The principle of the sovereign equality of States set forth in Article 2, paragraph 1, of the Charter was also based on other principles, such as that of the self-determination of peoples. In its report to the United Nations Conference on International Organization, Committee 1 of Commission 1 had given a definition of sovereign equality which should be taken into account.

29. In his delegation's view, the Sixth Committee should begin to study the principles in detail without prejudging the form which the results of its work should take. The possibility of a declaration should certainly not be ruled out. The General Assembly had adopted many declarations on important questions. It was, however, desirable not to take yet any decision on the nature of the instrument in which the principles would be set forth. For the time being the Sixth Committee should set up a working group to prepare a joint statement of objectives and methods of work and to identify the elements of all the principles to be considered in detail. Like the representatives of Czechoslovakia, Poland and the Soviet Union, he much hoped that the Committee would be able to submit a useful document in 1965—International Co-operation Year.

30. Mr. BLIX (Sweden), referring to a remark by the Polish representative at the beginning of the meeting, said that he did not by any means deny the value of declarations as legal instruments, particularly for States which were not parties to binding instruments or to which the Charter did not apply. Also, the principles of the Charter should not be looked over casually but studied thoroughly with the intention of settling particular problems. He was happy to note that other representatives too, including those of Iraq (808th meeting) and the United Arab Republic, had stressed the question of method and held that a serious and searching study of the principles was essential.

31. Mr. LACHS (Poland) also favoured a thorough study, but thought that the Committee should above all aim at preparing an instrument which might be a declaration first and then a convention.

The meeting rose at 12.55 p.m.

5/ Official Records of the General Assembly, Sixteenth Session, Annexes, agenda item 19, document A/4879.

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