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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. TANG (China) said that his delegation, as it had indicated at the seventeenth session, supported any serious study of the principles of international law; indeed, it was mindful of the fact that the Chinese Government had been chiefly responsible for the insertion in the Charter of Article 13, for the encouragement of the progressive development of international law and its codification.

2. In interpreting General Assembly resolution 1815 (XVII), it would point out that the study which had been recommended was to be carried out in accordance with the Charter. The Committee might well take the Charter for guidance when examining United Nations practice, endeavour to fill the gaps, if any, and seek means of strengthening it as the supreme rule of the international community. But it must ever bear in mind all the principles in the Charter and not merely the four principles before the Committee. Until it had made a thorough study of all the relevant principles it should not draw hasty conclusions with high-sounding declarations which would undermine the prestige of the Charter rather than enhance it. Moreover, operative paragraph 2 of resolution 1815 (XVII) emphasized the need to secure the more effective application of those principles. That was the crux of the matter, as shown by the state of affairs confronting the United Nations eighteen years after its establishment. The Secretariat had drawn up a list of treaties, declarations, resolutions, decisions and proposals relating to the Committee's study (A/C.6/L.537) and one of those texts set forth the so-called five principles of peaceful coexistence. Unfortunately, it was a known fact that those principles had become a dead letter as a result of the actions of the very people who had enunciated them.

3. In analysing the four principles under study, the Chinese delegation chose to start with the principle of the sovereign equality of States, on which the United Nations was founded. The principle had been stated for the first time in the Moscow Declaration on General Security, signed by China, the United States, the United Kingdom and the Soviet Union on 30 October 1943. At Dumbarton Oaks and at the United Nations Conference on International Organization at San Francisco, the notion of sovereign equality had been defined as the legal equality and full sovereignty of States, and the obligation incumbent upon them to comply fully with their international obligations. China, in its relations with other States, had stressed equality and reciprocity rather than sovereignty, as indicated in article 141 of its Constitution. Indeed, in the absence of respect for international obligations, neither the principle of sovereignty, nor, for that matter, any other principle, could be applied effectively.

4. It had been said in the Committee that in virtue of the principle of sovereign equality, all States were equally entitled to join international organizations or to participate in open multilateral treaties. That undue extension of the principle could not be reconciled with the existing law of the United Nations. For the United Nations was an international organization governed by a contractual agreement—the Charter, and under Article 4 of the Charter, membership in the United Nations was open only to peace-loving States which accepted the obligations contained in the Charter and, in the judgement of the Organization, were able and willing to carry out those obligations. In that respect, his delegation shared the view of Canada, which had stated in its comments on resolution 1815 (XVII) that "only 'peace-loving States' were sovereign equals" (see A/5470). He held that a United Nations-declared aggressor was definitely non-peace-loving. With regard to the participation of States in multilateral treaties, he quoted operative paragraph 4 of resolution 1903 (XVIII) on participation in general multilateral treaties concluded under the auspices of the League of Nations, which the General Assembly had adopted on the report of the Sixth Committee. That text showed that the right of participation in multilateral treaties might be limited and reserved to certain States.

5. The principle of non-intervention by a State in matters within the domestic jurisdiction of another State, a corollary of the principle of the sovereign equality of States, was distinguished only in appearance from the restrictive provision of Article 2, paragraph 7, of the Charter, which had been invoked on many occasions in the Security Council and in the General Assembly in connexion with disputes being considered by those bodies. China had always taken a liberal view of the question and felt that if a conflict of interests among several nations gave rise to a dispute, the United Nations had the right to intervene with a view to settling the dispute. When the facts of the dispute were not clear, the question of competence should not prevent the United Nations from considering

the question in order to clarify it. Finally, his delegation thought that the effective application of the general principle of non-intervention was subject to strict compliance with the rule prohibiting States from interfering in the civil strife of other States. In that respect, it associated itself in the views expressed by the Brazilian Government (see A/5470) and by the Government of Jamaica (ibid.).

6. The third principle, established and developed by the United Nations, imposed upon all States the obligation to refrain from the threat or use of force against another State, except for purposes of self-defence or in application of a decision of the Security Council or a recommendation of the General Assembly. In connexion with that principle, it was the spirit rather than the letter of Article 2, paragraph 4 of the Charter which merited consideration, that is, the Member States had pledged themselves to take united action to save succeeding generations from the scourge of war. In case of a threat to the peace, a breach of the peace or an act of aggression, the rights and duties of Member States, of the Security Council and of the General Assembly were clearly defined by the Charter and United Nations practice. A difficulty would arise if the party directly concerned decided not to call upon the United Nations, for in that event the Organization could not initiate action. But whatever the reasons preventing the State which had been attacked from bringing its complaint to the United Nations, peace was indivisible and an attack against one Member State was an attack against all Member States. By not appealing to the United Nations to intervene, the victim was encouraging further aggression against itself and its neighbours. The Committee should orient its study of the principle in the sense of the community of vital interests in order to secure its more effective application.

7. He recalled that the principle of the peaceful settlement of international disputes stated in Article 2, paragraph 3, of the Charter had been adopted on the proposal of China, except that the initial text submitted by China had referred not only to "justice" but to "international law" as well. At the Committee of Jurists which met in Washington in April 1945, the representative of China had supported the establishment of a new court to succeed the Permanent Court of Justice at The Hague and had proposed that its jurisdiction should be compulsory. Unfortunately, that proposal had been rejected and Article 36 of the present Statute of the International Court of Justice provided that the Court's jurisdiction was compulsory only if the States parties declared that they recognized it as compulsory. The Republic of China had been one of the first States to make a declaration to that effect. His delegation had brought back to mind the history of Article 2, paragraph 3, in the hope that the Committee would realize that acceptance of the compulsory jurisdiction of the International Court of Justice by the States parties was the chief means of securing a more effective application of the principle of the peaceful settlement of international disputes.

8. His Government reserved the right to state its final position at a later stage.

9. Mr. AMLIE (Norway) said that there appeared to be two main trends of opinion with respect to the Committee's terms of reference and its approach to the questions before it. Some representatives seemed to consider that General Assembly resolution 1815 (XVII) could only be interpreted to mean that the Committee's task was to draw up a general declaration of principles. Those representatives seemed to base their contention on paragraph 2 of the resolution, in which the General Assembly had resolved to study the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification and thus secure their more effective application. Some of those representatives had referred to article 15 of the Statute of the International Law Commission for a definition of the expressions "codification" and "progressive development". Some of those representatives would like the declaration of principles to be adopted at the present session and had proposed that one or more working groups should be entrusted with the preparation of a preliminary draft. They had urged that such a declaration should be adopted in time for 1965, which would be the twentieth anniversary of the founding of the United Nations, and International Co-operation Year.

10. In the view of some other representatives, resolution 1815 (XVII) did not necessarily mean that the Committee was to prepare a declaration of general principles. Those representatives considered that resolution 1815 (XVII) imposed only the obligation to study the four principles set out in paragraph 3 and that consequently the Committee was free to decide whether the outcome of the study should be a declaration of general principles or recommendations for practical solutions, if necessary only in limited fields. Those representatives were averse to the stipulation of target dates and had emphasized the necessity of a thorough study of the whole question before making any decision concerning the action to be taken on the completion of the Committee's studies.

11. His delegation shared the views of the second group of representatives. In no part of resolution 1815 (XVII) was it stated that the General Assembly should codify and develop the principles in question. In paragraph 2, the General Assembly had decided to undertake a study of those principles, and in paragraph 3 it had decided to place the item on the agenda of the eighteenth session in order to study four of them. It was true that the Assembly had referred to Article 13 of the Charter and had used the words "with a view to their progressive development and codification", but, that did not necessarily mean that it had decided that such work should be done by the Sixth Committee or at the present juncture. It might simply have wished to indicate an objective to be achieved at a later stage. Paragraph 2 of resolution 1815 (XVII) ended with the words "so as to secure their more effective application," thus indicating that the final goal to be achieved was the "effective application" of the principles, and that codification of the principles was only a stage on the road. If the shortest way towards that goal led through practical solutions, the Committee had the right and the duty to adopt such solutions.

12. When the Committee had discussed the Czechoslovak draft resolution [1] at the seventeenth session, one of the main arguments against it had been that it did not also open the way for practical solutions. Presumably the delegations that had not been in favour of the draft and had voted for the compromise text which had become resolution 1815 (XVII) had considered that the latter text offered the desired

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

possibilities of a practical approach that must be taken into consideration in determining the Committee's terms of reference. His contention was not that resolution 1815 (XVII) excluded a declaration of general principles, but that it authorized whatever course of action might be considered feasible, including the practical solutions, even in limited sectors. His delegation therefore did not share the view of some representatives that the Netherlands' proposal for the establishment of a centre for international fact-finding fell outside the scope of the item.

13. As to any action after the completion of the Committee's studies, he was sceptical concerning the value of a declaration of principles. True, many changes had occurred in eighteen years, the most spectacular being decolonization and technical development, which had required much adjustment of the rules of international law. It did not seem, however, that those changes substantially affected the fundamental principles concerning friendly relations and co-operation among States proclaimed by the Charter. It might even be dangerous to supplement and develop those principles, for changes were still occurring and would always occur. The value and strength of the Charter lay precisely in its simplicity and general character. A more detailed and specific declaration might be rapidly outmoded. Inasmuch as such a declaration would purport to be linked with the Charter, such a development might be prejudicial to the standing of the Charter itself.

14. It might be contended that several declarations, based on provisions of the Charter, had previously been adopted, including the Universal Declaration of Human Rights, the Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV)), or the Declaration on permanent sovereignty over natural resources (resolution 1803 (XVII)). In those fields, however, the provisions of the Charter were scant and limited. The question of friendly relations and co-operation among States was the central theme of the Charter. Hence a declaration in that field would overlap and compete with the Charter and thereby weaken it. In the view of the Norwegian delegation the Sixth Committee should primarily seek to find practical solutions to ensure the more effective application of the principles concerned.

15. If, however, the Committee decided to draft general principles, it should bear certain considerations in mind. First, there should be no uncertainty concerning the contents and scope of the principles which the Committee sought to develop. The Committee could not draw up a detailed draft of principles if the meaning and scope of the basic principles had not first been defined. Secondly, the principles adopted should be stated in clear terms, which would raise no difficulties of interpretation. Otherwise, the Committee would only have added to the uncertainty and to the points of controversy. Thirdly, the Committee should not merely reproduce and reformulate the principles of the Charter. That would be unnecessary, and even dangerous, in that restatements, being necessarily fragmentary and incomplete, would tend to restrict and distort the meaning of the Charter. Fourthly, the principles adopted should not expressly or implicitly conflict with the principles of the Charter or run counter to United Nations practice and policies. The Charter could be amended only by the procedure set out in Chapter XVIII. Fifthly, it was essential to distinguish between legal principles and political aims. Political aims were by their nature foreign to legal principles. If that distinction was not made, the Committee might weaken the legal rules and increase the danger of international friction.

16. Whether the Committee decided to prepare a declaration of principles or to seek procedures for obtaining practical solutions, his delegation stressed the necessity of thorough research and studies on the various questions before any decision was taken, and it associated itself with previous statements to that effect, specially those by the Belgian (807th meeting) and Swedish (806th meeting) representatives. Such studies would take time and the Committee should therefore avoid setting time-limits. He did not favour the establishment of working groups by the Committee during the present session, because such groups would have neither the necessary working material nor the necessary time to carry out the studies and research. The principles concerning friendly relations and co-operation among States were the most important principles in the Charter. The Committee should take care not to treat so vast and important a question in haste.

17. He recalled the various arguments put forward concerning the peaceful settlement of disputes in favour of negotiation and against judicial settlement, including resort to the International Court of Justice. He thought that not only purely technical disputes but also those with political aspects could frequently be settled by arbitration or judicial settlement. In many cases it would turn out that the political aspects had been overrated and that the fundamental questions involved were really legal. The apprehension expressed by some representatives with respect to judicial settlement were, to a large degree, unfounded. The Statute of the International Court of Justic included very elaborate rules concerning the election of judges, their qualifications, their disqualification in certain circumstances, the sources of the law which they should apply, and the possibility of revision of judgements based on erroneous facts. The Court consisted of fifteen members, no two of whom might be nationals of the same State. At every election to the Court, the electors should bear in mind that the persons to be elected should individually possess the qualifications required, and also that in the body as a whole the representation of the main forms of civilization and the principal legal systems of the world should be assured. In that connexion he pointed to the fact that one of the judges elected to the International Court of Justice during the present session of the General Assembly was an African. In addition, if the judgements of the Court were studied, it would be seen that in a great number of cases the Court, far from being conservative, had taken a progressive and far-sighted attitude. As to the impartiality of the judges, it should be remembered, as the United Kingdom delegation had already pointed out, that there had been cases in which judges had taken a position contrary to the contentions of their own Governments. In his delegation's view, a prerequisite for an international community based on the rule of law and on the sovereign equality of States was the operation of international judicial and arbitral machinery, designed to settle disputes between States impartially according to universally accepted principles of law.

18. It was true that there were at the present juncture divergences of opinion on a number of principles of international law, but it was important not to lose sight

of the fact that international law was still in an embryonic state and that the International Court of Justice and arbitration tribunals had an important role to play in its development. At its second session, the General Assembly had adopted several resolutions in which it had called on States to submit their legal disputes more frequently to the International Court of Justice, to accept the compulsory jurisdiction of the Court with as few reservations as possible, and to insert in their conventions and treaties arbitration clauses providing for the submission of disputes to the Court. Unfortunately, even the last of those recommendations had found hardly any acceptance, although it was only of limited scope. Thus, when the 1958 Conventions on the Law of the Sea, [2] the Vienna Convention on Diplomatic Relations of 1961 [3] and the Vienna Convention on Consular Relations of 1963 [4] had been adopted, the question of the settlement of disputes had had to be covered by a separate protocol.

19. There could be no doubt that judicial settlement and arbitration procedures were more favourable to small States than negotiation, the outcome of which often reflected the difference in power of the parties. With regard to the matter under consideration the studies of the Sixth Committee should include the study of practical measures whereby the use of the International Court of Justice and the international machinery of arbitration could be made more acceptable and attractive to States.

20. Mr. KIRCHSCHLAEGER (Austria) said that one of the great merits of the Charter was that it had laid the foundations of an international social system based on the maintenance of peace and on friendly relations and co-operation among States. There could be no doubt that the Charter was the most important international legal instrument of the present age by virtue of the vital principles which it contained. If those principles were taken as legally binding rules, then the most important task of the Sixth Committee was to secure their more effective application. On that point, the delegation of Austria fully shared the view expressed by the representative of Cameroon at the 814th meeting of the Committee.

21. One way of reaching the Committee's goal would be to strengthen the will of States to follow those principles strictly and in good faith. That might not always be very easy, for States often believed that such a policy would not be in accordance with their interests, particularly their so-called vital interests, the defence of which had often led, in the past, to the most terrible results. It was therefore necessary, in addition, to develop public opinion in all the countries of the world. The final aim should be a world public opinion guided exclusively by the rule of wider law, and training in international law would play a very great role in that context.

22. Article 13 of the Charter pointed out another way of bringing about the more effective application of the principles in question: that of their progressive development and codification, which was also mentioned in resolution 1815 (XVII). To be sure, neither the Sixth Committee nor the General Assembly could create new rules for such rules could only obtain their legally binding force from a treaty or international custom, but the Sixth Committee could determine to what extent contemporary international practice had developed new rules of law which had not yet been codified. For their codification, the normal procedure of making recommendations should be followed. It was important not to lose sight of the fact that, in the progressive development and codification of international law, a balance had to be kept between the need for improvement and the need for stability.

23. It was regrettable that only a small number of States had submitted their views and suggestions to the Secretary-General in writing. If more than ninety States out of 110 failed to answer a request made to them by the General Assembly or the Secretary-General, then there must be compelling reasons for such an attitude. It was possible that small States did not have enough staff to send representatives to international conferences or prepare thorough statements, based on detailed study, on various fundamental matters; certain States might not be willing to submit in advance written comments on a subject which would later be discussed orally. If the Sixth Committee wanted the task assigned to it under resolution 1815 (XVII) to have permanent effects, it was essential that it should re-study most thoroughly the principles contained in paragraph 3 of that resolution, bearing in mind all the suggestions and observations made, and particularly the suggestion made by the representative of the Netherlands (803rd meeting) that an international fact-finding centre should be set up. In order to do that, another urgent invitation, comparable to that contained in operative paragraph 4 of resolution 1815 (XVII), should be extended to all Member States. It would likewise be desirable to set up a working group with terms of reference based on the provisions of resolution 1815 (XVII).

24. As the principles now being considered by the Sixth Committee were already stated in the Charter and had the force of law, the statement of a new law was not urgent. It was, however, urgently necessary that those principles should be applied. The relaxation of tension which had been felt almost everywhere after the signing at Moscow of the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, had brought about a favourable climate for the progressive development and even the codification of the law of nations as a whole and of the principles so often mentioned in particular. It would be a great step forward if all Member States contributed to the relaxation of tension by applying in good faith the principles of the Charter, and particularly the four principles enumerated in paragraph 3 of resolution 1815 (XVII). The codification of international law was only possible when circumstances permitted different conceptions to be unified. Those circumstances had existed in 1945 when the Charter had been drafted, but they had unfortunately more or less disappeared since then. The first thing to be done, therefore, was for every State to try to eliminate all tensions, not merely those which existed between East and West. It would then be possible, in a healthier international climate, to improve the basis for friendly relations and co-operation among States constituted by the principles of the Charter.

The meeting rose at 4.35 p.m.

[2] United Nations Conference on the Law of the Sea, Official Records, Volume II, Annexes (United Nations publication, Sales No.: 58.V.4, vol. II).

[3] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Volume II, Annexes (United Nations publication, Sales No.: 62.X.1).

[4] United Nations Conference on Consular Relations, Official Records, Volume II, Annexes (United Nations publication, Sales No.: 63.X.2).

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