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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, A/C.6/L.538 and Corr.1, A/C.6/L.539) (continued)

1. Mr. MORE (India) pointed out that the present was the most propitious time for consideration of the principles enumerated in General Assembly resolution 1815 (XVII) because there had been a marked improvement in the international climate brought about not only by the awareness of the powerful nations that there was no alternative to peaceful co-operation, but by the work of the United Nations itself. United Nations action to achieve a permanent peace based on peaceful coexistence of States with different ideologies and social systems should be pressed forward. The United Nations must develop a corpus of international law which would help to create a world free from dispute in which there would be no need for the threat or use of force. To that end, the study of the principles enumerated in resolution 1815 (XVII) should be searching, deep and objective, for they were the fundamental rules of the Charter and the Sixth Committee, as the legal arm of the General Assembly, shared the responsibility for keeping them alive, magnifying the purposes of the Charter and adapting them to present-day needs. The most urgent of those needs was the elimination of threats or use of force in the settlement of disputes, but the other three principles before the Committee at the current session were closely related to it and should be studied in the same context.

2. He emphasized the Committee's duty to ensure the progressive development of international law and to that end, to ascertain how it could be adapted to the rapidly changing conditions of the modern world. As indicated in the comments of some Governments (A/5470 and Add.1), there were many deficiencies in the principles of law under study which could be removed by elaboration or amplification or by deriving logical corollaries. Moreover, unless the development of international law kept pace with the new hopes and aspirations of the many nations of Asia and Africa which had recently attained independence, the principles of the Charter would lose all validity for them. Those new nations had already indicated in three declarations what those hopes and aspirations were. The Committee should work towards a new declaration which would be a synthesis of the principles of the Charter and those embodied in 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.

3. In striving for the progressive development of international law and the adaptation of the principles of the Charter to a world which had radically changed since 1945, due emphasis should be placed on decolonization in the interest of social justice. Nations with vested interests, determined to retain trade privileges and the right to exploit the resources of colonies, thus preserving the status quo, should be made to understand that they could no longer cling to the past and hold back the future in a world in which colonialism was being elminated and the new States were determined to effect revolutionary changes. As the General Assembly had stated in resolution 1514 (XV), colonialism was an impediment to world peace and co-operation; it should be removed without further delay.

4. In connexion with the principle of the prohibition of the threat or use of force, although it would be dogmatic for the Committee at that stage of its study to pronounce itself in favour of a specific interpretation of the word "force", yet it had some ground for believing that the word had not been used in the restricted sense of "armed" force only in Article 2, paragraph 4, of the Charter. On two occasions, the Charter had qualified the word "force" by the adjective "armed"; however, in that Article, the qualifying word had been omitted. The omission should be regarded as deliberate and "force" should be interpreted to include not only "armed force", but economic force, blockades, war propaganda and subversive acts. It should further be noted that under Articles 39 and 51 of the Charter, force could legally be used. It was for the General Assembly to decide whether colonies could also legally be permitted to use force for their liberation.

5. Since international law was created and maintained by States, it would cease to be a living force unless it corresponded to the needs of States. One of those needs was the settlement of differences with other States by peaceful means in order not to endanger international peace, security and justice. However, the whole gamut of procedures for peaceful settlement, many of which had been stated in Article

33, should be reviewed and made absolutely impartial and effective. It was significant that negotiation had been the means most frequently used in peaceful settlement in recent years. But greater use could also be made of decisions by the International Court of Justice ex aequo et bono. Unfortunately, despite strenuous efforts by the United Nations, disputes had not been eliminated in international relations, and might never be. In the circumstances, it was urgent for the Committee to seek to establish effective machinery for their settlement. In that regard, India had some difficulty in endorsing the suggestion that States should accept the compulsory jurisdiction of the International Court of Justice. Such acceptance would drastically reduce the scope of Article 33 which, while not exhaustive, left the parties free to choose any of a variety of means of settlement, including judicial settlement. Acceptance of the Court's compulsory jurisdiction would compel the parties to have only one recourse, namely judicial settlement by the Court, and would be tantamount to amending the Charter.

6. Although the Charter stressed friendly relations and co-operation among sovereign and equal States, it also recognized that sovereignty was vested in the peoples of the Non-Self-Governing Territories. Indeed, article 1 of the Trusteeship Agreement for the Territory of Somaliland under Italian Administration[1/] had specifically stated that principle. Obviously, genuine and effective international co-operation could not be achieved until all colonial territories were free and independent. The colonial Powers had invoked the claim of domestic jurisdiction, however, in order to preclude consideration of the situation in territories under their rule, arguing that those territories were not sovereign. That argument should not be used to perpetuate colonial domination over the Non-Self-Governing Territories or situations in those territories which threatened peace and security such as apartheid in South Africa. The colonial territories should not be regarded as an integral part of the "territorial integrity" of the Powers which ruled them; they had acquired a quasi-independent status under the tutelage of the United Nations, a political and legal status distinct from the legal personality of the colonial Powers.

7. The General Assembly had recently adopted resolution 1907 (XVIII) designating 1965 as International Co-operation Year, under which all States had pledged themselves to organize and undertake suitable activities to foster international co-operation. He therefore appealed to the Committee to complete its study by 1965 and to make concrete suggestions for effective co-operation among States.

8. Mr. PLIMPTON (United States of America) said that his delegation's conception of the principle of non-intervention in matters within the domestic jurisdiction of any State was based on certain assumptions. First of all, intervention by States was to be distinguished from intervention by the United Nations. The United Nations was not a sovereign State or "super-State". Its function was to establish and maintain international peace, security and justice and its actions must be evaluated in that light; they could not be judged by the same rules as those of States. Article 2, paragraph 7, of the Charter, which placed a limitation on intervention by the United Nations, did not regulate the actions of States, which were governed by other provisions, notably Article 2, paragraph 4. Accordingly, the questions of intervention by States and by the United Nations would be discussed separately. Neither of the provisions he had referred to, however, could be read in isolation; each must be considered with the related provisions of the Charter. Finally, it must be recognized that what constituted intervention in domestic affairs was largely a matter of degree. States could not be insulated from each other or the United Nations. The actions of the United Nations, whether they were binding decisions of the Security Council under Article 25 or recommendations by another organ such as the General Assembly which were not binding but carried moral force, often had domestic consequences for Members. Similarly, many actions by States had consequences in other States. To attempt to prohibit all acts by States the consequences of which affected the domestic life of other States would be a practical impossibility, apart from the fact that many such acts had traditionally been recognized as those within the rightful competence of States. The Committee's task was rather to determine, in view of the interdependence of States, in the modern world, those actions which were permissible and those which were not.

9. Before the twentieth century there had been little restraint upon the employment of military force to accomplish national objectives. It would not be accurate, however, to conclude that international law on non-intervention by States had come into being with the adoption of the Charter. The Charter was the culmination of a process which had begun in the nineteenth century, a process whereby international law had evolved in response to changes in international society. The evolution had been particularly marked in the western hemisphere, as representatives from Latin American countries had shown, but there had also been progress on a global basis. What was the present state of international law to which that historical process had led? The Charter had taken over much of the classical conception of intervention, as involving the use of force or the threat to use it as a principal element, and had prohibited such intervention. On the other hand, intervention might be pursued in more subtle ways in an attempt to avoid the Charter's prohibition. Over the years there had been much debate as to what constituted intervention contrary to the Charter, but none of the definitions proposed had won general acceptance. Rather than make any further attempts at formulating a definition, it would be well to consider the different elements of the principle of non-intervention.

10. The first was the nature of the act which was asserted to constitute intervention. Many acts by States which had consequences in the internal affairs of other States, such as their economic policies, but they could not, merely by virtue of their consequential relationship be considered intervention. They were generally recognized as lying within the discretion of the State taking them, unless it had voluntarily accorded them an international character by the conconclusion of a treaty or unless those policies fell within the area in which customary international law had recognized the obligation of States to protect the persons or property of foreign nationals. A second aspect was the interest which the complainant State asserted to have been injured and the extent to which it bore an international character. Matters lying within the domestic jurisdiction of States were con-

1/ Official Records of the General Assembly, Fifth Session, Supplement No. 10.

tinually being reduced in number with the growth of customary international law and international agreements. International law, for instance, had long recognized the right of States to take measures to protect their nationals and property in foreign States. A third aspect was the mode of intervention and the extent to which the means by which one State acted to produce a certain affect within another State was appropriate to the issue in question. For instance, international practice recognized many areas where appropriate diplomatic communications might be exchanged regarding subjects which could not properly be dealt with by the threat or use of force. The legitimate functions of consuls took them into the internal affairs of the receiving State. As far as measures of compulsion were concerned, it was now regrettably common for clandestine activities to be carried on by one State within the territory of other States for the purpose of overthrowing their Governments or even of radically altering their political and economic structure. Such activities generally involved affiliations with domestic political movements, which were encouraged, if not financed, by the intervening State. The practice constituted one of the major forms of illegal intervention by which the political independence of States was violated.

11. Those factors should be borne in mind when considering intervention by States. But in modern international society, intervention was not simply a unilateral response by a State, except in so far as it might be necessary to deal with an immediate danger. Allegations of intervention must be evaluated within the system of collective security provided in the Charter. Intervention might well entail a situation the continuation of which was likely to endanger the maintenance of international peace and security and might thus be within the competence of the Security Council. It was even more liable to involve a situation likely to impair the general welfare or friendly relations among nations, with which the General Assembly was entitled to deal under Article 14. It might also be the subject of action by regional organizations within the terms of reference established by their own constituent instruments and by Chapter VIII of the Charter. The obligation of a State which considered that it had been the victim of an act of intervention was, without prejudice to its right of self-defence, to seek its remedy within the system of collective security of the Charter, including regional security. The counterpart to that was the obligation of a State against which such charges had been made to respond to inquiry and other action by the appropriate organ of the international community.

12. As far as intervention by the United Nations was concerned, the authors of the Charter had been clear that Article 2, paragraph 7, should not be read as applying directly to the United Nations principles of international law concerning non-intervention by States. The Rapporteur of Committee 1 of Commission I of the United Nations Conference on International Organization, in his report on draft paragraph 8 of Chapter II, [2] which was to become Article 2, paragraph 7, had stated its subject to be the relations of the Organization and its members with respect to domestic and international jurisdiction, and not intervention by one State in matters falling within the domestic jurisdiction of another; since the Organization provided under the Charter would have wider functions than those previously assumed by the League of Nations and other international bodies, the tendency to provide it with a broad jurisdiction was justified, but it was also necessary to ensure that it did not go beyond acceptable limits. Having made that distinction, it was necessary to inquire into the meaning of the term "intervention" in Article 2, paragraph 7. Historically, the term denoted interference of an imperative character, depriving a State of its customary discretion. The United States delegation shared the view of the late Judge Sir Hersch Lauterpacht that it should be regarded as having that meaning in the Charter and that to give it a loose meaning embracing all actions which had an impact within Member States would nullify important provisions of the Charter. Once that meaning was accepted, it was clear that Article 2, paragraph 7, could not limit the competence of a United Nations organ to discuss any question within its jurisdiction under the relevant articles of the Charter. The contrary proposition had, of course, been argued. Article 2, paragraph 7, had been invoked as grounds for opposing the inclusion of certain items in the agenda, but in no case had that provision been upheld. At the third session, for instance, replying to objections to discussions of the question of the observance of human rights in Bulgaria, Hungary and Romania, the United States representative had stated that Article 2, paragraph 7, was not intended to preclude discussion in the Assembly, in appropriate cases, on the promotion of human rights and fundamental freedoms and that the Assembly was not barred from expressing an opinion or making a recommendation when there was a persistent and wilful disregard for human rights in any particular country. At one extreme, therefore, it was clear that mere discussion did not constitute intervention, while at the other extreme, Article 2, paragraph 7 itself, stipulated that its provisions were not to prejudice the application of enforcement measures under Chapter VII. Hence the area of non-permissible intervention by the United Nations lay somewhere in between. The problems in that area were complex and did not admit of easy answers. For example, if the term "intervention" carried an imperative connotation from its use in inter-State relations, did it follow that a mere recommendation by a United Nations organ, which normally lacked such an imperative connotation, did not constitute intervention? Did a recommendatory resolution directed specifically to a State and calling upon it to take measures in a sphere essentially within its domestic jurisdiction constitute intervention? With regard to the latter question, it was his delegation's view that the injunction of Article 2, paragraph 7, covered more than decisions of the Security Council, which were legally binding under Article 25. It might be argued that the original intention had been to restrict it to such decisions, a view supported by Professor Stone and, with reservations, by Sir Hersch Lauterpacht, but the functions of United Nations organs had necessarily evolved since the Charter had first come into force. The weakening of the Security Council by the abuse of the veto had thrust considerable responsibilities on to other organs of the United Nations, notably the General Assembly, which accordingly had sought means to make their decisions effective. To assert that General Assembly resolutions were devoid of any element of the imperative was to disregard, for example, resolutions establishing and regulating military-type forces. There were the imperative

[2] United Nations Conference on International Organization, Commission I, 18 June 1945, vol. 6, pp. 486-487.

financial decisions authorized by Article 17 and endorsed by the International Court of Justice. There was an imperative element in so far as instructions were given to the Secretary-General. Even where such an element was not immediately present in a General Assembly resolution, it might be that its recommendations acquired additional emphasis because of its power to take imperative measures within related administrative and financial spheres. Whatever view was taken on that question, if the General Assembly made recommendations which would plainly not be followed, its effectiveness would be considerably undermined. Due note should be taken, moreover, of the tendency of United Nations organs to accept determinations of fact and policy by other organs. Security Council resolutions, for example, often gave a certain weight to previous resolutions of other organs. In the original Dumbarton Oaks Proposals, the provision which had later become Article 2, paragraph 7, had related to the Security Council alone. During the discussions at San Francisco, it had been placed in a broader theme, relating to the Organization as a whole, as the function of the other organs had assumed greater significance in the minds of the drafters of the Charter. That was further confirmation that Article 2, paragraph 7, was intended to apply to organs other than the Security Council. The conclusion must be that the question of whether action by a United Nations organ had the imperative element important to the notion of "intervention" could only be answered by reference to the language of the relevant resolution and to the attendant circumstances. There could be no simple answer to the complex question of the relationship of the Organization to its Member States in diverse political situations. In short, not only the Security Council could be guilty of intervention. Since those were its views, it was clear that his delegation would not agree that the question of whether a recommendation constituted intervention depended on whether it was addressed to all Members of the Organization or merely to one or a few of them. The number of States to which a recommendation was addressed depended on the scope of the situation under consideration. Where only one or a few were involved, there would be no logical or legal point in casting a resolution in general rather than specific form.

13. A second fundamental question was that of what matters in the words of Article 2, paragraph 7, of the Charter, lay "essentially within the domestic jurisdiction of any State". In his delegation's view the use of the word "essentially" instead of "solely", as in Article 15, paragraph 8, of the Covenant of the League of Nations, did not have substantive effect. Although that difference had been emphasized by Judge Krylov in the advisory opinion of the International Court of Justice on the interpretation of the peace treaties with Bulgaria, Hungary and Romania, his opinion [3] represented a minority dissent from the majority opinion. Whether a matter lay essentially within the domestic jurisdiction of a State depended in the first instance on the scope and content of international law. As the International Court of Justice had stated in the peace treaties case, the interpretation of the terms of a treaty could not be considered as a question essentially within domestic jurisdiction but by its very nature lay within the competence of the Court. [4] Modern international society was characterized by a growing network of legal rules. They complemented the practice of States, which reflected a recognition of international obligations regarding matters previously considered within their own discretion. There was, more particularly, a marked growth in treaty relationships by which States voluntarily assumed international obligations, and thus granted international character to, matters which might previously have been within their domestic jurisdiction. The fact that the international character of a question was a consequence of the acceptance of international obligations concerning it had been recognized by the Permanent Court of International Justice in its advisory opinion concerning the Nationality Decrees issued in Tunis and Morocco (French zone) on 8 November 1921: [5] matters "solely within ... domestic jurisdiction" were those which thought they might concern the interests of more than one State were not in principle regulated by international law; whether or not a certain matter was solely within the jurisdiction of a State was thus essentially a relative question, depending on the development of international relations; in a matter not in principle regulated by international law the right of a State to use its discretion might nevertheless be restricted by obligations undertaken towards other States and in such cases jurisdiction was limited by rules of international law; Article 15, paragraph 8, of the League Covenant then ceased to apply and the dispute as to whether a State had or had not the right to take certain measures became a dispute of an international character. In any event, as far as the maintenance of international peace and security was concerned, it was clear that the Charter had given the issue an international character and the United Nations organs the full competence necessary for effective action. In becoming parties to the Charter, the Members of the Organization had assumed the obligations provided for in Article 2, paragraph 3, 4 and 5, and matters relating to those provisions could accordingly not lie essentially within the domestic jurisdiction of States. Thus the Security Council acted under Chapter VI with regard to disputes or situations the continuance of which was likely to endanger the maintenance of international peace and security and under Chapter VII with regard to threats to the peace, breaches of the peace and acts of aggression. Under Article 10 the General Assembly, with the limitation provided in Article 12, could discuss and make recommendations on any questions within the scope of the Charter. The fact that any dispute likely to endanger the maintenance of international peace and security could not lie essentially within domestic jurisdiction had been repeatedly confirmed in the practice of the United Nations. It had on a number of occasions dealt with questions which in other circumstances might have been considered essentially within the domestic jurisdiction of the State concerned, basing its authority to do so on its responsibility for keeping the peace. Obviously, the question of whether or not a matter was likely to endanger peace and security must be decided in good faith; merely saying that it was likely to do so did not make it so and the loose use of languages in such cases undermined confidence in the Organization's decisions.

14. A third aspect of the matter requiring study was the procedures by which Article 2, paragraph 7, had

[3] Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950, p. 105.

[4] Ibid., pp. 65, 70 and 71.

[5] Publications of the Permanent Court of International Justice, Series B, No. 4, February 7th, 1923. Collection of Advisory Opinions, Advisory Opinion No. 4.

been and should be implemented by United Nations organs. In that connexion the difference in wording between Article 15, paragraph 8, of the League Covenant and Article 2, paragraph 7, of the Charter had been reflected in a perceptible difference in practice. The Covenant provision explicitly provided for a finding by the League Council on the question of whether or not a matter lay solely within the domestic jurisdiction of a State. In practice, the Council appeared to have taken the position that such findings should be made by a body possessing special legal competence. In the Åland Island question it had appointed a committee of three jurists for the purpose, although it had indicated that the question would have been referred to the Permanent Court of International Justice if it had been constituted at that time. Accordingly it had referred the question of competence in the case of the Nationality Decrees issued in Tunis and Morocco (French zone) to the Permanent Court in 1922. The only other dispute in which the applicability of Article 15, paragraph 8, had been raised, namely the dispute between Greece and Turkey concerning the ecumenical Patriarch, had been settled before a determination regarding the Council's competence had become necessary.

15. In implementing Article 2, paragraph 7 of the Charter, however, the organs of the United Nations had followed a less formal course. The determination of competence had frequently been made by the organ involved, in the terms of substantive action. In adopting a resolution after objections based on Article 2, paragraph 7, had been raised, organs of the United Nations had implicitly rejected those objections. On other occasions, the organ concerned had either rejected motions based on Article 2, paragraph 7, that it lacked competence (the Ad Hoc Political Committee at the seventh and eighth sessions, on apartheid) or had positively affirmed its competence (the First Committee at the third and fourth sessions, on Greece). Both the Security Council in 1947 (195th meeting) on the Indonesian question and the General Assembly, at the first session (52nd meeting), on the treatment of people of Indian origin in South Africa, had rejected proposals that an advisory opinion on the question of competence be sought from the International Court of Justice.

16. In his delegation's view that less formal procedure was not in principle objectionable. It was consistent with the terms of Article 2, paragraph 7, and appeared to have been contemplated by the authors of the Charter. In answering the question which organs of the United Nations should be entrusted with the responsibility of interpreting the Charter, Committee 2 of Commission IV of the San Francisco Conference had stated that in the course of day-to-day operations each of the various organs of the Organization would inevitably interpret such parts of the Charter as were applicable to its particular functions, that process being inherent in the functions of any body which operated under an instrument defining its functions and powers; if there was a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter it would always be open to the General Assembly or the Security Council to ask the International Court of Justice for an advisory opinion on the matter. [6] It might well be that there had been some instances in which an advisory opinion could usefully have been requested from the International Court of Justice. There were certain advantages to such a course of action. Not only would subsequent proceedings in the General Assembly or the Security Council have a clearer basis after the Court gave its opinion, but greater co-operation might be expected from the State which had raised the jurisdictional objection. Everyone would benefit, moreover, from a lucid exposition by the Court of the complex matters inherent in Article 2, paragraph 7. In suggesting recourse to the International Court his delegation was not unaware that Article 2, paragraph 7, contained no reference to international law. The omission was not inadvertent. The rights and obligations of States and the competence of international organizations brought into being by a multilateral treaty must be interpreted in the light of international law and no express reference in the Charter was necessary to establish that.

17. The discussion had focused on the United Nations because of its leading position in the family of international organizations, but the problem might arise in other organizations such as the specialized agencies. Some of those organizations, such as the International Atomic Energy Agency, had constitutional provisions equivalent to Article 2, paragraph 7, of the Charter. Controversies arising out of such provisions might be dealt with on the basis of criteria similar to those applied to the United Nations. Some organizations did not have the authority to take action with that degree of compulsion normally necessary to constitute intervention so that in their case the question did not arise. With regard to organizations which had such authority but were not barred by any provision equivalent to Article 2, paragraph 7, the issue would be one of competence, namely, whether the subject matter lay within the exclusive competence of the complainant State or was an international one. In such cases the most significant legal obligation, and thus the most significant source of an international character, might well be the constitutional instrument of the organization concerned.

18. In presenting that review of the present state of international law on non-intervention and the factors which had shaped it, his delegation had done no more than scratch the surface of the subject. International law had evolved in response to the needs of an increasingly interdependent international community and it was the purpose of the Committee's study to further that process in accordance with present and future needs. It could not achieve that purpose by facile formulations, partisan proclamations or shallow declarations. Only through more profound study and analysis of the law in all its complexity could there emerge that enhanced understanding which would lead to its more effective application.

19. Mr. WATANAKUN (Thailand) said that his delegation supported the establishment of a working group to undertake a systematic and careful study of the four principles as a first step towards their progressive development and codification. The study should take into account existing State practice and the views of Governments regarding the scope and substance of the principles. When the study had been completed, the Committee would be in a position to decide the manner in which they should be reaffirmed or adapted to present-day conditions of international life. The mere fact that they had been established in the Charter did not per se qualify them as principles of positive international law. The working group should be

[6] See United Nations Conference on International Organization, IV/2/42 (2).

composed of representatives of Member States with particular competence in legal matters, with due regard to equitable geographical distribution and representation of the principal legal systems of the world.

20. The principle of the prohibition of the threat or use of force established in Article 2, paragraph 4, should be considered in conjunction with Article 51 and its scope and content should be clearly defined. It was essential, for example, to arrive at an agreed interpretation of the word "force".

21. The principle of the peaceful settlement of disputes constituted the positive obligation of States, once they had rejected force as an instrument for the conduct of international relations. The reluctance of a large number of States to use the means of peaceful settlement specified in Article 33 indicated that there were defects in the existing machinery. The working group should strive to effect a remedy, bearing in mind that strict observance of the principle of sovereign equality would enable States more readily to accept recourse to that machinery. Moreover, the Netherlands suggestion (803rd meeting) for an international fact-finding centre should also be examined by the working group. He recalled the suggestion made by the Foreign Minister of Thailand at the sixteenth session (1218th meeting) and reiterated recently in the plenary for the establishment of a "service for peace committee" within the United Nations, but not necessarily as an organ of the United Nations. The Committee's task would be to devise ways of preventing world problems from becoming a threat to peace or from resulting in international conflict. The committee would make recommendations directly to the parties concerned and, where appropriate, might serve as an intermediary between them. It would not supplant the Secretary-General in the exercise of his peace-making functions under the Charter; instead, it would supplement those functions, intervening openly in cases which did not require discreet negotiations or quiet diplomacy, but were already a matter of general interest and knowledge.

22. The whole substance of the principle of non-intervention should be reconsidered by the working group. In particular, a distinction should be drawn between lawful and unlawful intervention. For example, while subversive activities directed against the lawful Government of a State clearly constituted unlawful intervention, it was less obvious that economic aid used for political effect rather then for purely economic purposes was also intervention. The need of developing countries for economic and social development should not be exploited for the political benefit of any State.

23. Lastly, observance of the principle of the sovereign equality of States vitally affected the development of international law and means must be sought to make it effective.

24. Mr. SHIELDS (Ireland) said that his country, as one devoted to the ideal of peace and friendly co-operation among States founded on international justice and morality, welcomed the steps taken by the Committee under resolution 1815 (XVII) to ensure the more effective application of the principles of the Charter. Indeed, the debates on the item under consideration both at the seventeenth session and during the current session were themselves a significant contribution to the promotion of friendly relations and international co-operation. However, the present debate had tended to a considerable extent to concentrate on the method of work to be adopted in studying the four principles and it would appear that it was only now that the Committee was approaching the threshold of the study with the making of which it had been charged. The Irish delegation attached great importance to a comprehensive analysis of each of the principles, but considered it premature to forecast the form in which the results of that analysis should be presented or the action which the Committee should take upon its completion. Accordingly, the Committee should resist the temptation to fix unrealistically early target dates for such action. Indeed, the greatest contribution which could be made to the promotion of international co-operation and peace in the changing world would be the bona fide application by all Member States of the principles enumerated in resolution 1815 (XVII) and of all the principles of the Charter.

25. Each of the four principles should be studied in turn by the full Committee during the remainder of the current session and at the nineteenth session, when it would have much more material available to it in the form of comments by Governments, suggestions by representatives and documentation by the Secretariat. The relatively small response from Governments thus far appeared to indicate that before formulating their views they were giving the most careful consideration to what were in fact extremely complex questions. Therefore, those which had replied deserved special commendation for they had helped to clarify the nature and scope of the Committee's task. Ireland, for its part, intended to approach the substance of the Committee's study in a genuinely constructive spirit for it was convinced that the Committee bore a heavy responsibility for strengthening the rule of law based on justice and that it was in the interest of the majority of Member States, which were militarily weak, to exert every effort to establish the rule of law, for the alternative was international anarchy in which all nations, big or small, would be destroyed.

26. The objective of all States should be to contribute to the development of the United Nations into an international body which would not only settle international disputes through the application of law based on justice, as interpreted by the Organization, but would also have the power to restrain law-breakers. He recalled that the Council of Europe, of which Ireland was a member, by adopting and applying the Convention for the Protection of Human Rights and Fundamental Freedoms, [1] had done much to strengthen the rule of law in relation to human rights on the regional level. The Organs created by the Council, namely, the European Commission of Human Rights and the European Court of Human Rights were significant innovations. In contrast to that regional achievement, the development of the rule of law on a world-wide basis had lagged far behind.

27. On the other hand, it should be recognized that the universal rule of law could not be attained overnight or simply by the drafting of declarations of general principles. It could be most effectively asserted by faithful compliance with the principles of the Charter and by bringing to bear against all who would violate them the moral force of world public opinion.

28. Mr. CASH (Argentina) said that the Argentine delegation had supported the inclusion in the agenda

[1] United Nations, Treaty Series, vol. 213 (1955), No. 2889.

of the General Assembly of the question before the Sixth Committee because it considered that, in view of the great changes which had taken place in the world since 1945, the time was ripe for the consideration of the principles enumerated in resolution 1815 (XVII). Those principles had long been at once the cause and the effect of the international actions of Argentina, which believed it to be essential that man should live in a world governed by international law and illuminated by justice and equity.

29. Under resolution 1815 (XVII) two questions lay before the Committee: first the procedure and then the substance of the four principles.

30. As far as procedure was concerned, it was clear from article 15 of the Statute of the International Law Commission that the progressive development of the principles before the Committee should be effected by the preparation of draft conventions on subjects which had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States, while codification should be carried out in the case of principles regarding which there had already been extensive State practice, precedent and doctrine. Thus, the Committee's study must establish which principles needed codification and which needed progressive development. There must be no implication of any attempt to amend or revise the Charter in any part of the work of codification or progressive development. The Argentine delegation shared the view of the delegation of Chile that the International Law Commission should not be asked to bear the burden of carrying out the study referred to in resolution 1815 (XVII), but that the execution of that study should be entrusted to a working group of the Sixth Committee itself.

31. In the matter of the more fundamental aspects of the principles before the Committee, the Argentine delegation felt that some reference to the part played in the development and realization of those principles by Argentina and by Latin America in general might be of assistance and might serve as a basis for the establishment of a more precise notion of what the question before the Committee involved.

32. Argentina had been one of the pioneers in the advocacy of the principle that States should refrain from the threat or use of force in their international relations, and the Minister for Foreign Affairs of Argentina, Dr. Drago, had proclaimed as long ago as 1902 the so-called Drago Doctrine, which had later become the basis of The Hague Convention of 1907 respecting the Limitation of the Employment of Force for the Recovery of Contract Debts. In 1902-1903, Argentina had given a worthy example to the world in taking steps to reduce tension with its neighbour, Chile, by concluding the first agreement for the limitation of armaments ever signed anywhere in the world. Many other examples could be given, but those two examples were enough to give some idea of Argentina's great tradition of eschewal of the threat or use of force in international relations. The principle that States should refrain from the threat or use of force in their international relations was one of the most important legal rules of the Charter. In view of the uncertainty which seemed to prevail regarding its exact meaning, it was essential that the word "force" should be the subject of a study to define its exact signification.

33. As had already been emphasized, the principle of the peaceful settlement of international disputes was the "other side of the medal" of the principle of the prohibition of the threat or use of force, and Argentina, which was proud to have settled all its territorial disputes by peaceful arbitration, fully supported the principles of the Charter regarding the peaceful settlement of disputes. A number of interesting suggestions had been made on that subject, and the Argentine delegation, for its part, wished to stress the need for the examination and, if necessary, revision of the existing international conventions on the peaceful settlement of disputes in order to ensure that they conformed to present circumstances. The Argentine delegation considered that the suggestion made by the representative of the Netherlands that an international fact-finding centre should be set up was worthy of the Committee's closest attention.

34. The recognition of the principle of sovereign equality was the fundamental principle of the United Nations, and was the essential basis not only of relations between the United Nations and its Member States, but also of relations between States. That was confirmed by Article 78 of the United Nations Charter and, more explicitly, by article 6 of the Charter of the Organization of American States. [8] To Argentina, the principle of sovereign equality meant complete internal autonomy and complete external independence, and the application of that principle should cover the legal equality of States, the enjoyment by all States of all the rights inherent in full sovereignty, respect for the personality of States, their territorial integrity and political independence, and the honest fulfilment by all States of their international duties and obligations.

35. As had already been stated, the history of inter-American relations was fundamentally the history of non-intervention. That was clear from the records of the sessions of the International Conferences of American States held in Havana in 1928 and in Montevideo in 1933. The Argentine delegation considered that the most complete expression of the principle of non-intervention was to be found in article 15 of the Charter of the Organization of American States. It felt that the principle should be viewed in the light of the order established on a world scale by the United Nations Charter and on a regional scale by the Charter of the Organization of American States.

36. As far as the other principles to be given further consideration at the Committee's next session were concerned, the Argentine delegation felt that priority should be given to the principle of good faith in the fulfilment of international obligations, which was at the very basis of the rule of law.

37. Mr. PECHOTA (Czechoslovakia) said that the most striking feature of the general debate which was now coming to an end had been the sincerity shown by the speakers in trying to lay a solid foundation for the work which the Committee had to do in order to implement resolution 1815 (XVII). Few of the items discussed by the Sixth Committee had had the benefit of such contemplative and penetrating treatment, yet the obstacles confronting the Committee remained much the same as they had been when the idea of the progressive development and codification of the principles under consideration had first been raised, at the fifteenth session of the General Assembly.

38. A considerable effort on the part of many delegations had been needed to clear the way for the adop-

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[8] United Nations, Treaty Series, vol. 119 (1952), No. 1609.

tion of resolution 1815 (XVII), which, for all its imperfections, marked a turning-point in the history of the legal activities of the United Nations. The value of that resolution could only be maintained, however, by a continuous endeavour to make progress, and it was vital that, now that it was on the threshold of a decision on how best to continue its efforts, the Committee should not allow the results already obtained to be nullified or weakened.

39. The Czechoslovak delegation was convinced that the idea of the codification and progressive development of the principles of peaceful coexistence had now become a living force, in the promotion of which a prominent role had been played by the new States of Asia and Africa. In the opinion of the Czechoslovak delegation, the Sixth Committee had assembled enough material to enable it to start immediately the codification of the four principles before it. Many views and suggestions relating to those principles had been recorded in the course of the general debate, and the Secretariat had provided a useful selection of background material. It was to be hoped that the Secretariat would provide equally valuable assistance in the next phase of the Committee's work.

40. Some delegations appeared to be reluctant to accept the idea of the codification and progressive development of the principles enumerated in resolution 1815 (XVII), and had advanced various arguments against the Czechoslovak proposals contained in document A/C.6/L.528, but the Czechoslovak delegation remained convinced that the adoption of a Declaration of principles of peaceful coexistence by the General Assembly would constitute an important contribution to the strengthening of the role of international law in relations among States and the better application of the Purposes and Principles of the Charter in the light of changing conditions. The adoption of declarations on topical legal principles was a well-established practice in the United Nations, and no one could dispute the political and legal value of such documents as the Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV)). Nor could there be any doubt regarding the General Assembly's right to express itself in solemn form or define its position on general principles the observance of which was an essential condition for the maintenance of peace and the promotion of the well-being and progress of the peoples of the world. The First Committee was—highly appropriately, in the view of the Czechoslovak delegation—at present studying a Declaration of legal principles governing the activities of States in the exploration and use of outer space (A/C.1/L.331), but was it any less imperative to develop and enunciate principles governing relations between States on earth, where collisions of interests took place every day and every hour?

41. The Czechoslovak delegation regretted that the Sixth Committee had failed to pass from the stage of the general discussion of the principles before it to their codification proper, in spite of the fact that the majority of delegates had appeared to be willing to support the idea of setting up a working group responsible for the preparation of the necessary proposals. What was even more regrettable, however, was that the continued opposition of some delegations to the objectives set by resolution 1815 (XVII) seemed likely to produce a sort of stalemate in the Committee which might prevent a unanimous decision on the proper implementation of that resolution. The Czechoslovak delegation considered that the suggestions which it had made in document A/C.6/L.528 regarding the setting up of a working group and its terms of reference might be used, mutatis mutandis, as a means of implementing resolution 1815 (XVII), but, in a spirit of genuine co-operation, it would not fail to support any positive solution which might be arrived at by the sponsors of the two draft resolutions (A/C.6/L.538 and Corr.1 and A/C.6/L.539) before the Committee, and it would be happy to give any assistance it could to the achievement of such a solution. In the view of the Czechoslovak delegation, the terms of draft resolution A/C.6/L.538 and Corr.1 represented the lowest common denominator which the Committee could accept without forsaking the final objectives set out in resolution 1815 (XVII). The Czechoslovak delegation, like many delegations in the Sixth Committee, was preoccupied with the idea of strengthening the role of international law in the community of nations, and it was its considered view that any genuine and intelligent effort aimed at the codification and progressive development of the principles of international law concerning peaceful coexistence would result in the strengthening of the cause of peace.

42. Mrs. KELLY (United States of America) said that the long general debate which was now coming to an end had been useful and enlightening, and had been a healthy exercise which had done something to remedy the practice which had grown up of paying lip-service to fundamental principles of international life without making a real analysis of the significance of those principles.

43. The notion of sovereignty evoked national and even personal emotions. Article 2, paragraph 1, of the United Nations Charter stated that the Organization was based on the principle of the sovereign equality of all its Members, so that it was obvious that the principle of sovereign equality was applicable to the mutual legal relationships of Members within the United Nations—that was to say, to what they did as Members of the United Nations. Thus, the provisions of Article 2, paragraph 1, of the Charter were applicable in any situation in which a Member of the United Nations had acted in its capacity as a Member, and their meaning was that all the consequences of United Nations membership were equally apportioned among all the Members of the United Nations. The effect of Article 2, paragraph 1, was therefore to establish the formal, juridical equality of all Member States, regardless of their size, wealth or strength. No Member State could claim a greater share of the benefits of membership or a lesser share of its burdens, except on the basis of the differences specifically provided for in the Charter.

44. The United Nations Charter contained provisions for many distinctions between Members in respect of such things as the right of veto in the Security Council, the amount of money a State had to pay as its dues to the Organization, and so forth, but the essential features of membership, such as the right to participate fully in the activities of the United Nations and to vote, were, generally speaking, alike for all.

45. On assuming United Nations membership, a State became entitled to a wide range of rights pertaining to its participation in the United Nations. It had sometimes been suggested, in the past, that one or another of those rights should be curtailed in the case of a particular member, on grounds other than those provided in Articles 5, 6 and 19. For example, it had sometimes been suggested that the right to make its

voice heard in a debate or to participate in a United Nations conference should be denied a particular member because of the alleged repugnance of its domestic policies. In general such suggestions had rightly met with significant resistance, because there should be no discrimination against a Member State on political grounds. In cases where it was claimed that a purported Member State was not really a Member that an acknowledged Member should be expelled or suspended, or that a prospective Member did not meet the requirements for membership, the situation was different in each case.

46. It could hardly be stressed too strongly that the Members of the United Nations were equal in their obligations as well as their rights. It was true that, in the case of the financial obligations of Members, there was provision for inequality of obligations, based upon Member States' capacity to pay, but while that inequality affected the magnitude of the obligations, it had no effect on their validity, which was the same for all Members. It was reasonable to expect Members to be at least as diligent, vociferous and energetic in demanding fulfilment of such obligations by all Members as in defending the right of all Members to the many benefits of membership of the United Nations.

47. The representative of Czechoslovakia had asked the Committee how, in view of the agreement attained in outer space matters in other organs of the United Nations, it could possibly fail to reach immediate agreement on matters concerning relations on earth, and he had gone on to say that a majority of the members of the Sixth Committee were in favour of the setting up of a working group to draft a declaration of principles. The United States delegation was not at all sure that the majority of the members of the Sixth Committee were in favour of such a procedure, however, and the answer to the Czechoslovak representative's rhetorical question contrasting the agreement reached on outer space with the lack of agreement on earthly issues was that there was no Charter for outer space, whereas there was more than a mere declaration for earth. There was the Charter of the United Nations—a binding treaty, comprehensive in its terms and flexible in its application.

48. Mr. ALCIVAR (Ecuador), supported by Mr. HERRERA (Guatemala), formally proposed that the debate on the item before the Committee should be adjourned for three working days, in order to provide more time for informal discussions between the sponsors of draft resolution A/C.6/L.538 and Corr.1 and A/C.6/L.539, and that, in the meantime, the Committee should take up the fourth item on its agenda—technical assistance to promote the teaching, study, dissemination and wider appreciation of international law: report of the Secretary-General with a view to the strengthening of the practical application of international law.

49. Mr. TABIBI (Afghanistan) supported the proposal of the representative of Ecuador, but suggested that, as members of the Committee would not have statements ready on the new item, it should be taken up after an interval of one day, on which there would be no meetings.

50. The CHAIRMAN invited the Committee to vote on the proposal of the delegation of Ecuador, as amended by the representative of Afghanistan.

The proposal was adopted by 47 votes to none, with 8 abstentions.

The meeting rose at 6.25 p.m.

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