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SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

First Session

SUMMARY RECORD OF THE TWENTIETH MEETING

Held at Mexico City,
on Friday, 11 September 1964, at 10.50 a.m.

CONTENTS

PRESENT:

Chairman:	Mr. GARCIA ROBLES	(Mexico)
Rapporteur:	Mr. BLIX	Sweden
Members:	Mr. COLOMBO	Argentina
	Sir Kenneth BAILEY	Australia
	U SAN MAUNG	Burma
	Mr. PECHOTA	Czechoslovakia
	Mr. IGNACIO-PINTO	Dahomey
	Mr. MONOD	France
	Mr. DADZIE	Ghana
	Mr. HERRERA IBARGUEN	Guatemala
	Mr. KRISHNA RAO	India
	Mr. ARANGIO RUIZ	Italy
	Mr. OHTAKA	Japan
	Mr. FATTAL	Lebanon
	Mr. RAISIMBAZAFY	Madagascar
	Mr. CASTAÑEDA	Mexico
	Mr. van GORKOM	Netherlands
	Mr. ELIAS	Nigeria
	Mr. BIERZANEK	Poland
	Mr. CRISTESCU	Romania
	Mr. FEDOROV	Union of Soviet Socialist Republics
	Mr. EL-REEDY	United Arab Republic

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PRESENT (continued):

Members (continued):	Mr. GIBBS	United Kingdom of Great Britain and Northern Ireland
	Mr. SCHWEBEL	United States of America
	Mr. SAHOVIC	Yugoslavia
Secretariat:	Mr. BAGUINIAN	Acting Representative of the Secretary-General
	Mr. WATTLES	Deputy Secretary of the Committee

I. CONSIDERATION OF THE FOUR PRINCIPLES REFERRED TO THE SPECIAL COMMITTEE IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 1966 (XVIII) OF 16 DECEMBER 1963, NAMELY:

(b) THE PRINCIPLE THAT STATES SHALL SETTLE THEIR INTERNATIONAL DISPUTES BY PEACEFUL MEANS IN SUCH A MANNER THAT INTERNATIONAL PEACE AND SECURITY AND JUSTICE ARE NOT ENDANGERED (A/AC.119/L.6, L.7, L.8) (continued)

Mr. FEDOROV (Union of Soviet Socialist Republics) observed that the principl of peaceful settlement of disputes was closely bound up with the first principle the Special Committee had discussed, for if the threat or use of force was prohibited, States must settle their international disputes solely by peaceful means. The connexion between the two principles was very clearly indicated in Article 1 (1) of th Charter.

It followed from Article 2 (3) of the Charter and from contemporary international law that States had no choice between military and peaceful means of settlement. They did, however, have freedom to choose among the wide range of means of peaceful settlement provided for in Article 33 of the Charter, resort to which was binding upon Members of the United Nations.

His delegation supported the formulation of principle B set forth in the Czechoslovak proposal (A/AC.119/L.6, p. 2), which most accurately expressed the true purport of the principle and reflected the practice of States in post-war international affairs. The Czechoslovak formulation rightly stressed the mandatory nature of the duty of States to settle their disputes solely by peaceful means, while not impairing their right to choose the most appropriate methods of settlement. The emphasis placed on direct negotiation in the list of means of settlement given in the Czechoslovak draft was fully justified; negotiation had proved in practice to be the best way of finding the means of solving disputes. If States were not required to accept the duty of patient negotiation, disputes could easily grow to such proportions as to endanger peace. An example of the importance of direct negotiation was the exchange of messages

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conducted between Mr. Khrushchev and President Kennedy during the Caribbean crisis in the latter part of 1962, which had helped to surmount an extremely acute world crisis.

The principle of peaceful settlement of disputes was embodied in many international instruments, such as the Convention for the Pacific Settlement of International Disputes, 1907; the Pact of the League of Arab States of 1945; the Inter-American Treaty of Reciprocal Assistance of 1947; the Charter of the Organization of American States of 1948; the Treaty of Friendship, Co-operation and Mutual Assistance (Warsaw Treaty) of 1955; the Charter of the Organization of African Unity of 1963; the Bandung Declaration on World Peace and Co-operation of 1955; and the Belgrade Declaration of 1961.

The USSR, true to its policy of peaceful coexistence, steadfastly supported the principle of the peaceful settlement of international disputes and controversies. Its position was reflected in numerous treaties, agreements, statements and communiqués. At the Special Committee's eighteenth meeting, the Czechoslovak representative had mentioned the 1959 Joint Communiqué of the United States and the Soviet Union. It might be added that during the current year the Soviet Union had issued joint communiqués with Denmark and Norway stressing the necessity and possibility of settling international problems peacefully, by negotiation; and on 31 December 1963 Mr. Khrushchev had addressed a letter to the Heads of State or Government of all countries on the subject of the peaceful settlement of territorial and frontier questions. The USSR had itself concluded treaties with a number of neighbouring countries on the peaceful settlement of frontier conflicts.

Turning to the United Kingdom draft (A/AC.119/L.8), he observed that its formulation of the principle of peaceful settlement was diffuse and imprecise, and

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contained provisions which his delegation found unacceptable. He had in mind particularly the clause which in substance pressed for the acceptance by States of the compulsory jurisdiction of the International Court of Justice. That, however, was a question which could not be considered without bearing in mind both its legal aspect and recent international practice. Under Article 36 (3) of the Charter and Article 36 (1) of the Statute of the Court, disputes were to be referred to the Court by "the parties", not by a party. Thus it was clear that a dispute could not be brought before the Court without the agreement of all the parties. Article 36 (2) of the Statute provided that States might recognize the compulsory jurisdiction of the Court; thus, such recognition was entirely optional, and could not be imposed on any State. As for international practice, the past six years had seen the conclusion of a number of international agreements on legal questions which had been drafted at United Nations conferences such as the 1958 Conference on the Law of the Sea, the 1961 Conference on Diplomatic Intercourse and Immunities and the 1963 Conference on Consular Relations. Some participants in those Conferences had argued for the inclusion in the respective conventions of articles prescribing the compulsory jurisdiction of the International Court of Justice; they had contended that without such provisions the conventions would be ineffective. The majority, however, had felt that the compulsory jurisdiction of the Court would be best dealt with in optional protocols. The conventions in question had come into force, and in March 1964 it had been reported that the number of States which had ratified the protocols was insignificant. It was clear, therefore, that the great majority of States did not consider it appropriate or advisable to recognize the compulsory jurisdiction of the Court on various questions. That was quite natural, for many States felt that there were other more effective means of settling disputes of

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certain kinds. However, it did not preclude the fact that sometimes States could accept the jurisdiction of the International Court of Justice on certain conventions taking into account their nature. For instance, the Soviet Union accepted on several occasions the jurisdiction of the Court on matters connected with the interpretation and application of some conventions, inter alia, the convention on slavery.

No more than forty countries, to his knowledge, had accepted the compulsory jurisdiction of the Court under Article 36 (2) of its Statute, and most of them had done so with reservations which virtually nullified their acceptance. The United States, for instance, had on 26 August 1946 entered a reservation to the effect that it would not recognize the compulsory jurisdiction of the Court in disputes which came within the domestic jurisdiction of the United States, as understood or determined by that country itself. The famous Interhandel case between the United States and Switzerland was an instance of how States which had accepted the compulsory jurisdiction of the Court could evade that jurisdiction by invoking their reservations.

Accordingly, the USSR delegation believed that it would be unrealistic to produce a formula enjoining States to recognize the Court's compulsory jurisdiction, as had been suggested, for instance, by the Japanese representative at the 18th meeting. The legal rules worked out by the Committee should have due regard to the practice of States and proceed from the actual state of world affairs. Otherwise they would be merely a form of words. What might be stated was that disputes could be referred to the International Court of Justice where all parties to the dispute consented to that procedure. Any attempt, however, to impose the Court's compulsory jurisdiction on States would be most resolutely opposed by his delegation as an invasion of the sovereignty of States.

Mr. BIERZANEK (Poland) observed that under Article 33 (1) of the Charter, States were free to choose from among the means of peaceful settlement of disputes therein enumerated. The question was whether it was desirable to impose any limitation on States in making such a choice, and by so doing to go beyond the Charter itself. The United Kingdom proposal seemed to advocate a generalization of the provision in Article 36 (3) of the Charter that the Security Council should take into consideration that legal disputes should as a rule be referred by the parties to the International Court of Justice. His own delegation doubted, however, whether many States could be persuaded to recognize the jurisdiction of the Court as compulsory, in accordance with the optional provisions of Article 36 (2) of the Statute of the Court, and it was supported in that view by eminent authorities on international law. The experience of the past two decades showed that States were less and less inclined to resort to judicial procedures for the settlement of international disputes; in general, they seemed to be more willing to accept compulsory arbitral procedures in connexion with specialized activities such as those covered by technical conventions than to subscribe to Article 36 (2) of the Statute. Statistics cited by the United Kingdom in its comments contained in document A/5470 showed that while thirty-seven of the 111 States which had been Members of the United Nations in mid-1963 had accepted the jurisdiction of the Court as compulsory, only four of the thirty-five States admitted to membership since 1955 had done so. Between 1922 and 1940 some twenty-eight cases had been referred to the Permanent Court of International Justice for an advisory opinion, whereas between 1946 and 1961 only twelve cases had been submitted to the International Court of Justice, six of them prior to the end of 1950.

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There were many factors contributing to the general reluctance to accept the compulsory jurisdiction of the Court, but there could be no doubt that the tension and mutual distrust which were characteristic of present-day international relations were among the foremost. Although Article 36 (3) of the Charter specifically used the term "legal disputes", any international dispute, whether legal or non-legal, was a political one, and in periods of tension it was difficult to determine whether a particular dispute was or was not of a legal nature.

The Yugoslav representative had rightly observed that one of the reasons why States were unwilling to accept the compulsory jurisdiction of the Court was that the general principles of international law were not sufficiently developed and generally recognized. The Polish delegation attached less importance to the actual number of countries subscribing to Article 36 (2) of the Statute than it did to those aspects of international law which could contribute to disengagement in international relations and the strengthening of peace and security. It had therefore consistently advocated all steps which would be the logical corollaries of the outlawing of war and the use of force, such as the prohibition of war propaganda and of pressure applied for the attainment of the objectives which in the past had been attained by armed force, recognition of the duty of States to co-operate in bringing about progressive disarmament, and recognition of the right of self-determination and the concomitant right of self-defence against colonial domination. He had been glad to hear certain delegations state that their Governments fully supported disarmament and were opposed to war propaganda and colonial domination; but he doubted whether such statements could help to dispel the existing tension when those same delegations insisted that they could not possibly fit their policies into any legal framework, that international law must remain silent with respect to those matters, that the

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exercise of economic or political pressure was a part of normal diplomatic intercourse, and that the prohibition of war propaganda might jeopardize freedom of expression.

His delegation considered that international law should contribute to improving international relations and to strengthening security on the basis of peaceful co-existence between peoples having different political and social systems. It was therefore essential that the Special Committee, unlike other legal committees, shou proceed with the codification and progressive development of international law, and should not be content simply to restate the lex lata. That was his delegation's answer to the representative of Australia, who had said in effect that Poland seemed to want international law to cover every desirable proposition concerning the conduct of States.

In the light of all those considerations, it was not surprising that States in most cases preferred to settle disputes affecting their most vital interests by negotiation, a method which, as the Czechoslovak representative had pointed out, made it possible to take into account the nature and circumstances of each particular dispute and to guarantee respect for the sovereign equality of the parti It was essential that the experience of recent years, to which the Soviet representative had just referred, should be taken into consideration. As it was unrealistic to think that a majority of States would be willing to subscribe to Article 36 (2) of the Statute of the International Court of Justice, his delegation felt that principle B should be formulated on the basis of the Czechoslovak and Yugoslav proposals.

The meeting rose at 11.45 a.m.