UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.119/SR.25
23 October 1964

ORIGINAL: ENGLISH

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

First Session

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Held at Mexico City,
on Thursday, 17 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. CHARPENTIER	Canada
	Mr. KUBRYCHT	Czechoslovakia
	Mr. MONOD	France
	Mr. DADZIE	Ghana
	Mr. HERRERA IBARGÜEN	Guatemala
	Mr. KRISHNA RAO	India
	Mr. ARANGIO RUIZ	Italy
	Mr. OHTAKA	Japan
	Mr. FATTAL	Lebanon
	Mr. RATSIMBAZAFY	Madagascar
	Mr. CASTAÑEDA	Mexico
	Mr. van GORKOM	Netherlands
	Mr. ELIAS	Nigeria
	Mr. BIERZANEK	Poland
	Mr. CRISTESCU	Romania
	Mr. KHLESTOV	Union of Soviet Socialist Republics
	Mr. KHALIL	United Arab Republic

PRESENT (continued):

Members (continued):	Mr. SINCLAIR	United Kingdom of Great Britai and Northern Ireland
	Mr. SCHWEBEL	United States of America
	Mr. ALVARADO	Venezuela
	Mr. VILFAN	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:

(c) THE DUTY NOT TO INTERVENE IN MATTERS WITHIN THE DOMESTIC JURISDICTION OF ANY STATE, IN ACCORDANCE WITH THE CHARTER (A/AC.119/L.6, L.7, L.8)

Mr. KUBYCHT (Czechoslovakia) said that in the latter half of the nineteenth century the principle of non-intervention, which had originated as a revolutionary political principle, had come to be accepted as one of the pillars of the edifice of international law. By the beginning of the twentieth century it had become a part of positive international law, and it had been given expression in Article 15 (8) of the League of Nations Covenant. Its development had been substantially accelerated by the Latin American countries, which rightly considered it a guarantee of their independence; instruments which could be cited in that connexion were the 1933 Convention on Rights and Duties of States, the 1933 Declaration of American Principles and the 1945 Act of Chapultepec. Today it was one of the cornerstones of the political and legal system created by the United Nations Charter, an instrument conceived as a shield protecting the equality of all States, regardless of their economic or social systems, and as the foundation of peaceful co-existence in the post-war era. Peaceful and friendly relations among States depended on the strict and unconditional application of the principle of non-intervention; history was replete with examples of the way in which intervention by one State in the affairs of another tended to increase international tension and threaten the peace and security of the world. Czechoslovakia, which had repeatedly been the victim of acts of aggression, was a firm advocate of peaceful coexistence and regarded non-intervention as one of the essential principles governing relations between States. It hoped, therefore, that the Committee would formulate principle C in absolutely clear and precise terms.

(Mr. Kubrycht, Czechoslovakia)

The Czechoslovak delegation's proposal (A/AC.119/L.6) provided for the prohibition of both direct and indirect intervention by one State in the affairs of another. Thus it would apply not only to intervention by armed force, which was in any case covered by other rules of international law, but also to political, economic or any other kind of interference, pressure or intervention which could infringe the sovereignty of a State. The United Nations Charter proclaimed the principle of the sovereign equality of Member States, in Article 2 (1), and prohibited intervention by the Organization in the domestic affairs of Member States, in Article 2 (7). United Nations practice and international practice in general since the Second World War had confirmed the soundness of the legal principle of non-intervention beyond any possibility of doubt.

With the consolidation and development of the principle of self-determination, the principle of non-intervention had acquired special importance, for the collapse of the colonial system and the accession to independence of many new States had brought into sharp relief the need to protect the sovereignty and independent development of those States against external interference. The Afro-Asian States, in drawing up such instruments as the Bandung Declaration and the Charter of the Organization of African Unity, had included the principle of non-intervention among the basic principles governing relations between States in the post-colonial era.

The second sentence in the first paragraph of the Czechoslovak proposal had been dictated by the consideration that any interference aimed at infringing the right of a State to decide the course of its own political, social or economic development could cause international friction that might endanger peace, and that any external pressure exercised against the right of a State freely to choose a particular social system or political regime should therefore be unconditionally prohibited.

/...

(Mr. Kubrycht, Czechoslovakia)

It would be noted that the first paragraph of the draft mentioned intervention in the external as well as the internal affairs of States. That might seem superfluous, since the conduct of a State's external affairs was naturally its own concern. His delegation had preferred, however, to include such a provision, thus profiting by the collective experience of the American States as reflected in articles 15 and 16 of the Charter of the Organization of American States.

The second paragraph of the Czechoslovak draft was based on the conviction that any act, manifestation or attempt directed against the territorial integrity or inviolability of a State was not only an invasion of its sovereignty but also prejudicial to peaceful relations among States.

Finally, his delegation had considered it essential to include a provision expressly prohibiting the threat to sever diplomatic relations used as a means of compelling one State not to recognize another, for there were States which resorted to that tactic in order to prevent third States from exercising their inalienable right to participate in international relations, thereby weakening the concept of universality on which contemporary international law was founded.

Mr. VILFAN (Yugoslavia) recalled that during the visit of President Tito to Mexico in October 1963 a joint Mexican-Yugoslav communiqué had been issued stressing, inter alia, the importance for peace and co-operation among nations of universal observance of the principles of national independence, self-determination and non-intervention. In that communiqué, and also in a statement made later by President Tito before the United Nations General Assembly, the elaboration under United Nations auspices of a general agreement on non-intervention had been suggested.

In examining the principle of non-intervention, members of the Committee should first give thought to the underlying value they were seeking to protect. That value,

(Mr. Vilfan, Yugoslavia)

in his opinion, was the free, unhampered and hence, organic development of the States as members of the international community. The object, in other words, was to ensure that every State freely enjoyed all its rights under international law, or, as it was sometimes put, was able to assert its personality as a State. While that value was simply correlated to the value of political independence and territorial integrity, its separate and special importance was clear from the many historical cases in which political independence and territorial integrity, while formally existing, had been vastly reduced in actual fact through the suppression of the personality of the State.

The unhampered and organic development of the State held a high place in the hierarchy of values of the United Nations Charter, as could be seen from the Preamble and from Articles 1 (2) and 2 (1). The references in those provisions to the equal and sovereign rights of States and the right of self-determination of peoples clearly implie non-intervention and the right of unhampered national development. The process of self-determination, incidentally, did not come to an end with the declaration of independence and the formation of a State in a given territory; it was the day-to-day struggle by which a people determined its destiny. Article 55 gave a clear idea of what was implied in the concepts of equal rights and self-determination as used in the Charte Developments since the drafting of the Charter had served only to increase the significance of the notion of the free development of nations, as was illustrated most clearly by the process of decolonization.

Support for the principle of non-intervention and the free development of nations was not, as was sometimes claimed, inconsistent with the idea of world integration. Indeed, it was impossible to imagine such integration, in a context of democracy, withou the prior development of national processes of democratization.

(Mr. Vilfan, Yugoslavia)

Article 2 (4) of the Charter protected the political independence and territorial integrity of States, which was one aspect of the fundamental value of national independence, and it could be said also to postulate implicitly the other aspect of that value - the free and unhampered development of States. Article 2 (7), in prohibiting United Nations intervention in the domestic affairs of States, also implicitly prohibited such intervention by other States. The time had come to state explicitly what the Charter implied with respect to non-intervention; that was clearly what the General Assembly had had in mind in including non-intervention among the principles referred to the Special Committee for progressive development and codification The Yugoslav delegation's proposal on the principle of non-intervention (A/AC.119/L.7, pp. 2-3) was an attempt to carry into effect the General Assembly's intention.

The first paragraph of the proposal formulated the principle as a simple prohibition of intervention; its wording was taken directly from article 15 of the Charter of the Organization of American States. The second paragraph formulated the same prohibition, but using the approach of Article 2 (4) of the United Nations Charter; it stated the prohibition in terms of the value to be protected. The third paragraph specified, by way of example, certain types of intervention, all of them cited from existing texts. The wording of sub-paragraph (a) was taken almost entirely from article 16 of the Charter of the Organization of American States. Sub-paragraphs (b), (c) and (d) were based partly on an opinion of the Inter-American Juridical Committee and partly on the International Law Commission's Draft Code of Offences against the Peace and Security of Mankind. Sub-paragraph (e) was derived, from General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources.

It was impossible to enumerate all the possible forms of intervention. A more complete codification should be attempted in future, but the absence of such a

(Mr. Vilfan, Yugoslavia)

codification at the present time should not prevent the Committee from illustrating what it meant by intervention. The problem was the same as that encountered in connexion with principle A; the fact that there was no agreed definition of aggression did not preclude the Committee from spelling out the terms of Article 2 (4).

He entirely agreed with the statement in the United Kingdom proposal that "in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States" (A/AC.119/L.8, p. 7). Some delegations had contended that because of the interdependence of nations in the modern world it was impossible to extend the meaning of "force" as used in Article 2 (4) beyond the sphere of armed force without running the risk of abuses of the right of States to defend themselves against "force". No such objection, he believed, could be raised against the Yugoslav delegation's proposal on non-intervention; in view of the nature and content of the principle in question, full reliance could be placed on the judgement of the victim country and on the decision of the United Nations organ to which it would turn for protection.

The two other proposals on non-intervention were constructive and contained elements which the Committee could profitably use. But he felt that it was more in keeping with the Charter and with the stage already reached in international thinking on the question of intervention that reference should be made in the Committee's formulation of principle C not only to political independence and territorial integrity but also to the right of every State to free and organic development.

Mr. BIERZANEK (Poland) said that the principle which was now the subject of the Committee's debate was the generally recognized one that every State had the right to political independence and that all other States must refrain from any intervention in its internal or external affairs as well as from any acts aimed at a violation of its territorial integrity. He believed that the principle of non-intervention required new formulation, taking into account the practice of the United Nations and of States during the last twenty years and the need to ensure friendly relations and co-operation in the future.

Firstly, in view of the present division of the world into opposing ideological camps and differing political and economic systems, it was necessary to stress that any pressure or interference by one State or group of States with the object of changing the social or political order in another State was prohibited. That prohibition was included in the Czechoslovak and Yugoslav proposals (A/AC.119/L.6 and L.7), and he considered that both those proposals deserved full support.

Secondly, since the principle of non-intervention, as stated in particular in Article 2 (7) of the Charter, had repeatedly been invoked against the interests of colonial peoples fighting for independence, principle C should be so formulated as not to hinder the self-determination of colonial peoples. A clause covering that point had been suggested by his Government in paragraph 13 of its comments reproduced in document A/5470.

Thirdly, there was the question of the forms of pressure used by some States to compel other States to recognize or not to recognize a new State or Government, particularly the threat to sever diplomatic relations. Such acts constituted unlawful pressure on the sovereign will of States and contributed to international tension. The deplorable consequences of the policy of non-recognition of new States and Governments, and the difficulties to which it gave rise in the activities of

/...

(Mr. Bierzanek, Poland)

international organizations, were well known. During the last two decades that policy had been used extensively; never before had there been such a gap between what was recognized and what was really the case. In that connexion, he wished to recall the view which had been expressed by the United Kingdom Government in connexion with the discussion of the Draft Declaration on Rights and Duties of States, namely, that the recognition and non-recognition of States was a matter of legal duty and not of policy. The problem was a complex one, but one aspect of it was relevant to principle C. Recent years had seen the formulation of the so-called "Hallstein doctrine" that the Federal Republic of Germany should sever diplomatic relations with States recognizing the other German State. His delegation believed that every State as a corollary to its sovereignty, had the right to decide freely and without pressure whether a new State fulfilled the conditions for recognition as a subject of international law. The representative of Sweden had been right in saying, at the Committee's tenth meeting, that a State was not entitled to use force against an entity merely because it claimed that that entity did not constitute a State. It was nevertheless important that decisions on recognition should be in keeping with reality, in order to avoid confused situations in which potential aggressors might be tempted to use force against States which they did not recognize as such.

In according or refusing recognition, States were performing what had been called a quasi-judicial function as members of the international community. That function must not be performed arbitrarily, nor must its performance be the subject of pressure by third States. The Polish delegation believed that such pressure constituted a violation of international law - as did similar pressure used to compel a State to vote in a particular way in an international organization.

/...

(Mr. Bierzanek, Poland)

It was true that the prohibition of the kind of pressure to which he referred was not expressly contained in any instrument of positive international law, but his delegation considered that it followed from the general principles of international law. Although every State naturally had the right to make its own decisions concerning its diplomatic relations, that right must not be used for the purpose of unlawful pressure on other States. In international law, it was an abuse of rights (abus de droit to exercise rights in such a way as to interfere in matters within the competence of other Governments.

If the "Hallstein doctrine" should become generalized, States might find themselves obliged to choose whether to maintain diplomatic relations with one great Power or with another. That would lead to the disintegration of international order.

The nuclear age made it an absolute necessity that States should adopt a higher standard of conduct. His delegation therefore rejected the view that pressure exercised by one State on another was a feature of normal diplomatic intercourse and permissible under international law. The progressive development of international law required that the prohibition of the use of armed force should be extended to cover all forms of pressure aimed against the political independence of other States and their free exercise of sovereign rights.

In the light of those considerations, his delegation considered that the formulation of principle C should contain a paragraph on the lines of the third paragraph in the Czechoslovak proposal.

The meeting rose at 11.55 a.m.