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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 THIRTY-FIRST MEETING

Held at Mexico City,
on Tuesday, 22 September 1964, at 4.45 p.m.

CONTENTS

PRESENT:

Chairman:	Mr. PECHOTA	(Czechoslovakia)
later,	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. VANDERPUYE	Ghana
	Mr. de CORDOBA	Guatemala
	Mr. MISHRA	India
	Mr. ARANGIO RUIZ	Italy
	Mr. OHTAKA	Japan
	Mr. FATTAL	Lebanon
	Mr. RATSIMBAZAFY	Madagascar
	Miss TELLEZ BENOIT	Mexico
	Mr. RIPHAGEN	Netherlands
	Mr. AGORO	Nigeria
	Mr. BIERZANEK	Poland
	Mr. CRISTESCU	Romania
	Mr. KHLESTOV	Union of Soviet Socialist Republics
	Mr. KHALIL	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland

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PRESENT (continued):

Members (continued):	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:

(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.8, L.23, L.24, L.25, L.26, L.27) (continued)

U SAN MAUNG (Burma) said that his delegation had hoped that it would be possible for the Committee to achieve some measure of unanimity on the topic now before it. It was clear, however, that there was a considerable divergence of opinion on what constituted intervention in matters essentially within the domestic jurisdiction of a State. Some representatives had indeed suggested that the Charter, under Article 2 (4), prohibited only the threat or use of armed force, and that anything short of dictatorial interference in the affairs of another State did not constitute illegal intervention; Article 2 (7), it was asserted, applied only to the United Nations itself, and not to inter-State relations.

Since, however, the question was being considered within the broader framework of principles of international law concerning friendly relations and co-operation among States, and since one of the goals of the United Nations was the progressive development of international law, the Committee should examine not only the purposes and principles of the Charter in themselves, but also the spirit underlying Article 2 (7). Nothing could be more destructive of friendly relations and co-operation than interference by one State in matters essentially within the domestic jurisdiction of another State. Given the sovereign equality of all States, each State was entitled to develop its own political, economic and social order in the manner best suited to its people, and it was presumptuous for any State to think that its own order was superior and should be imposed on other States. That had once been the

(U San Maung, Burma)

attitude adopted by European nations towards Asian and other countries; now that the principle of sovereign equality was universally accepted, however, most States would surely agree that the principle embodied in Article 2 (7) was valid with respect to relations between one State and another.

The principle of non-interference in the affairs of other States had been proclaimed not only in the Declarations adopted at Bandung in 1955 and at Belgrade in 1961, but also in the Charters of the Organization of American States and the Organization of African Unity. As the representative of India had pointed out at the 29th meeting, the proposal submitted by the delegations of Ghana, India and Yugoslavia (A/AC.119/L.27) was inspired to a large extent by the relevant provisions of the Charter of the Organization of American States. The Burmese delegation agreed that the provisions of that Charter, particularly its article 15, should be used as a guide in the formulation of the principle of non-intervention, and it therefore warmly welcomed the three-Power proposal. It also supported the ideas set forth in the proposals of Mexico (A/AC.119/L.24) and Czechoslovakia (A/AC.119/L.6), and hoped that the Drafting Committee would find it possible to combine those three proposals.

His delegation would spare no efforts in striving for a draft which would be acceptable to the great majority of delegations, even if it proved impossible to achieve complete agreement. Burma, believing that the best safeguard of its territorial integrity and political independence lay not in armaments but in the establishment of friendly relations with all peoples, earnestly hoped that the endeavours of the Special Committee would be crowned with success.

Mr. RATSIMBAZAFY (Madagascar) said that while the various proposals which had been submitted would serve as a useful basis for the Committee's work, his delegation did not consider any of them completely satisfactory. Some proposals seemed based on an unrealistic desire for a rapid advance in international law, while others reflected an excessive concern for the preservation of national sovereignty. It was true that the principle of sovereignty was still the keystone of inter-State relations, but his delegation believed that significant progress in international law would be impossible without the gradual breaking down of the walls of national sovereignty. The efforts of the Special Committee itself were based on the assumption that States should recognize as mandatory the rules of international law, agree to limit their freedom of action in certain fields under multilateral agreements, and, above all, transfer some of their powers to the appropriate organs of the United Nations. It was important to realize that any progress made by the United Nations must reflect in some degree a surrender of national sovereignty, and that such a process was in the interests of peace and stability. When the Organization had undertaken the task of maintaining law and order in the Middle East and in Africa, and of speeding the process of decolonization, individual Powers had been obliged to recognize a limitation on their freedom of action in those spheres. The authority of the United Nations as a body must take precedence over that of its individual Member States. It was to be hoped that the Special Committee would be able to do much to assist the organs of the United Nations in the patient conquest of areas of competence.

So far as principle C was concerned, he believed that a distinction should be made between the sovereignty of States in their mutual relations and the limited sovereignty of States in their relations with the United Nations. Thus, while the principle of

(Mr. Ratsimbazafy, Madagascar)

non-intervention was fully applicable in relations between States, and necessary for the protection of their independence, it did not apply to legitimate collective measures taken by the United Nations in the common interest for the defence of peace. A State's voluntary acceptance of obligations under the United Nations Charter upon its admission to the Organization was a manifestation of its sovereignty. Thus, there was nothing to prevent the United Nations from taking up questions of international concern, even when they did not relate directly to the maintenance of peace and security. The question whether a particular subject was within the exclusive competence of a State was an essentially relative question depending on the development of international relations, as the Permanent Court of International Justice had stressed in the Tunis and Morocco Nationality Decree Case.

Mr. CHARPENTIER (Canada) said that in its written comments on principle C, the Canadian Government had stated that sovereign equality would be meaningless if the territorial integrity and political independence of Member States were not held to be inviolate or if the Members of the United Nations, acting singly or in concert, were entitled to intervene in the domestic affairs of other Member States. Thus in his delegation's view the legal concept of non-intervention as between States Members of the United Nations could be derived by implication from the Charter system and could be regarded as springing from the concept of respect for the personality of the State, which constituted an element of sovereign equality as defined in the Report of Sub-Committee I/1/A to Committee I/1 at the San Francisco Conference. So far as concerned other States, the concept could be viewed as an important derogation from the full freedom of action normally associated with national sovereignty. However, the Charter did not expressly state that concept as a legally binding norm; that was the

(Mr. Charpentier, Canada)

source of the main difficulty encountered in formulating rules of non-intervention. For example, certain speakers had referred to the concept of self-determination embodied in Article 1 (2) of the Charter as the main rationale for the formulation of such rules; yet the self-determination referred to in that paragraph was the self-determination of peoples, a concept which might not always coincide with the concept of the self-determination of States, and which left open the possibility of orderly change. That example suggested that too rigid a formulation of the rules of non-intervention might lead to serious contradictions when the Special Committee came to study the principle of equal rights and self-determination of peoples.

There were certain inconsistencies between the proposals submitted on principle C and those relating to principles A and B. For instance, there was a potential conflict between proposals for the non-recognition of situations brought about by the use of force and proposals concerning the recognition of States. It was to be hoped that as the Committee's work progressed those inconsistencies would be ironed out. He noted in that connexion that the four members of the Committee which were permanent members of the Security Council did not seem eager to draw up a list of identifiable cases of intervention - a fact from which his delegation inferred that they shared certain misgivings as to the effect which such a list might have on the Security Council's discharge of its responsibilities. For example, in a case in which a State complained to the Council that another State had broken or suspended diplomatic relations with it, United Nations practice under the Charter and the practice of States since the signing of the Charter would give little indication of what course should be followed. The Council would be faced from the outset with the problem that its function was to deal with threats to international peace and security, and it would be difficult to determine

(Mr. Charpentier, Canada)

on what basis it could act to protect the plaintiff against the alleged intervention so as to ensure the more effective application of the Charter principles with which the Special Committee was primarily concerned.

However, those difficulties did not necessarily rule out any detailed formulations. His delegation felt that some of the proposals submitted would be valuable if they could be fitted into an agreed progressive framework of peaceful means of settling disputes. He welcomed in particular the Mexican proposal that the legal system elaborated by the Organization of American States should be taken as a model; that system was a history-making achievement of the countries of Latin America and of the great Power which had co-operated with them in building it. The community of views and interests which had made the OAS instruments both possible and significant suggested what should be the major criterion for determining the possible scope of the Committee's efforts in elaborating the principle of non-intervention. Some delegations had suggested that the members of the Committee could find a community of interest in the need to combat the nuclear threat. His delegation did not share that view, for it felt that the Committee was concerned with an area of international life which, embracing as it did the necessary intercourse of States, was not concerned with that threat. Genuine multilateral co-operation would thus seem to be a more adequate justification for the Committee's efforts.

The CHAIRMAN said that he would give the floor to delegations which had asked to speak in exercise of the right of reply.

Mr. BIERZANEK (Poland) said some speakers had asserted that every State had the right to take discretionary steps such as those contemplated under the Hallstein doctrine, and that that right should not be subject to limitations. His delegation had never denied the right of States to recognize new States and Governments, although in t

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(Mr. Bierzanek, Poland)

view of many authorities that right was not an unlimited one; he recalled in that connexion the view expressed by Sir Hersch Lauterpacht that it was the duty of States to recognize new States and Governments, and the opinion expressed by certain Governments i connexion with the Draft Declaration on the Rights and Duties of States that in the interests of international law the sphere left to purely political judgements should be reduced to the narrowest possible limits. What his delegation contended was that althou States had the right to recognize other States and decide the extent of their relations with them - for example, they could maintain only commercial relations with certain States and refrain from establishing diplomatic relations with them, as in the case of t two existing German States - they were not entitled to abuse that right by threatening t sever diplomatic relations in order to compel other States to recognize or refrain from recognizing new States or Governments, for such action constituted illegal intervention in the external affairs of sovereign States. The Hallstein doctrine was not a doctrine simple non-recognition but a programme of qualified non-recognition involving the exerci of pressure on third States.

His delegation shared the views on the principle of non-intervention expressed by t Mexican representative at the previous meeting, and considered that the Mexican proposal (A/AC.119/L.24), together with the Czechoslovak and three-Power proposals, should be use by the Drafting Committee as a basis for the formulation of principle C. The Mexican proposal would prohibit States from making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages. Th Central European countries were faced not so much with that problem as with the problem of direct, powerful pressure exerted on other States to compel them not to recognize a new State.

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(Mr. Bierzanek, Poland)

Both the Mexican and the Czechoslovak proposals were aimed at ensuring the establishment of conditions in which States would be free to make their own decisions concerning recognition, one of the aspects of international law in which it was particularly desirable that progress should be made

Mr. García Robles (Mexico) resumed the Chair.

Mr. SAHOVIC (Yugoslavia), replying to points made the previous day by the United States representative, said that on the subject of the criteria which should guide the Committee in its study of the four principles the Yugoslav delegation agreed with the Indian representative, who had stressed that under General Assembly resolution 1966 (XVIII) the Committee was to study principles of international law. The debates and documents preceding the Committee's present session clearly showed that the United Nations considered the subject under consideration to come within the framework of international law in general. The words "in accordance with the Charter of the United Nations", used several times in General Assembly resolutions 1815 (XVII) and 1966 (XVIII), indicated the general direction in which the principles were to be developed; the Charter was to be the basis of the Committee's work, but the Committee was free to take into consideration new elements arising since the signing of the Charter "for the purpose of the progressive development and codification of the four principles" (resolution 1966 (XVIII), operative paragraph 1).

While the Charter contained no provision dealing explicitly with the principle of non-intervention, that principle must be regarded as implicit in it. It was the natural corollary of Article 2 (4), prohibiting the use of force, and of Article 2 (1), which laid down the principle of sovereign equality, as well as the right of self-determination of peoples. The duty of non-intervention could be

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(Mr. Sahovic, Yugoslavia)

studied independently of Article 2 (7), which prohibited intervention by the United Nations in the domestic affairs of States; but it could be argued that Article 2 (7) implied a fortiori a prohibition of intervention as between States.

The United States representative had criticized the clause in the Yugoslav proposal relating to the right of States to the free disposal of their natural wealth and resources (A/AC.119/L.7, p. 3). The proposal in question was not included in the three-Power proposal, but a similar clause was to be found in the Mexican proposal (A/AC.119/L.24). A condemnation of intervention in that sphere would represent a step forward in the progressive development of the principle that States had the right to dispose of their natural riches and resources, a right proclaimed by the General Assembly in resolutions 626 (VII) and 1803 (XVII). However, it was not enough simply to proclaim legal norms; efforts must be made to ensure their actual application, bearing in mind of course the level of development of international law and more particularly the possibilities of practical action by the United Nations. The latter factor was linked, in turn, to the degree of interdependence of States, and it was the rapid rate at which that interdependence was growing that would do most to promote the elaboration of new norms of international law governing friendly relations and co-operation among States. Finally, it must also be kept in mind that it was precisely due to the interest shown regarding the principle of non-intervention that the General Assembly had taken up the question of the sovereignty of States over their natural resources; in fact, General Assembly resolution 626 (VII) recommended all Member States "to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any State over its natural resources."

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Mr. VANDERPUYE (Ghana) said that one of the members of the Committee had taken a somewhat conservative view of the principle of non-intervention, asserting in effect that it applied only to relations between the United Nations and States and not to inter-State relations. Since it was the Committee's task to foster international co-operation, he appealed to the delegation in question to reconsider its position with a view to making a more constructive contribution to the Committee's efforts.

ORGANIZATION OF WORK

The CHAIRMAN suggested that in view of the limited time remaining for the completion of the Committee's work, a time-limit of ten minutes should be imposed on statements made in the discussion on principle D and on methods of fact-finding.

Mr. MISHRA (India) and U SAN MAUNG (Burma) supported the Chairman's suggestion.

In reply to a question from Mr. FATTAL (Lebanon), the CHAIRMAN said that he would expect members to speak only once on each item, but they would have the right to speak briefly in exercise of their right of reply.

The Chairman's suggestion was approved.

The meeting rose at 5.45 p.m.