UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.119/SR.23
22 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-THIRD MEETING

Held at Mexico City,
on Tuesday, 15 September 1964, at 10.50 a.m.

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(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.8 and L.17-L.22) (continued)

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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. PECHOTA	Czechoslovakia
	Mr. IGNACIO-PINTO	Dahomey
	Mr. DELEAU	France
	Mr. DADZIE	Ghana
	Mr. HERRERA IBARGÜEN	Guatemala
	Mr. KRISHNA RAO	India
	Mr. ARANGIO RUIZ	Italy
	Mr. HATANO	Japan
	Mr. FATTAL	Lebanon
	Mr. MORENO	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

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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. ALVARADO	Venezuela
	Mr. VILFAN	Yugoslavia
Secretariat:	Mr. BAGUINIAN	Acting Representative of the Secretary-General
	Mr. WATTLES	Deputy Secretary of the Committee

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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.8 and L.17-L.22) (continued)

Mr. CHARPENTIER (Canada) said that although principle B embraced a smaller range of concepts than principle A, it was of enormous significance since it was intimately linked with the notion of sovereign equality, a link reflected both in the state of mind resulting from mutual respect among States and in the institutional consequences resulting from the idea of juridical equality. The state of mind in question characterized the relations between States as a whole rather than simply the frictions between them. It might therefore be best to consider the secondary rules or principles that might be formulated on that subject during the discussion of principle D, at which time his delegation might have some suggestions to make.

As to institutional effects, the Charter approached the question from two different but complementary angles - that of means of settlement between parties and that of means of settlement through the intermediary of United Nations bodies. The obligation of the parties in the case of direct means of settlement went much further than the mere renunciation of the use of force. Their freedom to choose between means was limited both by the imperative of keeping the peace and by that of juridical equality. But juridical equality often had to make itself effective in circumstances where there was an initial imbalance between the parties; and that imbalance explained the broad range of means of settlement proposed by the Charter in addition to negotiation pure and simple. Apart from those traditional means, the Charter provided for various auxiliary institutions, in particular, the International Court of Justice, the Security Council, the General Assembly and the Secretary-General. In that system the Court had a distinct

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(Mr. Charpentier, Canada)

role: its activity was not necessarily dependent on a given dispute's endangering security and the general welfare. In view of the nature of the principal disputes which had arisen since the drafting of the Charter, his delegation did not believe that any long-term conclusions could be drawn from the extent to which recourse had been had to the International Court.

The proposals before the Special Committee on principle B left a gap with respect to the powers and functions of United Nations political organs in the peaceful settlement of disputes. To fill that gap, his delegation and that of Guatemala had submitted an amendment (A/AC.119/L.20), based largely on Article 14 of the Charter and on United Nations practice in the matter of friendly relations. Owing to various technical difficulties connected with the wording of that amendment, the sponsors had decided to withdraw it, and the Canadian delegation had now substituted for it the amendment in document A/AC.119/L.22, which could be more easily fitted into the proposals already submitted. He hoped that the Drafting Committee would be able to use it as a basis for the formulation of a progressive clause stressing the role of the political organs of the United Nations in the choice of the appropriate means of settlement.

In conclusion, his delegation believed it essential that the principle of peaceful settlement should be considered in the context of existing international relations rather than in that of some hypothetical world of allegedly non-political disputes.

Mr. HERRERA IBARGÜEN (Guatemala) associated himself with the Canadian representative's remarks. He hoped that the Drafting Committee would take into account the idea underlying the joint amendment, which had been withdrawn solely for technical reasons.

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Mr. KRISHNA RAO (India) said that the proposal submitted by his delegation with those of Ghana and Yugoslavia (A/AC.119/L.19) was inspired by the desire to find a compromise solution acceptable to all; and he hoped that it would be approached in that spirit.

Paragraph 1 of the proposal reproduced the substance of Article 2 (3) of the Charter while extending the principle to all States, in line with the ideas of Article 2 (6). With regard to paragraph 2, he thought that the criticisms which had been voiced by some delegations were based on misunderstanding. The reason why reference was made first to the procedure of negotiation was that, in the nature of things, the first step towards peaceful settlement was a dialogue between the parties, or negotiation in the broad sense. As had been pointed out by the French jurist André Gros, it was by the age-old method of direct negotiation that the great majority of disputes between States were in fact resolved, often without even coming to the knowledge of the general public. It had been argued that the assertion that disputes between States should be settled by direct negotiations was on the one hand too obvious to require repetition and, on the other, a restrictive conception, limiting the scope of Article 33 of the Charter. The two parts of that criticism seemed mutually contradictory. In any case, the sponsors of document A/AC.119/L.19 were not claiming that negotiation was the only means of settling disputes peacefully, but that it was the principal means, as was confirmed by the authority whom he had cited. The United Kingdom delegation, in the commentary annexed to its proposal (A/AC.119/L.8, page 5), admitted that negotiation was the means of settlement which was most commonly used, while rightly adding that it was not the only means. The formulation proposed in document A/AC.119/L.19 differed from the language of Article 33 (1) of the Charter only in so far as it made particular reference to direct negotiations; it did not

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(Mr. Krishna Rao, India)

close the door to the other methods of settlement listed in the Article concerned. The Charter provision was notably flexible; it left the choice of procedure to the parties, and refrained from laying down that one particular method must be used in certain circumstances - although it had been rightly shown that the words "of their own choice" in the provision covered any choice which might have been made before the dispute had arisen as well as choices made after the dispute had arisen. As an eminent United States scholar had pointed out, the Charter made it the right as well as the duty of Member States to settle their disputes by means of their own choice, and five of the six Articles in Chapter VI related to settlement by the parties themselves. It was clear that the Charter imposed no obligation on States to resort to any particular means of settlement under given circumstances, or even to resort to the various procedures *seriatim*. He therefore could not accept the view that the three-Power proposal represented a retrograde step.

It was clear that the Special Committee was not obliged to adhere rigidly to the terms of Article 33; Article 13 (1) provided for the progressive development of international law, and the provisions of the Charter were wide enough to allow such development. The method of direct negotiation was covered by Article 33 (1), and the pre-eminence of direct negotiation as a means of settling disputes had been established by the practice of States during the last two decades. It was natural, then, that that pre-eminence should be recognized in the Committee's recommendations to the General Assembly.

The three-Power proposal did not require that direct negotiations should be resorted to first in all disputes; the words "unless otherwise provided for" covered situations in which bilateral or multilateral treaties to which the States in dispute were parties provided for a particular method of resolving disputes. The inclusion of provisions

(Mr. Krishna Rao, India)

of that nature in bilateral and multilateral agreements was specifically recommended in paragraph 4 of the proposal. The words "unless otherwise provided for" also took into account the right of States to bring disputes of particular gravity to the attention of the appropriate United Nations organ without going through the various procedures of peaceful settlement.

The proposal naturally allowed the parties, upon entering into negotiations, to decide to seek a settlement through one of the other means available, such as inquiry, mediation and conciliation. The methods of arbitration, judicial settlement and resort to regional agencies or arrangements might be adopted either as a result of negotiations undertaken after the dispute had arisen or in pursuance of treaty provisions of the kind he had already mentioned.

It was true that direct negotiations sometimes failed to make progress and were interrupted, at least temporarily. In such cases the assistance of a third party, such as the United Nations, might be needed to set the process going again. Such temporary interruptions did not, in his view, detract from the value of direct negotiations.

He would now turn to paragraph 3 of the three-Power proposal. His own country had accepted the compulsory jurisdiction of the International Court of Justice following its accession to independence, and following a temporary revocation of that acceptance had resumed its original policy in 1959. However, it was necessary to be realistic. It was a well-known dictum that the legal order must be flexible as well as stable and respond to changes in actual life. The facts of actual life were that one great Power rejected the competence of the International Court and that another had made its acceptance of the compulsory jurisdiction of the Court contingent on serious reservations. As for the newly independent States, it was not as easy for them to accept the Court's jurisdiction as it was for older States; the new States were in much

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(Mr. Krishna Rao, India)

the same position as the older States had been in 1920 in relation to the Permanent Court of International Justice. Sometimes, situations arising from obligations inherited by new States from former colonial regimes had not been satisfactorily settled. Apprehensions based on the composition of the Court and suspicions that some of its judges allowed themselves to be influenced by the national policies of their countries were also an obstacle. The newly independent States were conscious of the need for a universal law and for its codification; but the function of international law in the modern world could not be to protect vested interests in a period of change but must be to adjust conflicts of interests on a basis which contemporary opinion regarded as reasonable. If the rule of law was to flourish, patently unjust situations must be rectified. As Professor Toynbee had said, law must be adjusted to life, and the purpose of law was "to make life work".

Those considerations had to be borne in mind in considering the question of compulsory jurisdiction. He believed that steady progress was being made towards the goal of a common law of mankind. The achievements of the International Law Commission and of the various plenipotentiary conferences which had given effect to its work were important in that regard. The recent elections of new judges to the International Court were to be welcomed in that they had helped to broaden the Court's membership. Progress was likewise being made in reducing the number of reservations to declarations of States accepting the compulsory jurisdiction of the Court. He sympathized in that connexion with the motives behind the Japanese proposal (A/AC.119/L.18), but appealed to the representative of Japan to show more patience towards newly independent countries and to take into account genuine difficulties. Japan itself, which was a relatively old nation, had allowed three years to elapse between its admission to the United Nations and its acceptance of the compulsory jurisdiction of the Court.

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(Mr. Krishna Rao, India)

He had been surprised to hear it said that no discernible trend towards the acceptance of international arbitration and judicial settlement was observable among the new States. In fact, a very large number of agreements concluded among African and Asian States, and between those States and other States, as well as multilateral agreements to which they had acceded, provided for disputes to be settled by the International Court. Other agreements provided for the appointment of arbitrators by the President of the Court. Progress was also being made in the same field through the Asian-African Legal Consultative Committee. Finally, there were the developments within the framework of the Organization of African Unity mentioned by the representative of Nigeria at the 18th meeting.

Mr. IGNACIO-PINTO (Dahomey) said that the debate had shown the existence of two different views on the means to be used for the peaceful settlement of disputes: first, that primary reliance should be placed on the means already laid down in Articles 2 (3) and 33 (1) of the Charter, and secondly, that States should move forward from that position and accept the compulsory jurisdiction of the International Court of Justice and scrupulously comply with its decisions. His delegation believed that the Committee should remain within the limits of its terms of reference, which were to consider the formulation of principles of international law concerning friendly relations and co-operation among States. In a spirit of realism, and in conformity with an old African tradition, his delegation supported the principle of negotiation - provided that the parties to the dispute were acting in good faith - as a means of settling disputes among States, but that principle had been adequately stressed in the Charter, and if the Committee confined itself merely to paraphrasing what the Charter had already said so cogently it would not make much progress in its task.

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(Mr. Ignacio-Pinto, Dahomey)

The truth was that everyone was more or less subject to the influence of his country's policies. The Committee had to act within the realm of the possible. Dahomey, which was a small country in comparison with the great Powers, would favour the establishment of a supreme international tribunal whose jurisdiction would be recognized by all in the assurance that law would prevail over force; it felt that to give preference to the means of conciliation would leave it exposed to the indirect influence of the power of any large State with which it might come into conflict.

His delegation therefore found none of the three formulas proposed satisfactory, nor could it support the three-Power compromise proposal (A/AC.119/L.19), which seemed to place primary emphasis on the method of direct negotiations. In view of the Committee's purpose, the best solution might be to affirm the principle of voluntary acceptance of the jurisdiction of a supreme international tribunal. However, in view of the difficulty of reaching agreement on a text which would clearly proclaim the desirability and necessity of a supreme international judicial organ, his delegation would be prepared to support a solution which would in effect amount to the maintenance of the status quo, namely, a reaffirmation of the procedures deriving from Articles 2 (3), 33 and 36 of the Charter. At the same time, it regretted that circumstances were not yet favourable to the establishment of an international juridical order which all could accept without reservation.

Mr. VILFAN (Yugoslavia) withdrew the section of his delegation's proposal (A/AC.119/L.7) containing a draft formulation of principle B in favour of the joint proposal by Ghana, India and Yugoslavia (A/AC.119/L.19). His earlier proposal had made no mention either of the International Court of Justice or of any specific means for the peaceful settlement of disputes. In view of the United Kingdom proposal

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(Mr. Vilfan, Yugoslavia)

(A/AC.119/L.8) and the course of the debate, however, the sponsors had felt that the final formulation of principle B should include a reference to the Court, in order both to make the principle more complete and to take account of one of the goals of the United Nations, which, as the Indian representative had expressed it, was to have one law: the law of humanity.

Supplementing his earlier remarks about the serious legal misgivings underlying the reservations made concerning the Court's jurisdiction, he pointed out that one reason why such reservations were made was the very under-developed state of international law as it existed at present. That had been recognized by the former Secretary-General of the United Nations, when he had said in the Introduction to his Annual Report for 1955 that the reluctance of Governments to submit their differences to judicial settlement partly derived from the fragmentary and unstable character of international law; where there was in existence a broad scope of uncertainty in the law, then the tendency to seek political solutions, even in cases where legal right was the essence of the conflic was understandable. Those who were urging universal acceptance of the Court's jurisdiction and the development of international law through its case law should bear that point in mind. No responsible statesman could risk endangering his country's vital interests as long as uncertainty remained over the scope of international law. It was for that reason that the sponsors had included the last sentence of paragraph 3 (b) in their proposal.

Paragraph 6 of the three-Power proposal closely reflected his delegation's earlier proposal, and had been inserted in the belief that the formulation of principle B should take account, not only of the obligation of the parties to settle disputes by peaceful means and their right to the free choice of means, but also of the other conditions essential to the success of peaceful negotiations. The Committee would not be able to

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(Mr. Vilfan, Yugoslavia)

fulfil its duty unless it bore in mind the close relationship between principle B and such other principles of the Charter as sovereign equality and mutual understanding and co-operation.

The new proposal before the Committee was the result of the sponsors' joint endeavours to find common ground which could serve as a basis for compromise.

Mr. BLIX (Sweden) said when he had said at an earlier meeting that it would be desirable for the International Court of Justice to have more cases brought before it so that international law could develop through case law as well as through codification and the conclusion of multilateral treaties, he had not wished to imply that States should submit cases to the Court only for the purpose of clarifying points of international law.

Mr. SCHWEBEL (United States of America) said that he agreed with much of what the Yugoslav representative had said, as also with the remarks of the former Secretary-General which he had cited. The United States realized that the under-developed and uncertain state of international law, in many spheres, inhibited recourse to the International Court of Justice; the situation could hardly be different, in the absence of a genuine international legislature, a strong executive, and a world court with compulsory jurisdiction. But it did not follow that international law was in such a parlous state that recourse to the Court involved greater risks than States could take. It was clear from the cases which the International Court of Justice had handled over the years that the Court had played a valuable part in interpreting and developing the law. While it was generally true that States did not go to the Court in order to develop the law, legal development was a consequence of the Court's activity; it was his impression,moreover, that in the Channel Islands case the parties had been more interested in determining the law than in asserting their individual claims.

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(Mr. Schwebel, United States)

At the previous meeting he had mentioned several points on which his delegation could not agree with the USSR delegation, but he had neglected to mention one remark made by the USSR representative which was most encouraging and with which he fully agreed, namely, that all States were bound by international law and that being so bound was not incompatible with State sovereignty.

At the present meeting, the Indian representative had mentioned certain agreements among the newer States, in reply, he believed, to his own remarks at the previous meeting. However, the Indian representative had misunderstood the point he had been trying to make. It had been maintained in the Committee that the reason why the newer States had not made use of the International Court of Justice was that they considered the law of the Court to be that of the older States, and not theirs. His point had been that that being the case, one would have expected to find a substantial number of cases between those countries based on their own jurisprudence (assuming there to be such); but in fact such cases were lacking.

The meeting rose at 12.35 p.m.