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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 TENTH MEETING

Held at Mexico City
on Thursday, 3 September 1964, at 4.25 p.m.

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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. 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. RIPHAGEN	Netherlands
	Mr. ELIAS	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. ALVARADO	Venezuela
	Mr. VILFAN	Yugoslavia
Secretariat:	Mr. STAVROPOULOUS	Representative of the Secretary-General
	Mr. BAGUINIAN	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:

(a) THE PRINCIPLE THAT STATES SHALL REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF ANY STATE, OR IN ANY OTHER MANNER INCONSISTENT WITH THE PURPOSES OF THE UNITED NATIONS (A/AC.119/L.6, L.7, L.8) (continued)

Sir Kenneth BAILEY (Australia) said that the task of the Special Committee differed from that of the International Law Commission, in that the latter traditionally prepared draft articles for ultimate adoption by States, whereas the Special Committee had been set up to study certain principles and present a report capable of adoption by the General Assembly. The task of the Committee, as the Mexican representative had stated at the previous meeting, was not to study or paraphrase the Charter, still less to amend it, but to determine the scope and meaning of the four principles by making them more systematic, even though still formulated in broad language.

Resolutions of the General Assembly did not in themselves constitute international law, but they might constitute an important step in the process of making international law. At the last session of the General Assembly, his delegation had clearly indicated that it was not opposed to the adoption of a General Assembly resolution in the solemn and emphatic form of a declaration, and had said that a resolution or declaration by the General Assembly, especially if universally adopted and adhered to in practice, might be valuable evidence of international custom, which in turn was a most important source of law; but it had cautioned that such a resolution or declaration was certainly not law-making, in the sense that a treaty, convention or declaration ratified by Governments was.

The most important element in the process of evolving international law was universality. Resolutions adopted by mere majority did not show what international custom was; accordingly, the Committee's basic function in studying the four

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principles was to ascertain the area in which there was a consensus among delegations. That was why General Assembly resolution 1966 (XVIII) emphasized the principles of equitable geographical representation and the necessity for the principal legal systems of the world to be represented in the Committee.

That being so, the Australian delegation believed that the Committee should aim at producing a document indicating the area of consensus within the Committee and capable of unanimous adoption by the General Assembly, either in the form of a solemn declaration or in that of a resolution. But the proposals placed before the Committee showed wide areas of disagreement; and while stress should be laid on areas of agreement it was important also that matters on which there was no agreement should be recorded. The United Kingdom proposal (A/AC.119/L.8) - a statement of principles accompanied by commentary - showed a useful way in which progress could be made. The statement of principles should contain only what was agreed; the commentary should set out the points on which divergent views were held, and record the respective views themselves.

In referring the four principles to a relatively small body like the Special Committee, the point had been to provide a forum less unwieldy than the Sixth Committee itself - one in which agreement might be reached after close discussion. Agreement might be reached by processes familiar in the United Nations, beginning with proposals by various sponsors and continuing with subsequent revisions by the sponsors to take account of points in other proposals, or perhaps the submission of new proposals designed to reconcile differences or facilitate agreement. He did not think that the Committee had by any means yet exhausted the possibilities of that procedure. If, however, the Committee decided at the appropriate time to establish a drafting committee to assist in drawing the discussion to its conclusions, the Australian delegation would

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think it necessary to make clear that its mandate would be to formulate a text setting forth both the areas of agreement in the Special Committee and the extent and nature of any disagreements. The drafting committee should proceed, like the Special Committee itself, by way of ascertained consensus, and not by taking votes.

Presenting some preliminary observations on the interpretation of Article 2 (4) of the Charter, he expressed agreement with the view stated by the Polish representative at the previous meeting that an approach to international law based exclusively on considerations of formal logic was at present to be rejected. It would be hard, however, to find any illustration of such an approach in the General Assembly's discussions of the four principles under consideration. In addition, not every desirable proposition about the conduct of States was appropriate for inclusion in a statement of existing principles of law. Some ethically unexceptionable standards, for instance, were so imprecise as to be incapable of any agreed or objectively ascertainable meaning, still less of any enforcement procedure. The virtue of "tolerance" mentioned in the Preamble of the Charter, for example, would scarcely be regarded anywhere as ready for formulation as a legal duty.

Article 2 (4) was best understood in its context. The very introductory phrase of Article 2 associated the imperative character of the principles in Article 2 with the duty of the Organization and its Members as stated in Article 1, and thereby also with the powers vested in the Organization to act in accordance with the principles. The duty of the Member was not to be ascertained in isolation from the powers and duties of the Organization. The prohibition of the resort to force by Members in Article 2 (4) was balanced on the one hand by the positive duty laid down in Article 2 (3) to settle disputes by peaceful means and the powers vested in United Nations bodies to settle disputes peacefully (Chapter VI), and on the other hand by the powers to maintain or

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restore peace and security vested in United Nations bodies, especially the Security Council (Chapter VII). There was a great element of legal unreality in interpreting Article 2 (4) or other principles out of that context and treating them as a kind of code of the legal duties of States divorced from the functioning of the Organization itself.

The powers of the Organization laid down in Chapter VII were specifically directed to the use or threat of armed force. No powers were given to the Security Council to deal with economic or political demands as distinct from threats to or breaches of the peace. Such matters were dealt with elsewhere in the Charter; and he agreed with the Mexican representative's suggestion that they were perhaps best dealt with elsewhere. The plain inference from the context of Article 2 (4) was that the force which a Member was prohibited from using or threatening, like the force which the Organization was authorized to use, was armed force, and nothing else. Against that proposition the Burmese representative had argued that when the framers of the Charter had meant to refer to armed force they had done so in unmistakable terms, as in Article 41. Article 44, however, like Article 2 (4), referred simply to "force", although in Article 44 it was clearly armed force alone that was intended. In any event, the meaning of the word "force" in Article 2 (4) was one of the legal matters on which there was no consensus in the Committee, and the discussion that had taken place since the Nigerian representative's statement had only served to emphasize that fact.

Mr. BLIX (Sweden) said that his delegation in the General Assembly, while voicing scepticism about the hasty drafting of declarations which would at best merely reaffirm the Charter and might at worst overlap the Charter and possibly create confusion, had always favoured the practical, detailed development of important areas

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of international law. It realized that the rules of the international community and, indeed, those of the Charter, were rough, primitive rules which needed to be developed.

The Charter principles before the Committee needed such development, and it was with that in mind that the Swedish delegation had suggested during the last session of the General Assembly that the Secretary-General should be requested to produce substantial documentation on the subject and that the establishment of a special committee might be a way of ensuring that it was given thorough discussion. The preparatory work done by the Secretariat was indeed most helpful; it demonstrated the complexity of the task and would at the same time assist the Committee in fulfilling it. The Committee was further fortunate in having before it three drafts which would focus the discussion on specific themes.

The drafts differed, *inter alia*, in their approach, the Czechoslovak and Yugoslav proposals being in the form of elaborate draft articles and the United Kingdom proposal containing draft articles and commentaries. He found a good deal of merit in the United Kingdom approach, which, if adopted, might permit the Committee to include in the commentaries various matters which delegations might feel could not go into strict elaborations of principles. Perhaps the commentaries could even record conflicting points of view and refer to United Nations resolutions. The difficulty of the United Kingdom approach was that the attainment of a consensus on the commentaries would involve considerable time and work. It might be, however, that the possibility of using commentaries would so facilitate agreement on the elaboration of the principles that time would actually be gained.

Turning to matters of substance, he expressed the view that the significance of the expression "in their international relations" in Article 2 (4) of the Charter was

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that force employed in a civil war fell outside the scope of that provision. Neither international law in general nor the Charter placed any restrictions upon the use of force in the establishment of new internal legal orders. That elaboration of the rule seemed to cover also rebellions which aimed at secession. That being so, perhaps a provision to the effect that internal rebellions were not forbidden under Article 2 (4) would suffice to clarify the point that struggles for independence were permitted. That would be a better solution than seeking to invoke the principle of self-defence as legal authority for such struggles.

The "threat or use of force" certainly covered the threat or waging of wars of aggression, and mention of that in some form would seem to be in order. Furthermore, he had heard no dissent from the provisions in paragraphs 2, 3 and 4 of the United Kingdom proposal relating to the various forms of armed force to be included under that heading, which appeared to be based on the draft Code of Offences Against the Peace and Security of Mankind adopted by the International Law Commission.

He saw greater difficulty in including a reference to war propaganda, at least in the form in which that was done in the Czechoslovak draft. There seemed to be no agreed definition of what constituted war propaganda; what might be regarded as a statement of fact in one State might be viewed as war propaganda in another. In a country like his, where freedom of the Press and freedom of speech were strongly protected by law and public opinion, the Government could not and would not introduce by legislation a vague restriction such as a prohibition of war propaganda. If aggressive words were used in their Press, Swedes would feel confident that they would be contradicted and that through free discussion the right course would be chosen. A simple condemnation of war propaganda coupled with a statement on the importance of the free flow of information for the preservation of peace was another matter; that,

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incidentally, was the subject of General Assembly resolution 381 (V). If it was considered really necessary - and he was not convinced that it was - a reaffirmation of ideas of that kind, perhaps in a commentary, might be a way of meeting the various wishes on the question.

Similarly, the need for disarmament, if it was to be mentioned at all, might be referred to in a commentary. His Government was seeking to the utmost of its ability to contribute to the solution of the disarmament problem at Geneva, and he wondered if the Committee would not do best to leave that subject to the Disarmament Conference, where it belonged. He was not convinced that that Conference's deliberations would be advanced by the Special Committee's declaring it a duty of States to act so that an agreement would be reached.

On the question whether the expression "force" in Article 2 (4) covered economic and political pressure, opinion was divided, and no rapproachement seemed to be in sight. The best solution might be to exclude both the affirmation in the United Kingdom draft (A/AC.119/L.8) that only "armed force" was meant and the affirmations in the Czechoslovak and Yugoslav drafts (A/AC.119/L.6 and L.7) that the term "force" covered economic and other non-military forms of pressure. He would add that he agreed fully with the view that an indiscriminate use of terms such as economic and ideological aggression might tend to erode the meaning of the term "aggression".

There seemed to be general agreement that the expression "against the territorial integrity or political independence of any State" did not imply any qualification of the prohibition of the threat or use of force; that agreement might perhaps find expression in the text finally adopted. The same was true regarding the understanding that the term "State" meant any State and covered non-members of the United Nations. It was true, as the United States representative had said, that there might be

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disagreement on whether a particular entity constituted a State, but if a State used force against an entity, claiming that it did not constitute a State, it might nevertheless be in breach of Article 2 (4), and it would be for the competent United Nations organ to determine whether the entity in question was in fact a State.

With regard to the exceptions to the rule contained in Article 2 (4), there seemed to be agreement that individual and collective self-defence in accordance with Article 51, enforcement action by regional agencies under Article 53, and collective measures undertaken by or under the authority of a competent United Nations organ, were not barred. He agreed with the representative of Mexico that action taken under the authority of the Organization should not properly be regarded as exceptions to the rule contained in Article 2 (4), and that an extensive interpretation of the right to self-defence as enunciated in Article 51 would be dangerous.

With regard to the reference in the Czechoslovak draft to territorial and frontier disputes, he felt that such a reference might be useful even though it was true that many other types of disputes were also dangerous.

While sympathizing with the idea behind the Yugoslav proposal that situations brought about in violation of Article 2 (4) should not be recognized, he would be reluctant to see the inclusion of such a clause as an elaboration of Article 2 (4), particularly as the rule might be very hard to apply.

He finally stressed that it was desirable that the elaboration of the Charter principles before the Committee should be such that all members could subscribe to it.

Mr. IGNACIO-PINTO (Dahomey) said that it was hardly necessary to stress the importance of the Committee's work. For those who had experienced the horrors of the Second World War it was hard to understand how anyone could still think in terms of force as a means of settling disputes between States. The attempt to codify the principles of international law concerning friendly relations and co-operation among States was timely. The results of the Committee's work would serve as a rule of behaviour for all peace-loving nations. The task was not an easy one, but could be achieved through united effort.

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The Committee should be grateful to the Secretariat for the plan of work which it had prepared (A/AC.119/4), and to the three delegations which had submitted written proposals. It was natural, and not a matter for concern, that divergencies existed between them. The Committee would be able to base itself on the three proposals, in so far as they were in conformity with the ideals of peace and harmony among peoples, in preparing recommendations for the General Assembly.

Of the three, his delegation tended to favour the Czechoslovak proposal, without however completely rejecting the other two. He noted that the Yugoslav proposal was quite close to that of Czechoslovakia. At the same time, he could not support the clauses in the Czechoslovak and Yugoslav proposals which justified the use of force and violence as a means for the liberation of peoples from the colonial yoke. To give a blessing to such means was inconsistent with the ideals of the United Nations and the principle that disputes should be settled through negotiation. In any case, such provisions would become irrelevant when there were no longer any peoples under colonial rule. His delegation was naturally for self-determination, but not for the open encouragement of a violation of the principles of the Charter.

The United Kingdom proposal seemed too rigid in its refusal to go beyond the letter of the Charter; in a changing and developing world one could not keep religiously to principles formulated twenty years previously. The attempt to adapt the Charter to contemporary conditions was legitimate.

The three proposals must be regarded as preliminary drafts, open to amendment. He hoped that delegations would find it possible to refrain from adopting intransigent positions. It must also be remembered that the codification of principles would be of little use in the absence of a sincere readiness to observe them. It was less through laws than through a change in morality that mankind could be saved from

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disaster. National leaders must be persuaded to turn away from the path of war and respect the rules of law.

Much encouraging progress had been made in the direction of the peaceful settlement of disputes. That gave ground for hope that the principles which the Committee was endeavouring to formulate would become universally accepted rules of international law. That was why his delegation supported the quest for a text capable of universal acceptance.

On the question of the establishment of a drafting committee, his delegation believed such a committee to be essential, and was glad to note that many delegations shared that view. The establishment of a drafting committee was normal United Nations practice when the purpose was to give clear and precise form to principles which had already been discussed at length. The sooner such a committee was set up, the better. He had full confidence in the Chairman so far as the composition of the committee was concerned; his delegation was not interested in battles of prestige. In any event, his delegation would have complete confidence in whoever was appointed to the drafting committee.

In conclusion, he trusted that the Special Committee would spare no effort in its task of strengthening peaceful coexistence, which was of paramount importance to developing countries such as his own. Despite certain alarming signs he believed that it was still possible to save mankind from catastrophe. While fear of nuclear weapons might constitute the beginning of wisdom, a spirit of mutual understanding was still more important, if brute force and violence were to give way to peaceful methods of solving disputes between States.

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Mr. DADZIE (Ghana), referring to the United Kingdom proposal, said that his delegation entirely agreed with what it actually said but found it unacceptable because of what it did not say, in other words, because of its restrictive character. Paragraph 1 in effect did no more than paraphrase the language of Article 2 (4) of the Charter, and to accept it would be to imply that there was no need to formulate any principles of international law concerning friendly relations and co-operation among States. The draft failed to take into account developments since the Second World War and the signing of the Charter, as reflected in the Bandung Declaration, the Belgrade Declaration, the Charter of the Organization of African Unity and the Moscow Test-Ban Treaty. The interpretation which it proposed of the word "force" in Article 2 (4) was proof of that assertion. The Ghanaian delegation's view was that no interpretation of the word "force" which did not cover economic and political pressure could be accepted. If at the time of the signing of the Charter the membership of the United Nations had been 113 instead of sixty, the results of its deliberations with respect to the threat or use of force might well have left no room for controversy; similarly, the Brazilian amendment might have been accorded a different reception. His delegation could therefore not accept paragraph 2 of the United Kingdom draft as it stood, particularly in the light of paragraphs 3 and 4, to which it had no objections.

Paragraph 5 omitted an important exception to the prohibition of the use of force, an exception which had been clearly established since the signing of the Charter: the right of self-defence against colonial domination, as reflected in the Declaration on the granting of independence to colonial countries and peoples. Millions of people in Africa were still the victims of colonial oppression. The time had come when those who continued to commit that crime against humanity must be

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restrained by the force of law. The work of laying down principles of law banning the use of force would be incomplete if it did not provide for the elimination of colonialism, and Ghana would be unable to support any formulation that failed to include such a provision. If those who subjected others to colonialist and neo-colonialist oppression were themselves its victims he was sure that it would be they who would be calling for a provision recognizing the right of self-defence against colonialism.

In paragraph 1 of the commentary to principle A, the United Kingdom draft stated that Article 2 (4) must be considered in the context of the Charter as a whole, bearing in mind *inter alia* the Purposes and Principles stated in the Preamble and the provisions of Chapters VI and VII. Yet the text of the Preamble showed clearly that the authors had been opposed to any form of oppression, whether military, economic or political. Accordingly, the Ghanaian delegation could not agree that the Preamble supported the United Kingdom's restrictive interpretation of the term "force" in the sense of military force. Moreover, as the Nigerian representative had pointed out, the term "armed force" in Chapter VII was used in contradistinction to the term "force" as used in Article 2 (4). The Australian representative had been correct in stating that Articles 41, 42 and 43 dealt with armed force, for it was perfectly clear from their texts that that was what was intended. The question at issue, however was not the meaning of those Articles but rather the meaning of the term "force" in Article 2 (4). On that point the United Kingdom draft was deficient, and the Ghanaian delegation accordingly preferred the Czechoslovak and Yugoslav texts.

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Mr. SINCLAIR (United Kingdom) said that although he intended to wait until next day to reply to most of the statements made on his delegation's draft, he would like to comment at once on the remarks just made by the Ghanaian representative. The latter seemed to feel that the United Kingdom draft amounted to no more than a paraphrase of the Charter, and failed to take into account the need for the progressive development of international law and the changes which had taken place since the signing of the Charter. That impression resulted from a misunderstanding of the purposes underlying the text: it was true that paragraph 1 constituted a restatement of Article 2 (4), presenting it in terms of the duties of States, but other parts of the draft, notably paragraphs 3 and 4, clearly took into consideration the events of the past two decades and United Nations practice during that period. It was therefore unfortunate that some speakers should have considered the United Kingdom draft to be unduly restrictive: that had certainly not been his delegation's intention.

The Ghanaian representative seemed to think that paragraph 1 of the commentary, particularly the fourth sentence, was intended as an explanation of the reasons why the United Kingdom delegation defined "force" in Article 2 (4) in the sense of armed force. That, however, was not the case; it was in paragraph 2 of the Commentary that the United Kingdom gave its reasons for that interpretation.

ORGANIZATION OF WORK

The CHAIRMAN said that the talks he had held with various members since the previous afternoon's meeting had convinced him that in the interest of reaching unanimous agreement on the proposed drafting committee it would be desirable to defer consideration of the matter until the next meeting. He would continue his efforts in the meantime, but if he failed to establish the existence of such agreement it would be for the Special Committee itself to decide at its next meeting the questions referred to in paragraph 6 of the plan of work (A/AC.119/L.8).

The meeting rose at 6 p.m.