United Nations
GENERAL ASSEMBLY
SEVENTEENTH SESSION
Official Records

SIXTH COMMITTEE, 759th MEETING

Wednesday, 14 November 1962, at 3.20 p.m.

NEW YORK

CONTENTS

Chairman: Mr. Constantine EUSTATHIADES (Greece).

AGENDA ITEM 75

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/5192, A/C.6/L.505, A/C.6/L.507 and Add.1 and 2) (continued)

1. Mr. RAO (India) said that all mankind aspired to peace and that that aspiration was reflected in the Charter of the United Nations. He referred to the Atlantic Charter and to the Declaration of the United Nations signed on 1 January 1942, which contained the principles that had been incorporated in the Charter. It must be admitted, however, that ever since the founding of the Organization, peace had continued to be most precarious, owing, it would seem, to the lack of principles of international law designed to ensure the maintenance of peace and security, and possibly also to the failure hitherto to establish conditions in which justice and the obligations deriving from treaties and other sources of international law could be respected. It was now the Committee's specific task to see that those conditions were brought about and to establish those principles. It could not succeed unless it found some formula whereby the ideological differences between States could be reduced.

2. In his delegation's view, it was essential to study a number of principles: first of all, the prohibition of war in all its forms—a principle which might be enunciated in several different ways, perhaps, as the Czechoslovak representative had expressed it, along the lines of Article 1, paragraph 1, of the Charter; second, the principle of self-determination of peoples; third, a principle relating to economic development. That principle might be based on Article 55 of the Charter. Some representatives had expressed doubts about the Committee's competence in that matter, but in his delegation's opinion the Committee was well qualified to deal with economic questions in so far as they were connected with the principles of international law designed to improve relations and co-operation among peoples. There was no doubt that the economic aspect of peace was just as important as the political aspect and consequently should find a place among the principles of international law.

3. The Committee had two draft resolutions (A/C.6/L.505 and A/C.6/L.507 and Add.1 and 2) before it for consideration. It should be prepared to welcome one more, so that it could have the benefit of a choice between three draft resolutions. Whichever was adopted would have to have the unanimous support of the Committee. Such an important question as that of friendly relations and co-operation among States could not be settled by a simple majority, and the Committee ought to set an example of co-operation and friendship.

4. Mr. PESSOU (Dahomey) said that the principles set forth by the previous speakers were actually so many different ways of expressing the concept of friendly co-operation in dialectical terms. Attempts to improve international relations had been made for a long time, as evidenced by the United Nations Charter, and the expression "peaceful coexistence" used in the Czechoslovak draft (A/C.6/L.505) did not go beyond the obligations laid down in the Charter. If means for ensuring that friendly co-operation were lacking, it was because the political world, as the representative of Brazil had said (756th meeting), was divided into two camps. International law could do nothing to improve relations among States unless there was an atmosphere psychologically conducive to the establishment of the rule of law. International juridical life was different from municipal juridical life because of the absence of a supra-State political authority and because of the very nature of the international social environment. The rule of law was imperfect and difficult to enforce, and remained dependent on the consent of States, i.e., in the last analysis, on the relative strength of those States and of the State requesting application of the law.

5. Moreover, there was but little general solidarity in the international environment; international relations were variable and precarious, shifting with technical advances and political or economic factors. They were also subject to the tyranny of ideologies or the play of sympathies, and international organizations lacked uniformity because certain States were represented in some of them and not in others.

6. International relations, therefore, revealed four characteristics: first, technical weakness of the legal system; second, lack of uniformity of that system in international society as a whole; third, the use of force for individual ends and fourth, the existence of many different organizations which did not constitute a common higher political authority of the international community.

7. The international community, however, was not living in a state of legal anarchy. At most it might be said that, juridically speaking, international society was primitive in character, and that that was the

cause of the present crisis through which the law was passing. That crisis, however, did not represent a break-down of the rules laid down in the Charter. It could perhaps serve to bring about a renewal of the law. It was the Committee's duty to place great hopes on the future of a law which would safeguard the dignity and integrity of mankind, and for that purpose each State should act in conformity with the principles of the Charter without paying attention to whether the other States were in fact observing those principles.

8. Mr. BLIX (Sweden) recalled that in 1960 it had been felt by some that a new study of the codification and development of international law was necessary. At that time the General Assembly had adopted resolution 1505 (XV), in which it had decided to place the question entitled "Future work in the field of codification and progressive development of international law" on the provisional agenda of its sixteenth session.

9. It would perhaps be going too far to say that the previous year the Committee had studied and surveyed the whole field of international law, as prescribed by resolution 1505 (XV). But it was true that it had made a thorough study of the development and codification of certain aspects of international law. At that time the members of the Committee had been unanimous in thinking that no matter what new topics might be chosen, there should be no insistence on their being assigned to the International Law Commission, which already had a sufficiently large programme of work to occupy it for several years. The General Assembly, in its resolution 1686 (XVI), had therefore recommended the International Law Commission to continue its work in the field of the law of treaties and of State responsibility, to include on its priority list the topic of succession of States and Governments and, lastly, to consider its own future programme of work. He still thought that that had been a wise decision. He further recalled that the members of the Committee had also acknowledged that they could themselves make a greater contribution to the work of codification and development of international law. The representative of the USSR had been the first to suggest that the Committee might undertake the study of certain aspects of international law. The Swedish delegation, like others, had supported that suggestion, and observed that it would be desirable to choose topics in which the element of development was fairly prominent, as the Sixth Committee was composed of representatives of Governments and not of individual jurists as was the Commission. In that way, the Committee might learn the views of many Governments on questions on which State practice was scant or non-existent and which might present problems for the Commission. As the representative of Hungary had rightly observed, that procedure would enable the new States to give their views on various sets of rules of international law which had emerged from the adjustment between the old States.

10. The question now was to determine what topics of international law the Committee would study during the years to come. The two draft resolutions before the Committee contained a number of suggestions on that subject. The nine-Power draft resolution (A/C.6/L.507 and Add.1 and 2) advocated a cautious approach. It envisaged the consideration of two topics and recommended that Member States, after studying them, should transmit their comments to the Secretary-General. The Committee would then consider those topics at its next session. There was nothing in that draft resolution to prevent the Committee from considering other fields of international law after completing its study of the selected topics. Moreover, the draft resolution did not specify what measures should be taken subsequently, thus leaving it to the Committee to decide in the light of the results of its discussion on the merits of the selected topics. He supported that procedure: no commitments should be entered into for the future and the Committee should be allowed to retain its freedom of action.

11. The Czechoslovak draft resolution (A/C.6/L.505) set forth concisely many fundamental principles which were based on the Charter, on the practice of the United Nations and on international law. It was a declaration of principles similar in type to the Universal Declaration of Human Rights. The draft resolution did not specify what the Sixth Committee would do after the adoption of that declaration; apparently, if it wished, it might consider in detail each of the principles set forth in the declaration.

12. A similar proposal had been made during the first session of the General Assembly with a view to the adoption of a declaration on the rights and duties of States. At that time, his delegation had said that it would be more logical and more practical to begin codifying certain particularly important fields of international law in order to have a solid base for constructing general principles. It had also pointed out that some articles of the draft declaration—as was the case with the Czechoslovak draft resolution—were analogous to the rules set forth in the Charter, a situation which might lead to duplication and complication. He still believed it to be more important for the Committee to concern itself with the practical development of certain rules of international law than to state general principles or to redefine existing principles.

13. With regard to the title to be given to the Sixth Committee's work, he recalled that at the last session the members of the Committee had been unable to agree on the choice of a topic entitled "Peaceful coexistence". It would be best to adopt a neutral title or perhaps to keep the present title with the addition of such individual topics as might have been agreed upon.

14. As for the number of topics, he thought that the list should not be too long, so that the Committee should not be bound for years by a work programme which would deprive it of its freedom of action. However, the item on the agenda did not compel the Committee to study all principles of international law concerning friendly relations.

15. So far as the selection of topics was concerned, all the political and legal questions which were already under consideration by other United Nations organs, as for example the questions concerning disarmament, the prohibition of nuclear weapons and war propaganda, human rights, space law and the elimination of colonialism, should be discarded.

16. At the 756th meeting the Brazilian representative had said that it was necessary to define the concept "principle of international law", and to distinguish as clearly as possible between purely legal and primarily moral principles. The Swedish delegation held the same view: the jurists who were mem-

bers of the Sixth Committee would be wise to concentrate on the consideration of principles which were susceptible not only of restatement in general terms but also of detailed legal analysis. That being so, he found it necessary to deal at greater length with the principles of universality, equality and self-determination.

17. In their statements, the representatives of Brazil (756th meeting), Tunisia (754th meeting) and Yugoslavia (753rd meeting) had described in a very interesting manner their conceptions of the international community. Like them, he could not agree that the world was reduced simply to two ideological blocs. The situation was much more complicated. There existed not only States with different economic and social systems but also rich and poor nations, nuclear and non-nuclear Powers, Moslem and Buddhist peoples, to mention only a few of the diverse elements which created the richness of the international community. To seek to destroy that diversity would be to deny the personality of small States and to reduce them to the rank of satellites, as the Tunisian representative had rightly observed (754th meeting).

18. In order to preserve the independence of States, and especially of small States, international law, as the Yugoslav representative had said, must be applied without distinction to all States, irrespective of their political, economic or social structure, just as domestic law governed the relations between all persons without distinction and in that manner ensured the protection of the weak against the strong. The recognition of the universal character of the international community, and consequently of the universal scope of international law, marked an advance towards the integration of the world under the aegis of the law. While it was evident that because of that universality the members of the international community had rights and duties with respect to international law, it might be doubted that any legal principle existed requiring them to maintain diplomatic, economic, cultural or legal relations. Such relations might certainly be desirable for a more complete integration of the world, but they did not appear to be in any way compulsory. Like the very great majority of multilateral treaties, the United Nations Charter did not provide that every State had the right to become a Member of the Organization; it established a procedure which gave the Member States the option of accepting or rejecting an application for admission. The Charter or other multilateral conventions of universal interest could conceivably be open to all States, but that would require the existence of a procedure whereby the statehood or other legal status required of the applicant could be established. While such procedures might be provided for in some conventions, they did not yet exist in customary international law. Accordingly, the principles set forth in paragraphs 12 and 17 of the Czechoslovak draft resolution (A/C.6/L.505) seemed to be political or moral rather than legal principles. They might be acted upon in specific cases; at times that would even be desirable from the political viewpoint. Some of the principles stated might in that manner gradually become customary international law, but they could not be established as principles of international law by a declaration of the General Assembly, since the latter had no legislative power.

19. The principle of equality was both a political ideal and a legal principle. As a political ideal and at the international level, that principle had been affirmed in proportion with the increase in the awareness of the situation of the individual in the developing areas. It had been reflected in measures—which, although still inadequate, were being intensified—to narrow the existing gap between the less developed countries and the industrialized countries, such as the aid programmes or the agreements concerning primary commodities. At the level of practical relations among States, his delegation considered that, in a spirit of solidarity and not of charity, more and more such measures should be taken to promote the principle of equality. However, it did not deem it wise to elaborate a rigid system of legal rules for the application of that principle.

20. As a legal principle, the principle of the equality of States was correctly set forth in the Czechoslovak draft resolution. It was questionable, however, whether there was any need to proclaim that general principle of customary international law should be proclaimed in a declaration and whether it really lent itself to juridical analysis. Moreover, it might even be said that the many exceptions to the principle which had been introduced by means of international agreements, such as, for example, the provisions of the Charter requiring the unanimity of the permanent members of the Security Council or the various weighted vote formulae used in the International Tin Council, the International Monetary Fund and the European Economic Community, were perhaps of greater practical interest for the structural development of the international community. However, the practice followed by States in that regard did not easily lend itself to codification.

21. The principle of self-determination of peoples was proclaimed in the Charter and had been amplified in General Assembly resolution 1514 (XV). That principle was so fundamentally important that more stress should have been laid on it in the nine-Power draft resolution (A/C.6/L.507 and Add.1 and 2). It must be acknowledged, however, that it would be extremely difficult, if not impossible, to define that principle in precise legal terms. Under the terms of the Czechoslovak draft resolution, every nation, and, under the Charter, every people, had the right of self-determination. But what was a nation or a people? Was it an ethnic, religious or linguistic group? The question could certainly be studied, but the Swedish delegation would prefer to leave to the General Assembly the practical application of the politically valuable but juridically vague principle of self-determination.

22. There were certain similarities between the two draft resolutions before the Committee. The question of the obligation to respect the territorial integrity and political independence of States, which was retained in the nine-Power draft resolution, corresponded to several principles of the Czechoslovak draft. It would be very useful, though not easy, to study that obligation in detail. The second question mentioned in paragraph 4 of the nine-Power draft, namely, the obligation to settle disputes by peaceful means, corresponded to paragraph 2 of the Czechoslovak draft. The Swedish delegation would also be prepared to study that question, which, furthermore, would include the study of another question to which the Swedish Government attached considerable importance, that of ways and means of inducing States to resort more frequently to judicial or arbitral settle-

ment of their disputes. It was only natural to think that the progressive codification of international law would entail more frequent resort to the judicial bodies responsible for applying that law. It was paradoxical to call for more advanced codification of international law and at the same time for more frequent recourse to negotiation as a basis for the settlement of disputes. The path of negotiation remained open and should be used, but the small and weaker States might prefer the judicial alternative. Furthermore, judicial settlement, which consisted in the application of legal principles, could be more easily accepted without loss of prestige. Finally, it helped to enrich international law by means of the case law it laid down. In that connexion, the Committee might also study such questions as the extension of the application of the optional clause of the Statute of the International Court of Justice (Article 36, para. 2) and the question of the circumstances in which States which had hitherto been unwilling to accept judicial settlements might be persuaded to do so, both in respect of disputes among themselves and of their disputes with other States.

23. He regretted that the United Nations had taken a retrograde step with regard to the judicial settlement of disputes when the General Assembly, at the current session, (1167th meeting) had approved the insertion into the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of a clause on the settlement of disputes which, at best, was meaningless, and at worst could conceivably restrict the jurisdiction which the International Court of Justice possessed under the optional clause. Such a decision indicated an erroneous conception of the judicial settlement of disputes, and it was therefore desirable that the Sixth Committee should study the question in detail.

24. The Swedish delegation would be prepared to study questions other than the two proposed in the nine-Power draft resolution (A/C.6/L.507 and Add.1 and 2) and corresponding to some of the principles set forth in the Czechoslovak draft resolution (A/C.6/L.505). It considered, however, that those two questions would amply suffice to occupy the Sixth Committee and the legal services of Member States for several years.

The meeting rose at 4.20 p.m.

Litho in U.N. 77601—May 1963—2,075