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1967 SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

SUMMARY RECORD OF THE SIXTY-FIFTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 31 July 1967, at 10.30 a.m.

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PRESENT:

Chairman:	Mr. ENGO	(Cameroon)
Rapporteur:	Mr. SAHOVIĆ	Yugoslavia
Members:	Mr. ABDELAZIZ	Algeria
	Mr. de la GUARDIA	Argentina
	Sir Kenneth BAILEY	Australia
	U MAUNG MAUNG	Burma
	Mr. HAPPY-TCHANKOU	Cameroon
	Mr. MILLER	Canada
	Mr. VARGAS	Chile
	Mr. PECHOTA	Czechoslovakia
	Mr. RENOUARD	France
	Mr. VANDERPUYE	Ghana
	Mr. DUPONT-WILLEMIN	Guatemala
	Mr. KARTHA	India
	Mr. ARANGIO-RUIZ	Italy
	Mr. HATANO	Japan
	Mr. MWENDWA	Kenya
	Mr. ANDRIAMISEZA	Madagascar
	Mr. GONZALEZ GALVEZ	Mexico
	Mr. RIPHAGEN	Netherlands
	Mr. SHITTA-BEY	Nigeria
	Mr. DABROWA	Poland
	Mr. GLASER	Romania
	Mr. BLIX	Sweden
	Mr. NACHABE	Syria
	Mr. CHKHIKVADZE	Union of Soviet Socialist Republics
	Mr. OSMAN	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland
	Mr. REIS	United States of America
	Mr. MOLINA LANDAETA	Venezuela
Secretariat:	Mr. MOVCHAN	Secretary of the Committee

CONSIDERATION, PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2181 (XXI) OF 12 DECEMBER 1966, OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS (agenda item 6)

A. CONSIDERATION, IN THE LIGHT OF THE DEBATE WHICH TOOK PLACE IN THE SIXTH COMMITTEE DURING THE SEVENTEENTH, EIGHTEENTH, TWENTIETH AND TWENTY-FIRST SESSIONS OF THE GENERAL ASSEMBLY AND IN THE 1964 and 1966 SPECIAL COMMITTEES, OF THE FOUR PRINCIPLES LISTED BELOW WITH A VIEW TO COMPLETING THEIR FORMULATION:

(a) THE PRINCIPLE THAT STATES SHALL REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY AND POLITICAL INDEPENDENCE OF ANY STATE, OR IN ANY OTHER MANNER INCONSISTENT WITH THE PURPOSES OF THE UNITED NATIONS (A/AC.125/L.40 and Corr.1, A/AC.125/L.44, A/AC.125/L.48) (continued)

Mr. SINCLAIR (United Kingdom) said that the principle that States should refrain in their international relations from the threat or use of force was the core of the Charter system for the maintenance of international peace and security. The importance and significance of the principle in the codification and progressive development of international law was recognized by all members of the Committee. Members of the Committee were also aware of the development whereby the old jus ad bellum had gradually become transformed into the jus contra bellum, and it was unnecessary for him to go into the history of how the new concept had come to be firmly established as a basic element of contemporary international law. In that connexion, the importance and significance of the Pact of Paris was worth mentioning.

The framers of the Charter, fully conscious of the miseries and devastation resulting from two world wars and determined to save succeeding generations from the scourge of war, had embodied in Article 2(4) the fundamental 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". The framers of the Charter had been only too well aware that it was not sufficient simply to enshrine that fundamental norm in the constituent instrument of the new world organization without making provision for its effective application. They intended the prohibition of the threat or use of force to operate within the institutional framework of an effective United Nations system for the maintenance of international peace and security.

Article 2(4) could not therefore be viewed in isolation, but only in the context of the Charter as a whole and of the institutional system established by the Charter. In considering the formulation of the principle, the Committee should therefore take into account all the relevant Charter provisions, and notably the Preamble, the Purposes and Principles set forth in Articles 1 and 2 and the provisions of Chapters VI and VII relating to the peaceful settlement of disputes and action with respect to threats to

the peace, breaches of the peace and acts of aggression. Article 51 of the Charter relating to the inherent right of individual or collective self-defence had also to be taken into account. It was a necessary consequence of that type of approach that the principle prohibiting the threat or use of force should be visualized as marching hand in hand with the principle relating to the peaceful settlement of international disputes. Bitter experience had shown that only by strengthening the modalities and instrumentalities for the peaceful settlement of international disputes could effective observance of the fundamental Charter provisions prohibiting the threat or use of force be secured. The principle of peaceful settlement of international disputes would be examined later, but his delegation wished to stress in the context of the current discussion the close and inexorable relationship between the negative prohibition of the threat or use of force and the positive precept that international disputes must be settled by peaceful means.

The United Kingdom proposal on the principle (A/AC.125/L.44, part 1) required little introduction. He had already explained, when discussing the proposal in relation to the principles of co-operation and good faith at the 57th and 59th meetings, that the United Kingdom delegation had sought, in formulating its proposals on each of the seven principles which the Committee was to consider, to build on progress already achieved. The text relating to the principle prohibiting the threat or use of force was in essence the compromise text on which agreement had so nearly been achieved at Mexico City. The one delegation which at that time had been unable to accept the compromise text had subsequently declared its acceptance at the twentieth session of the General Assembly. Accordingly, there were important elements in the text upon which general agreement had already been achieved.

The United Kingdom delegation had made certain additions to the compromise text which were based largely on the proposal submitted jointly by Australia, Canada, United Kingdom and the United States of America at the Committee's 1966 session (A/AC.125/L.22). Although he had already explained, during the 1966 session, the reasons for the inclusion of the additional language in the present paragraphs 2(b), 2(d) and 3 of part I of the United Kingdom proposal, he felt that a few additional words about the inclusion of the reference to "international lines of demarcation" in paragraphs 2(b) and (d) were called for. His delegation had given much thought to the phrase, particularly in the light of criticisms advanced against its inclusion at the 1966 session. It remained convinced that any violation of international lines of demarcation constituted as flagrant a breach of the principle as would a violation of the existing boundaries of a State. His delegation did not intend to seek to equate the status of an international line of demarcation with the status of a State frontier. The reason why the reference to

international lines of demarcation should be included was precisely because such lines might not be regarded as being comprehended within the expression "the existing boundaries of another State".

His delegation understood the expression "international lines of demarcation" to denote lines resulting from armistice agreements or other agreements for the cessation of hostilities which carried no implication as to the status of the territories divided by such lines. It did not consider that cease-fire positions as such could constitute an international line of demarcation as the expression was used in its proposal, although there did remain an obligation upon the States which had accepted cease-fire arrangements to maintain those arrangements pending negotiations for a settlement and to abide by any directives of the Security Council in that connexion. Recent events had only confirmed his delegation in its conclusion that, despite the difficulties, a reference to international lines of demarcation should be included in a comprehensive statement of the principle prohibiting the threat or use of force.

Little needed to be said in explanation of the further addition, relating to acts of armed reprisal or attack, in paragraph 2(b). There was a sufficient body of Security Council practice to warrant the prohibition of armed reprisals or attack; the expression of that prohibition necessarily required that every State should comply strictly with the duties expressed in paragraphs 2(b) and (c).

Having explained at the 1966 session the reasons for the inclusion of the additional language in paragraph 3, he would express the hope that those delegations which had previously expressed doubts about including the reference to "a competent organ of the United Nations" would recognize that the use of the expression was in no way intended to prejudge any constitutional issues within the United Nations. It might be that the recent invocation of certain procedures to ensure the convening of an emergency session of the General Assembly to consider questions relating to peace and security in the Middle East would have caused those delegations which had hitherto raised objection to the inclusion of the phrase to reconsider their position.

There was one new element, in paragraph 2(a) of the United Kingdom proposal, which had not been in the four-Power proposal submitted at the 1966 session. Members of the Committee would recall that some measure of progress had been made at the last session on one or two points, particularly in relation to the concept expressed in paragraph 2(a), which had been expanded to include additional language on which general agreement seemed to have been achieved within the Drafting Committee at the 1966 session.

Turning then to other aspects of the principle under consideration mentioned during the debate, he said that it was a matter of some surprise that the representative of Czechoslovakia should have asserted at the sixty-second meeting that little or no

progress had been achieved in the Committee's work on the principle. The United Kingdom delegation disagreed, for there was a firm basis for further work in the compromise text on which agreement had nearly been reached at Mexico City. That text, as he had already indicated, formed the kernel of the new United Kingdom proposal. It was regrettable that certain delegations which had been prepared to subscribe to the compromise text were now claiming that it represented an insufficient basis for further work. That was a retrograde step. The United Kingdom delegation had consistently sought to build upon areas of agreement and to preserve the progress which had been made during the preceding sessions.

As to the definition of the term "force", several delegations had suggested that the term should be interpreted as including any form of political or economic pressure. His delegation believed that view was misconceived. Article 51 of the Charter preserved the inherent right of individual or collective self-defence until the Security Council had taken the measures necessary to maintain international peace and security. It was doubtful whether measures of self-protection taken by a State asserting that it had been subjected to undue economic or political pressure could be considered to be taken in pursuance of the inherent right of self-defence as recognized by Article 51 of the Charter, although a State which was subjected to undue economic or political pressure was clearly entitled to take certain measures in self-protection. It would be the necessary consequence of giving an extended meaning to the term "force", as used in Article 2 (4) of the Charter, that Article 51 should also be given an extended meaning going beyond the intent of the framers of the Charter, who had it clearly in mind that the protection afforded by Article 51 should apply only in the case of an unlawful threat or use of armed force. The representative of Ghana had, at the 64th meeting, cited the opinions of international jurists, including Mrs. Higgins, in support of the thesis that the term "force" should be given an extended meaning going beyond armed or physical force. However, a perusal of Mrs. Higgins' book The Development of International Law through the Political Organs of the United Nations would show that she did not in fact subscribe to the extreme view that the term "force" encompassed all forms of political and economic pressure; her conclusions were much more cautiously expressed and tended, if anything, in the opposite direction.

In arguing as it did, the United Kingdom delegation was not to be taken as asserting that any form of economic or political pressure was permissible. Measures of an economic, political or other character designed to coerce another State were indeed specifically declared in paragraph 2(b) of part III of the United Kingdom proposal as tantamount to intervention involving a violation of international law and the Charter.

It was in the context of the principle of non-intervention that the question of economic and political pressure amounting to coercion should be considered, since its inclusion under an extended definition of the term "force" was essentially untenable as a matter of law and of Charter interpretation.

The so-called right of self-defence against colonial domination and the prohibition of recourse to force against peoples struggling for their independence were clearly related, but they had nothing to do with the principle under consideration, which related to the duty of States to refrain from the threat or use of force "in their international relations" and which did not affect the internal relationship between a State and the peoples subject to the jurisdiction of that State. The Charter rightly did not seek to regulate such internal disorders as might amount to rebellion or secession unless, because of the surrounding circumstances, the resulting situation could be categorized as a threat to international peace. Any Government, whether in respect of its own territory or in respect of Territories subject to its jurisdiction which had not yet achieved a full measure of self-government, must retain the right to exercise its responsibilities in the maintenance of law and order. To talk of a so-called right of self-defence against colonial domination or the so-called prohibition of recourse to force against peoples struggling for their independence was to seek to grant a licence for terrorism, riot and other acts disruptive of the public peace. Naturally, the United Kingdom Government stood committed, in accordance with its obligations under the Charter, to develop self-government in respect of the few remaining Non-Self-Governing Territories for which it retained responsibilities. It was its aim and purpose in accordance with the twin principles of consultation and consent, to promote the advance of the peoples of those Territories to full self-government in a peaceful and orderly manner. Its record in that field was a proud one, and it was precisely because it wished to be able to continue to discharge its responsibilities in accordance with its Charter obligations that it found totally unacceptable, in the context of the principle under consideration or of any other principle, provisions of that nature which would only complicate the task of those administering Powers who were seeking earnestly and vigorously to complete the process of decolonization. Such provisions would inevitably encourage the use of violence and terrorism. What was more, the assertion, implicitly if not explicitly, that other States might legitimately go to the aid of so-called national liberation movements by providing them with the means of violent action could only create and greatly increase tension between those members of the international community who acted upon that doctrine and the Powers administering Non-Self-Governing Territories. His delegation could conceive of few proposals more likely to disrupt friendly relations and co-operation among States to the detriment of the purposes of the United Nations.

In conclusion, he wished to refer briefly to two points which had been raised in the course of the debate at the 64th meeting. In the first place, his delegation considered it highly regrettable that the representative of Poland should have launched an intemperate attack against a State not represented in the Committee, namely the Federal Republic of Germany. His delegation associated itself fully with what had been said on the subject by the United States representative in his reply. He would not waste the Committee's time by restating the well-known views of the United Kingdom delegation which entirely rejected the irrelevant and distorted allegations made by the Polish representative concerning the policies pursued by the Government of the Federal Republic of Germany.

Secondly, as to General Assembly resolution 2160 (XXI), to which reference had been made by several delegations, the Committee would be aware that the United Kingdom had been one of the two Member States which had voted against the resolution. As the permanent representative of the United Kingdom to the United Nations had explained at the time the United Kingdom's negative vote on the resolution expressed the strong dissent of his Government from the sort of process involved in the drawing up of that resolution and, previously of General Assembly resolution 2131 (XX). It believed that the resolutions of that nature, which might be interpreted as expressing statements of legal significance, should not be concocted during the rush and uproar of a regular session of the General Assembly, but should be subjected to careful scrutiny by legal experts. The subject-matter of resolution 2160 (XXI) involved two of the seven principles remitted to the Committee for consideration and, for that reason, the United Kingdom delegation would have supported the original Italian proposal, the effect of which would have been to include the records of the General Assembly's debate on the item in the documentation to be considered in the further study of the seven principles by the Committee. It had not, however, been prepared to support, or even in any way be seen not to oppose, a substantive text conceived in haste and ambiguous in its terminology. Certain of the interpretations currently being given to that resolution, notably by the representatives of India, Cameroon and Poland, only served to confirm his delegation's belief that the resolution was ill-timed and ill-drafted and could not in any way contribute to a solution of the difficulties confronting the Committee.

Taking into account progress achieved at previous sessions, he hoped that the Committee would, at the present session, be able to complete its work on the formulation of the seven principles.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that at the beginning of the discussion on item 6 A(a) the representative of Japan, possibly with a view to accelerating the discussion, had called upon the Committee not to concern itself with international events in South-East Asia and other parts of the world. But the Committee could not conduct its work in an ivory tower and for its part the Soviet Union delegation could certainly not respond to such an appeal because the main principles and rules of contemporary international law and its progressive development derived from the practice of States and peoples and the realities of international life. For example, with the termination of the Second World War, objective conditions had come into being that demanded new rules to ensure peaceful coexistence between States with different political and economic systems. The Charter reflected the requirements of its epoch and enunciated a series of democratic principles including the prohibition of recourse to the threat or the use of force in international relations. All peace-loving States now looked to a further development and enrichment of international law on the basis of contemporary international practice, and with that view the Czechoslovak delegation had introduced its proposal on the principles of international law concerning friendly relations and co-operation among States.

It was true that the Committee's progress had been very slow. But that had been due to those Governments which from the beginning had had no real interest in its task. However, realizing the determination of the socialist, the non-aligned and the developing countries to get on with the work on the basis of the Czechoslovak proposal, they had abandoned their initial tactics of indifference to the Czechoslovak initiative and were now trying to protract matters endlessly by submitting amendments and new proposals and by going back on agreed texts. At Mexico City the United States delegation had been the only one to oppose the agreed text on the principle that States should refrain from the threat or use of force but had then formally withdrawn its objections at the twentieth session of the General Assembly. In the 1966 Special Committee, however, it had joined with the delegations of Australia, Canada and the United Kingdom in submitting a text containing certain new elements such as references to "lines of demarcation", "repressive measures", "a competent organ of the United Nations", which had served to frustrate agreement. The statement made by the United States representative at the 62nd meeting left the impression that he still did not want to reach agreement, which was not surprising since it was the United States Government which wished to see the Committee mark time on the principle under consideration because it was using naked force, committing aggression, practising various forms of pressure, waging a criminal war, killing civilians of all ages and both

sexes, destroying towns and villages, protecting aggressors in various parts of the world, encouraging revanchism and militarism in West Germany and arrogating to itself the role of world policeman. It was also mainly responsible for the Israeli aggression against the Arab States and the seizure of Arab territory.

The United States Government attempted to justify its unheard of cruelties in Viet-Nam by claiming that it was helping the people of that country to settle their own affairs, but that argument and United States policy had been condemned by the court of world opinion and by learned personalities in the United States itself. For example, in a recent book, Viet Nam and International Law, published by a committee of distinguished jurists such as Falk, Fried, Barnet, Maclure and Morgenthau, some of whom had worked for the State Department, the authors demonstrated that the State Department had failed to justify its invoking of the right of collective self-defence under the Charter. They pointed out that all States Members of the United Nations were bound by the provisions of Article 39 of the Charter, under which only the Security Council could determine the existence of a threat to peace, a breach of the peace or an act of aggression and decide on the measures to be taken. No State could, of itself decide to use force or launch aggressive operations that interfered in an internal conflict. The authors of the book concluded that the actions of the United States in Viet-Nam was a violation of the Charter and the 1954 Geneva Agreements and that its contention that it had responded to an appeal for help from the Saigon régime could not be sustained because that "Government" had not been freely elected by the people but was a puppet of the United States itself and would collapse if the United States withdrew its troops. It was therefore in no position to make an independent appeal to another Government that reflected the will of the people and was designed to support a movement of national self-determination. They also pointed out that United States action in Viet-Nam not only undermined generally recognized rules of international law but was contrary to the provisions of the United States constitution, under which only Congress could sanction United States engagement in a war. According to the authors, the United States Government had made many declarations avowing its desire for peace but its actions belied its words because it was continuing to escalate the war in Viet-Nam, was constructing costly bases in that country and training additional troops, thus signifying its intention to continue the war for many years.

His delegation fully supported the principles set out in the Czechoslovak proposal (A/AC.125/L.16), which met the requirements of the time and the interests of mankind. The joint draft declaration submitted by the non-aligned countries (A/AC.125/L.48) was of considerable interest and would be examined by the Drafting Committee to which his delegation would submit its detailed observations.

His Government was firmly opposed to any use of force against States and favoured the clearest possible formulation of a rule to prohibit the use of force and to condemn all forms of aggression whether armed, political, economic or any other. Similarly, incitement to aggression by others must be condemned as demonstrated by recent events in the Middle East. It was imperative to devise a principle concerning responsibility for such incitement since States were taking advantage of its absence. His delegation's views about "lines of demarcation" were well known. They could certainly not be equated with ordinary boundaries and must be considered in the light of the laws of war and not of rules designed for normal times of peace.

Mr. NACHABE (Syria) said that the principle under discussion, first enunciated in the Hague Conventions of 1899 and 1907, had become a rule of law embodied in Article 2 (4) of the Charter. It had also been confirmed in a number of other international instruments and at various international conferences. Although States had renounced war as an instrument of policy and had declared it to be illegal, colonial powers continued to use force in order to maintain their domination, and imperialist aggression had not yet disappeared. Israel also had pursued an aggressive policy for a number of years and was threatening peace. National liberation movements were being suppressed in violation of the legitimate rights of peoples to self-determination. Peace could only be assured if those inalienable rights were recognized and honoured.

In elaborating the principles referred to the Committee for the purpose of securing the progressive development of international law, the Committee must take into account the important changes that had taken place in the world since the adoption of the Charter. The concept of "force" must be broadly defined to include political, economic and other forms of pressure that could threaten the territorial integrity and political independence of States and were as dangerous as armed force. The argument put forward by the United States and United Kingdom representatives in favour of limiting the concept to armed force was unconvincing and inconsistent with the terms of Article 2 (4) of the Charter. The fact that the Article signified force in general terms was demonstrated by the rejection of the Brazilian amendment at the San Francisco Conference.

Propaganda encouraging the threat or use of force was rightly condemned in the joint draft declaration submitted by the non-aligned countries but it went without saying that the process of informing world opinion about the misdeeds of colonial Powers was not war propaganda.

Force was legitimate when used pursuant to a decision of a competent organ of the United Nations, or in individual or collective self-defence, or in the exercise of the right of self-defence against colonial domination. The legitimacy of the last instance

had been reaffirmed by General Assembly resolution 1514 (XV) and others, by provisions of the Charter of the United Nations and by other international organizations and international conferences.

The formulation of the principle under discussion should not include any reference to lines of demarcation established by a fait accompli with the illicit use of force against the will of the people in the territory concerned.

Mr. SAHOVIC (Yugoslavia) referred to the active part which his delegation had taken in the work on the principle of the prohibition of the threat or use of force. His delegation, therefore, together with other non-aligned countries, had again proposed the formulation of that principle, considering that the adoption of a formulation concerning the principle of the prohibition of the threat or use of force by the Special Committee would stress its extraordinary importance and would constitute a demonstration that the present membership of the United Nations was devoted to the Purposes and Principles of the Charter.

The acceptance of the Charter and of the prohibition of the threat or use of force embodied in its Article 2(4) had been hailed as marking the beginning of a new legal order based on such fundamental Charter principles as sovereign equality, equality of rights, self-determination of peoples, peaceful settlement of disputes and non-intervention. It had, however, become apparent that the application and observance of those principles could not be divorced from the struggle between different political forces. Despite all the progress made since the adoption of the Charter, it was clear that policies based on force in all its aspects remained the greatest obstacle in the way of the complete and final assertion of the rules of the new international law. Accordingly, it was not possible to discuss the principle of the prohibition of the threat or use of force without taking into account the reality of contemporary events. It was that reality, and the experience gained in the practice of international law, which would provide the necessary elements for the progressive development of that law; they would also provide the grounds on which to base a creative interpretation of the content of international law, an interpretation that would meet the requirements of a majority of the members of the contemporary international community, who aspired above all to peace, freedom and economic and social progress.

It was for those reasons that his delegation believed that the general worsening of the international situation, which had been recently marked by the aggression of Israel against the Arab States, the continuation of the Viet-Nam war and other acts of force, were responsible for the delay in the work of the Special Committee. It must be admitted that the absence of concrete results in the formulation of the principle

under discussion must be attributed to the impossibility of reconciling the practice of using force by some States with the new needs of the struggle against that use and the improvement and progressive development of its legal prohibition as laid down in the Charter.

His delegation had already explained in 1964 and 1966 the legal aspects of the formulation proposed by the non-aligned delegations. In particular, with regard to the question of methods of interpretation of the Charter, it had stressed the importance for purposes of that interpretation of the views held by the majority of the present Members of the United Nations, in contra-distinction with the preparatory work of the Charter in 1945. In that connexion, he cited article 28 of the draft articles on the law of treaties prepared by the International Law Commission. That article laid down that the preparatory work constituted only a supplementary means of interpretation.1/

Turning to the definition of the term "force", he stressed that it was essential for it to cover "all forms of pressure including those of a political and economic character, which have the effect of threatening the territorial integrity or political independence of any State" as expressed in paragraph 2(b) of the formulation sponsored by the non-aligned countries. No one could dispute the illegal character of the various forms of pressure which could be used, in the same way as armed force, to threaten the territorial integrity or the political independence of States. He expressed the hope that the Special Committee would be able to make a first step by approving the principle of that definition. After that first step, it would be possible to follow up the work with an analysis of the concept of political and economic pressure, an analysis which would not alter in any way the illegality of such pressures under the Charter and under international law.

Force was one and indivisible, just as international peace and the territorial integrity and political independence of States were indivisible. It was for those reasons that his delegation advocated a single definition of the term "force" notwithstanding the relationship which existed between the principle of the prohibition of the threat or use of force and the principle of non-intervention, a relationship which to some extent argued in favour of separate definitions of the various manifestations of force.

The formulation sponsored by the Yugoslav and other delegations did not contain any reference to the organization of irregular forces or armed bands for incursion into the territory of another State or to the participation in civil strife or the commission

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1/ See Official Records of the General Assembly, Twenty-first Session, Supplement No.9 (A/6309/Rev.1), p.49.

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1/ See Official Records of the General Assembly, Twenty-first Session, Supplement No.9 (A/6309/Rev.1), p.49.

of terrorist acts, i.e. the acts covered by paragraphs 2(b) and (c) of the United Kingdom proposal. The Yugoslav delegation condemned those acts, which were in fact covered by paragraphs 2(a) and 4 of the proposal submitted by the non-aligned countries, but it believed that those acts should be prohibited more especially within the framework of the formulation of the principle of non-intervention. It should be noted that the General Assembly itself had referred to such acts in paragraph 2 of its Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131 (XX)).

His delegation had of course no objection to the consideration of that particular point by the Drafting Committee, together with all other points raised during the discussion. In particular, the proposals made by Czechoslovakia and by Chile (A/AC.125/L.23) relating to questions of disarmament, and the relationship between the use of force by a regional agency and the competence of the Security Council were of great interest. The proposal made by Italy and the Netherlands (A/AC.125/L.24) was also of considerable interest. Although the Yugoslav delegation did not approve of the views set forth in that proposal, it believed that it represented progress by comparison with the text submitted in 1966 by Australia, Canada, the United Kingdom and the United States and the text of the newest proposal submitted by the United Kingdom.

The United Kingdom proposal took its inspiration from a text on which it had not been possible to agree in the 1964 Committee and which, even at that time, was regarded by many delegations as an unsatisfactory compromise proposal. The major defects of that formulation were that it gave an unduly narrow definition of the term "force" and that it failed to contain even the most superficial reference to the struggle of peoples under colonial domination when it was not possible at present to isolate that struggle from the question of the prohibition of the threat or use of force. The principle of the prohibition of the threat or use of force and that of the self-determination of peoples were complementary Charter principles and must be observed by States concurrently. The right of self-defence of peoples under colonial domination constituted an exception to the prohibition of the use of force, which for the Yugoslav delegation was the universal and absolute rule. The exception applied only in the event of repressive measures being taken by a colonial power against a people aspiring to self-determination.

Turning to the question of "international lines of demarcation", he observed that the United Kingdom proposal placed such lines on the same footing as State boundaries, a fact which explained the objections of many delegations. Moreover, there existed in practice several types of international lines of demarcation, and those lines were the result of a variety of actions, which were rarely legitimate, but, in most cases, illegal.

In conclusion, he expressed the hope that the Committee would be able to agree on the first elements of a formulation of the principle under discussion and thereby make a significant contribution to the maintenance of international peace and the strengthening of the role of international law. He did not want to be either an optimist or a pessimist but a realist. However, the first elements of an eventual agreement, regardless of its scope, should be included in the report of the Special Committee in order to serve as a basis for further negotiations.

Mr. VANDERPUYE (Ghana), exercising his right of reply, pointed out that the reference made at the previous meeting by the United Kingdom representative to a book by Mrs. Higgins came from a section of the book which preceded the conclusion of that author on the subject of the use of force. It was therefore part of the general exposition; the relevant passage was rather the one which he himself had cited at a previous meeting, and which was taken from the conclusion itsolf.

Moreover, in the statement he had made at the 64th meeting, he had also quoted the views of a number of other writers on international law, including Kelsen and, still more important, a number of international instruments, such as the Bogota Charter and the Declaration on the Rights and Duties of States.

Mr. REIS (United States of America), exercising his right of reply, said that the USSR representative had paid the highest possible tribute to the United States when he had pointed to the existence of dissent in that country with regard to policies in South-East Asia. The United States Government took with the utmost seriousness its role in assisting the people of the Republic of Viet-Nam to work out their own future, and there was every reason to derive encouragement from the fact that discussion and dissent continued with regard to United States policies in the matter. There were many aspects of the domestic life of the United States which stood in need of improvement, but the tradition of free speech had always been maintained at the highest level.

It was not the first time that United States forces had been engaged many thousands of miles away from their homes in a just cause; that had been so in the Second World War and, in the present instance, they were engaged in a struggle aimed at avoiding the repetition of a mistake made in the years prior to the Second World War, when acquiescence in violence had led to such tragic consequences.

As to the slanderous and outrageous allegations that the United States had the main responsibility for events in the Middle East, it was sufficient to point out that the USSR delegation had made a futile attempt in the competent organs of the United Nations in New York to uphold that mischievous and baseless accusation, which it had found impossible to substantiate.

The United States delegation was ready to proceed with the completion of the Committee's work but lack of time to complete that work, to which reference had been made by the USSR and other delegations in their suggestions for the holding of a 1968 session, could hardly be remedied by the introduction of irrelevant material in the current discussions of the Committee.

Mr. HATANO (Japan), exercising his right of reply, noted that the USSR delegation had described as unrealistic the appeal made by the Japanese delegation for the avoidance of propaganda and political polemics.

His delegation was fully aware of the gravity of the present international situation and agreed that contemporary events must be taken into account in the formulation of the principles of international law, but the Japanese representative, Mr. Amau, at the conclusion of his statement opening the discussion (62nd meeting) had merely wished to draw attention to two important considerations. The first was that there existed appropriate United Nations organs to deal with the questions involved in those tragic events; and the second was that those events could be taken into account without making explicit references to them and without making accusations. Accordingly, despite the criticism of the USSR delegation, the Japanese delegation earnestly reiterated the plea which it had made at the 62nd meeting.

Mr. MWENDWA (Kenya) said that the principle of the prohibition of the threat or use of force was of special importance in the context of the present world situation where a few Powers had a boundless striking potential. For that reason, no legal question was more important or more urgent than the strengthening of the role of international law as an instrument of peace.

Man had outlived the age of "might is right" and there had come about a growing recognition that a right constituted a right even though its beneficiary had no might with which to uphold it. However, in order to efface the last traces of the outmoded idea that might was right, it was necessary for all States to adhere resolutely and without question to the principle of the non-use of force. Indeed, the entire United Nations Charter constituted a legal embodiment of that principle.

The prohibition of the threat or use of force had come about as a result of the replacement of the notion of jus ad bellum by jus contra bellum under the pressure of events and of advances in military technique and armaments which endangered the very existence of humanity. The 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, the Bandung Declaration (principle 7), the Belgrade Declaration (chap.2), the Charter of the Organization of African Unity (art. 2 and 3) and Article 2 (4) of the United Nations Charter, all emphatically proclaimed the principle under consideration.

His delegation hoped that the Committee would reach agreement on the following points: (1) the meaning of the expression "in their international relations"; (2) the meaning of the expression "against the territorial integrity or political independence of any State"; (3) the definition of the term "force"; (4) the meaning of the term "aggression"; (5) the use of force in territorial disputes and border claims; (6) the use of force in exercise of the right of individual or collective self-defence; (7) the use of force in self-defence against colonial domination; (8) the question of non-recognition of situations brought about by the illegal threat or use of force, war propaganda and threats inherent in armaments.

In his delegation's view, all forms of threat of or use of force must be discountenanced. The prohibition of the use of force should embrace not only the threat or use of armed force, but also the threat or use of economic, political or any other form of pressure directed against the political independence and territorial integrity of a State.

General Assembly resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples, had implicitly banned all armed action or repressive measures against peoples exercising their right of self-determination. It would therefore be in conformity with that Declaration to include in the formulation of the principle under discussion a provision to the effect that the use of force in furtherance of colonial domination and the continued denial of the right of self-determination was an illegitimate use of force and was prohibited.

The type of force which was being discussed included the use, not only of regular, but also of irregular forces or armed bands operating against a State from bases within the territory of another State which condoned their presence. It was necessary, however, to draw a clear distinction between that type of action and certain classes of assistance in furtherance of liberation from colonial status. That type of assistance did not constitute a violation of the principle under discussion. Unless that distinction were drawn, his delegation would find itself in a most difficult position since the Summit Conference of Independent African States which had met at Addis Ababa in May 1963 had agreed on joint action to promote the cause of national liberation of colonial peoples.

The formulation of the principle under discussion should also include a clear and unequivocal reference to the circumstances under which the use of force would be lawful. Such circumstances would, of necessity, include the use of force by a regional agency acting in accordance with the Charter of the United Nations, and the use of force in the exercise of the individual or collective right of self-defence under Article 51 of

the Charter. It should also include the use of force in the exercise of the right of self-defence against colonial domination and in furtherance of the right of self-determination.

In conclusion, he expressed the hope that the proposal submitted by the non-aligned delegations would pave the way to the reaching of a consensus on the important principle under discussion.

Mr. SINCLAIR (United Kingdom), exercising his right of reply, explained that his sole purpose in citing a quotation from Mrs. Higgins had been to warn against the risk of selecting certain quotations from one author in support of a particular argument. It was not unusual to find that part of a quotation taken from one part of a work conflicted with a quotation from another part of the same work.

He believed that careful research into works by jurists relating to the interpretation of the Charter would show that by far the great majority considered that the term "force" bore the interpretation "armed force". It was necessary to interpret the term in the context of the Charter as a whole and not in isolation. There was a high measure of agreement that certain forms of economic and political pressure which amounted to coercion violated the provisions of the Charter and were against international law. Such coercion should, however, be considered in connexion with the principle of non-intervention and not in the present context.

The USSR representative's remarks, in particular about the situation in Viet-Nam, would have been welcome in the Security Council, but were not welcome in the Committee. As the USSR delegation in New York had opposed the discussion of the Viet-Nam situation in the Security Council, which was the appropriate organ to consider it, it was all the more strange that it sought to raise the issue elsewhere.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), exercising his right of reply, said that he had not mentioned the United Kingdom Government or its policies when he had spoken earlier, and he failed to see under what procedure the United Kingdom representative had considered he had the right of reply.

The Japanese representative had just repeated exactly what his delegation had said at the beginning of the debate. The USSR delegation could not agree with his approach; it was impossible to consider the question of prohibiting aggression without mentioning the existing situation in the world. To do so would be like discussing the prohibition of nuclear weapons without mentioning Hiroshima.

He fully understood the difficult situation in which the United States representative found himself, but no one could do anything to help him. The United States Government had got itself into a situation in which its representatives were constantly having to try to justify its actions. It was difficult for the United States representative to talk about prohibiting the use of force when his Government was in the process of using force. What he himself had spoken of in his statement had been the arguments being used by United States jurists and United States citizens, and by the world community, against the policy of aggression of the United States Government, and the United States representative had countered by talking of the right to freedom of speech. Prohibition of aggression was the topic under consideration.

The CHAIRMAN recalled his opening remarks to the Committee when he had appealed to members to direct themselves to their task and to bear in mind the shortage of time at their disposal. There were still a considerable number of speakers on the list, and only one more meeting remained for consideration of the principle relating to the threat or use of force. He appealed to members to do all in their power to save time and to co-operate even more than they had.

The meeting rose at 1.15 p.m.

The principle of self-determination of peoples entailed the right of States freely to choose their own political, economic and legal systems; the right to continue their development and to conduct their foreign policies without foreign intervention or intimidation; and the right freely to dispose of their natural wealth and resources.

The Australian representative seemed to have expressed doubts about the right of colonial peoples to receive external assistance to achieve their independence. While he agreed that the relevant Article of the Charter was originally meant to apply to sovereign States, to abide strictly by that interpretation at the present juncture was not realistic. If the Committee confined itself to the language of the Charter, it would not get very far considering the events that had taken place since the Charter had been drafted. There was abundant material on the basis of which the scope of the language used in the Charter could legitimately be extended.

Any formulation of the principle under discussion which recognized the basic rights of self-determination and equality would be acceptable to his delegation.

The CHAIRMAN declared the discussion of item 6 A (c) closed. The item would be referred to the Drafting Committee for consideration in the light of the views expressed during the discussion.

The meeting rose at 12.20 p.m.