UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.125/SR.72
4 December 1967

Original: ENGLISH

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

SUMMARY RECORD OF THE SEVENTY-SECOND MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 9 August 1967, at 10.30 a.m.

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GE.67-25304

PRESENT:

Chairman:	Mr. ENGO	(Cameroon)
Rapporteur:	Mr. SAHOVIC	Yugoslavia
Members:	Mr. ABDELAZIZ	Algeria
	Mr. de la GUARDIA) Mr. DELPECH)	Argentina
	Sir Kenneth BAILEY	Australia
	U MAUNG MAUNG	Burma
	Mr. HAPPY-TCHANKOU	Cameroon
	Mr. MILLER	Canada
	Mr. VARGAS	Chile
	Mr. PECHOTA	Czechoslovakia
	Mr. VIRALLY	France
	Mr. VANDERPUYE	Ghana
	Mr. LAVALLE	Guatemala
	Mr. KRISHNAN	India
	Mr. ARANGIO-RUIZ	Italy
	Mr. TOGO	Japan
	Mr. MWENDWA	Kenya
	Mr. ANDRIAMISEZA	Madagascar
	Mr. GONZALEZ GALVEZ) Mrs. de BRODY)	Mexico
	Mr. RIPHAGEN	Netherlands
	Mr. SHITTA-BEY	Nigeria
	Mr. ZDROJOWY	Poland
	Mr. GLASER	Romania
	Mr. BLIX	Sweden
	Mr. NACHABE	Syria
	Mr. CHKHIKVADZE	Union of Soviet Socialist Republics
	Mr. SHAKER	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. WATTLES	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)

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B. CONSIDERATION OF PROPOSALS ON THE PRINCIPLE CONCERNING THE DUTY NOT TO INTERVENE IN MATTERS WITHIN THE DOMESTIC JURISDICTION OF ANY STATE, IN ACCORDANCE WITH THE CHARTER, WITH THE AIM OF WIDENING THE AREA OF AGREEMENT ALREADY EXPRESSED IN GENERAL ASSEMBLY RESOLUTION 2131 (XX) (A/AC.125/L.40 and Corr.1, A/AC.125/L.44, A/AC.125/L.48) (continued)

Mr. REIS (United States of America) said that any serious discussion of the principle of non-intervention in matters within the jurisdiction of any State was bound to give rise to very different views, which might at times be irreconcilable. Like the use of force, questions of non-intervention, as well as acts of intervention, had hindered and continued to hinder co-operation among States. In some cases, they threatened the principle of self-determination and might even menace the peace. Efforts at individual and collective self-defence, which were legitimate under Article 51 of the Charter, had themselves been condemned by some as intervention.

The task of the Committee was particularly difficult, since what it sought was a definition of the permissible limits of the activities of a State in relation to those of other States. His delegation believed that if an objective and productive analysis of the various legal aspects of the question was to be made, it was desirable to avoid polemical exchanges on the serious problems which existed in many parts of the world.

A discussion of the principle of non-intervention had, of necessity, to begin with consideration of General Assembly resolution 2131 (XX), because of the evident differences of opinion as to the role of that resolution in the work of the Committee. The position of the United States on the matter was well known; it had not changed since the adoption of the resolution in 1965. As the United States representative had explained at that time, the United States Government had supported the resolution, first, because of its profound opposition to all forms of intervention contrary to the Charter and to the principles of international law, and second, because the resolution very clearly expressed the almost universal abhorrence of the most modern form of intervention, namely, intervention through terrorism and subversion. At the same time, however, the United States delegation had made it clear that it viewed the resolution as a statement of attitude and policy, not as a declaration or elaboration of the law governing non-intervention, and that its vote on the resolution was without prejudice to the position it would take on the definition of that law in the Special Committee.

Resolution 2131 (XX) contained a number of valuable concepts which were essential for any satisfactory definition of the principle of non-intervention. No-one would deny the importance, for the orderly conduct of international relations and for achieving universal freedom under the law, of the concept of the duty not to use force to deprive peoples of their national identity, referred to in paragraph 3 of the resolution, or of the concept that States should respect the right of self-determination and independence of peoples, referred to in paragraph 6. His delegation considered, however, that precisely because the Committee was seeking to develop a logical and comprehensive declaration on all seven principles concerning friendly relations, the substance of paragraph 3 should be considered in connexion with the prohibition of the use of force and that of paragraph 6 in connexion with self-determination. Since the aim was to draft a comprehensive declaration which would inter-relate agreed texts on all of the principles, a definition of the principle of non-intervention should, as far as possible, avoid substantive issues relating more closely to such other principles as self-determination and the use of force.

The same reasoning applied to paragraph 4 of resolution 2131 (XX). No-one could deny that "strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another", but it was clear that strict observance of obligations was no more essential with regard to non-intervention than with regard to the use of force or any other of the principles. In those circumstances, a legal formulation of the principle of non-intervention would be neither strengthened nor improved by the inclusion of such a paragraph. His delegation would find it difficult to agree to any formulation which would single out the principle of non-intervention for a declaration concerning the duty of States to observe their obligations; any such formulation would tend to diminish the importance of good faith in adhering to the other principles.

Other legal elements which resolution 2131 (XX) sought to express were: in paragraph 1, the principle that no State had the right to intervene in the affairs of another State; in paragraph 2, the principle that no State was entitled to coerce another State and that no State should organize or otherwise encourage any form of subversive or armed activities directed toward the violent overthrow of another State, or interfere in civil strife in another State; in paragraph 5, the principle that every State had the right to choose its own institutions, without interference; and in paragraph 8, the notion that failure to respect those principles might adversely affect the maintenance of international peace and security and thus create the need for action by the United Nations.

His delegation believed that those four ideas were the legal essence of resolution 2131 (XX) and the basis upon which the Committee should build a contemporary and accurate definition of the principle of non-intervention. It was that belief that had led it to accept and support the text submitted by the United Kingdom delegation at the present session (A/AC.125/L.44).

The four elements he had outlined were all reflected in a direct and precise form in the United Kingdom text. Moreover, the United Kingdom text strengthened the force with which resolution 2131 (XX) sought to enunciate the elements of non-intervention, and avoided certain imprecisions and ambiguities in it.

The wording of the first sentence of paragraph 2 of resolution 2131 (XX), which declared that no State might "use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind", created another problem. Although its authors had laudably sought to make clear that all forms of intervention were wrong, a strict legal interpretation of the sentence and its application to certain specific conditions could make the normal and customary diplomatic intercourse between States impossible. For example, if State A informed State B that any capital investment it might make in a development programme in State B would depend upon the latter's acceptance of a bilateral or multilateral investment agreement, that statement could well be considered as falling within the type of activities prohibited by paragraph 2 of resolution 2131 (XX), as it was worded. Such a result had assuredly not been intended.

In paragraph 1 and the more detailed sub-paragraphs of paragraph 2 of the United Kingdom text, it was made unmistakably clear that no State might legitimately intervent in the affairs of another, by whatever means, and that the threat or use of force, terrorism, subversion, encouragement of civil strife, coercive economic or political measures, or any other measures of a similar character could not be condoned. The second element of resolution 2131 (XX) was dealt with in detail in paragraphs 2 (a) and (b) of the United Kingdom text. Paragraph 1 clearly set forthe the entitlement of States to institutions of their own choice, while adding that every State had the right freely to choose the form and degree of its association with other States. In that connexion it should be remembered that alliances were not compulsory. Finally, as in the final paragraph of resolution 2131 (XX), paragraph 2 (a) and paragraph 3 of the United Kingdom text recalled that intervention could threaten the maintenance of international peace and security and that the responsibilities of the United Nations for maintaining the peace might be called into play.

He had spoken in some detail of the similarities between the United Kingdom proposal and resolution 2131 (XX) in order to make its origin clear. As required under the terms of General Assembly resolution 2181 (XXI), the United Kingdom proposal was aimed at widening the area of agreement already expressed in General Assembly resolution 2131 (XX). In addition, his delegation believed that a careful examination would show that the quality of the legal obligation of non-intervention laid down in resolution 2131 (XX) had been substantively improved in the United Kingdom text. For example, the first two paragraphs of resolution 2131 (XX) spoke of no State having the "right" to intervene and said that no State "may" use or encourage measures of coercion. Further, they spoke of armed intervention and all other forms of intervention as being "condemned". Such language was unduly weak for describing the legal consequences of any State's refusal to abide by the principle of non-intervention. The time had come when it was possible to go beyond such statements; intervention by the threat or use of force, by terrorism and subversion, by coercive political, economic or other measures, was not only wrong and deserving of condemnation; it should clearly be described as illegal. The more forceful and direct wording of the United Kingdom text represented a real advance and was an improvement on the text of resolution 2131 (XX).

The United Kingdom text had three basic qualities: it reflected in clear and precise language the fundamental elements of the principle of non-intervention, as set out in resolution 2131 (XX); it did not duplicate the substance of other principles of friendly relations; it clarified the legal consequences of actions by States which violated the fundamental of non-intervention. He believed that it provided a real basis for a consensus on the principle and his delegation would spare no effort to obtain such a consensus.

Mr. GONZALEZ GALVEZ (Mexico) said that any intervention, direct or indirect, for any reason whatsoever, in the internal or external affairs of a State was the very negation of its fundamental rights independence and sovereignty, and was, perhaps for that reason, the most frequent cause of international conflicts.

The fact that the principle of non-intervention had been formulated more rigorously in America than elsewhere gave grounds for satisfaction, but it also pointed to the origin of the principle; for it was, precisely, the painful experience of Latin America with innumerable acts of intervention, armed and otherwise, that had led to the strengthening of the principle of non-intervention as a defensive reaction. What for some nations was merely a technicality for the use of Foreign Office officials and specialists was, for the Mexican people, a principle for defence against attacks from outside.

With regard to the historical origins of the principle of non-intervention, he reminded the Committee that in 1825 the Colombian statesman Santander, in a communication to Bolivar, the Venezuelan liberator, had described the dangerous doctrine of intervention, advocated and practised by certain European Powers of the Holy Alliance, which he regarded as an attempt to subvert the sovereign rights of peoples. In modern times, the prohibition of intervention had been clearly stated in article 15 of the Charter of the Organization of American States (OAS)[1/] signed at Bogotá in 1948, and reaffirmed at the Buenos Aires Conference held in February 1967 to consider amendments to that Charter.

The Member States of the OAS had also taken two important decisions in connexion with the codification of the principle of non-intervention by the Inter-American Juridical Committee, which was the permanent legal organ of that organization. The first, adopted on 23 October 1959, specified a number of typical cases of violation of the principle of non-intervention; the second, adopted on 23 September 1965, defined the differences between intervention and collective action. The latter problem was of immediate interest in America, because of the proposal to set up an inter-American armed force within the framework of the OAS Charter and of the Inter-American Treaty of Reciprocal Assistance[2/] signed at Rio de Janeiro in 1947 - a proposal which Mexico had repeatedly rejected.

The position of the Mexican delegation with regard to the formulation of the principle under discussion was that the Declaration adopted by the General Assembly in resolution 2131 (XX) contained the best formulation it was possible to achieve at present, since it had been adopted unanimously and since the 1964 Special Committee had failed to agree on a formulation. That had been the position of his delegation when it had introduced the proposal sponsored by thirty-one countries of Latin America and other regions, which had become General Assembly resolution 2181 (XXI). By virtue of that resolution, the Special Committee's task was strictly limited to widening the area of agreement already expressed in resolution 2131 (XX).

1/ United Nations Treaty Series, Vol. 119, p.56.

2/ United Nations Treaty Series, Vol. 21, p.93.

The vagueness of some of the terms used in resolution 2131 (XX) was no argument for reopening the debate on the Declaration it contained. Even in internal law, whose concepts and terms were usually much more precise than those of international law, it was quite common to use basic concepts whose content was even less precise than some of those to be found in resolution 2131 (XX). In the United States, for example, the expression "due process of law", which had originated as a procedural safeguard for constitutional rights, had in the course of time come to represent a whole political philosophy and had been used to declare unconstitutional a number of social security measures introduced by President Roosevelt. In international law, there were even more striking examples, such as the expression "due diligence", which was used in the first of the Three Rules of Washington (1871) which had resulted from the Alabama case,3/ in connexion with the duty of vigilence incumbent on a neutral to prevent the fitting out of naval vessels within its jurisdiction.

At that point it was perhaps appropriate to comment on the doubts expressed by the Swedish representative in the 1966 Special Committee concerning the expression "external affairs". At the 30th meeting of the 1964 Special Committee the Mexican representative had pointed out that intervention in the external, as well as the internal, affairs of a State, was prohibited not only by the OAS Charter, but also by the Charter of the Organization of African Unity, the Warsaw Treaty and the Bandung Declaration, and had stressed the difficulty of drawing a distinction between external and internal affairs: experience had shown that most cases of intervention had both internal and external aspects. An obvious illustration was provided by the question of recognition, with regard to which Mexico had had occasion to resist attempts at intervention. Its position, which dated from 1930 and was known as the Estrada Doctrine, was that to grant or to refuse recognition was a denial of the sovereignty of a State, since it meant passing judgement on the legal status of its regime. Mexico therefore confined its action to maintaining diplomatic relations with other countries, where appropriate, without claiming to judge the right of a foreign country to accept, maintain or replace its Government or its authorities.

3/ See Oppenheim, International Law (Ed. Lauterpacht), 7th edition, Vol. II, p.715.

The argument as to the vagueness of certain terms was all the more baseless because the delegations participating in the work of the Committee had had ample opportunity to suggest any drafting amendments which they desired before the adoption of resolution 2131 (XX).

Moreover, any attempt to draw a clear-cut distinction between legal principles and political postulates would be the surest way to restrict the development of international law and deprive it of any real influence on the course of international relations, as the representative of Yugoslavia had pointed out in the Sixth Committee. That was the main reason why the study of the principles under consideration had been assigned to a Committee consisting of representatives of States and not to the International Law Commission.

It must be borne in mind that the principle embodied in resolution 2131 (XX) was by no means new to the international legal order, but had been proclaimed in many international treaties and agreements for over 150 years. In adopting the resolution unanimously the States Members of the United Nations had expressed their conviction on the content of an essentially legal principle of universal validity. It was not uncommon for procedures, rules of law and reciprocal rights established by States to be purely regional. But general principles such as that of non-intervention were of a different character. A stricter and more complete formulation of the principle of non-intervention, which was supported by a large number of States and which served the interests of the majority of the members of the international community, should have universal application. There was no reason why certain activities which were objectively unlawful and prohibited in one sphere should be permitted in another.

Lastly, he drew attention to the fact that on 11 February 1966 the permanent representative of Mexico to the United Nations had circulated, as an official document, a declaration on an event which the Mexican delegation considered to be the first specific case calling for the application of resolution 2131 (XX): the so-called "Tri-continental Peoples Solidarity Conference", from which had emanated threats of intervention and seditious propaganda. On that occasion, Mexico had invoked the Declaration embodied in resolution 2131 (XX) as the statement of a legal principle and not as the expression of a political or ideological trend.

Mr. KRISHNAN (India) said he had listened with some dismay and disappointment to the comments of the United Kingdom and United States representatives. The United Kingdom representative had started his statement with the remark that no resolution of the General Assembly could ever be said to be final or immutable, and with regard to General Assembly resolution 2131 (XX) he had said that some of its provisions ran counter to the body of international law.

The Indian delegation, holding the views it did about the positive and dynamic character of international law, and the need for it to grow, would be the last to suggest that a General Assembly resolution on any subject should be considered final in the sense of laying down the law for all time. But before starting to tear up resolution 2131 (XX) - with a view to improving on it, as the Committee had been told - his delegation would like to be convinced that the resolution had ceased to provide a reasonable and acceptable framework or that its provisions had ceased to hold any further validity. It had yet to hear one single convincing argument or good reason why it had become necessary to start tearing up the resolution. The resolution had been adopted only two years previously and, if he was not mistaken, remained perfectly acceptable and satisfactory in all its essentials, except perhaps to the United Kingdom.

The Special Committee had adopted a resolution at its 1966 session in which it had decided to abide by General Assembly resolution 2131 (XX) and instructed the Drafting Committee to direct its work on the item under discussion without prejudice to the provisions of that resolution. His delegation considered that the Committee should begin its work on the item from where it had left off at the 1966 session, thus maintaining an element of continuity and progress. The Committee's mandate was contained in General Assembly resolution 2181 (XXI); it was clear and simple, and asked the Committee to go forward, if possible. If the Committee adopted the United Kingdom proposal, it would, in effect, be going backward. In operative paragraph 5 of resolution 2181 (XXI) the Committee had been instructed to complete the formulation of four principles, namely: refraining from the use of force, co-operation, self-determination and the fulfilment of obligations in good faith. No reference had been made in that paragraph to non-intervention, because it was specifically dealt with in the following paragraph, which requested the Special Committee "to consider proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX)".

The question was whether there were any proposals before the Committee which aimed at widening the area of agreement already expressed in resolution 2131 (XX). In that connexion, he drew attention to the note on page 4 of the non-aligned countries' proposal (A/AC.125/L.48). The Committee would recall that at the 1966 session, a proposal on the subject had been submitted jointly by India, Lebanon, the United Arab Republic, Syria and Yugoslavia (A/AC.125/L.12). The first three paragraphs of that proposal had been identical with the first operative paragraphs of resolution 2131 (XX), paragraphs 4 and 5 had been taken from the proposal submitted jointly by India, Ghana and Yugoslavia at the Committee's 1964 session (A/AC.119/L.27), and paragraph 6 had been an addition. A revised proposal had been submitted jointly by India, Lebanon, the United Arab Republic, Syria and Yugoslavia at the 1966 session (A/AC.125/L.12/Rev.1 and Corr.1), which his delegation would commend to the Committee if any additional paragraphs or provisions were to be considered in connexion with the text of resolution 2131 (XX). The revised proposal sought to strengthen the provisions of resolution 2131 (XX) by the addition of three paragraphs and might provide a means of widening the areas of agreement already reached.

The United Kingdom proposal could not be considered as aiming to widen the areas of agreement on the item nor could it be considered as constituting a step forward. What it did, in fact, was to present a diminutive and somewhat distorted version of resolution 2131 (XX). The United Kingdom representative had said at the 71st meeting that operative paragraph 4 of the resolution had been included in the preambular part of his delegation's proposal. He (Mr. Krishnan) would say it had been relegated to the preambular part. Moreover, there were no provisions in the United Kingdom proposal corresponding to paragraphs 3 and 6 of the resolution, which prohibited the use of force to deprive peroples of their national identity and foreign pressure against the right of self-determination and independence of peoples and nations. Paragraph 1 of the resolution contained a prohibition of intervention in the "internal or external affairs of any other State"; the United Kingdom proposal made no express reference to external affairs. The right of a State to "choose the form and degree of its association with other States", referred to in the second sentence of paragraph 1 of the United Kingdom draft, if intended to cover the same point, was rather weak and ambiguous; from that right, the duty to refrain from intervention could only be derived, assumed or inferred.

Far from carrying the matter any further, the United Kingdom proposal detracted from the progress so far achieved. Legal principles of the kind being considered should be the product of a process of evolution. What the Committee should do, therefore, was to start with a sure and strong foundation and try to build on it. Resolution 2131 (XX) provided such a foundation and the Committee could add to it gradually, trying to reimforce and strengthen it. Nothing should be done, however, which would have the effect of impairing or minimizing the value of the resolution.

Mr. VANDERPUYE (Ghana) said that he would touch briefly on the history of intervention in Africa, which had lead to the enslavement and colonization of African countries. Early European settlers had found well-organized communities or States with all the attributes of 'statehood', and had they observed the principle of non-intervention they would have respected the sovereignty of those States and refrained from intervening in their affairs, whether by armed force or in any other way. But mediaeval international law, which had favoured a division of the world into civilized and uncivilized States, the latter including African and Asian countries, forbade the application of any principle of international law in dealings with uncivilized countries, and had provided legal justification for the rape of Africa and Asia.

Although the conscience of mankind had later been refined, customary international law was still western-orientated, having been originally designed to promote western European capitalist and imperialist interests, and it still provided many hidden advantages for those interests. In a world that was moving towards universally applicable international legal principles such partisan advantages were no longer acceptable and it was the Committee's task to review, re-formulate or create rules of international law, so as to secure their more equitable application, and to transform western international law into universal international law. It should look for guidance in the accumulated practice of the United Nations, as showing the will of States.

The difficulties facing the Committee reflected the dichotomy of opinion in the United Nations and among international jurists on the meaning and content of the principle of non-intervention. In 1966 the Committee had considered permissible and impermissible forms of intervention, among the latter being coercion to subordinate the exercise of sovereign rights or to secure advantages of any kind, and duress to obtain or perpetuate political or economic advantage. It had also discussed the limitation of the scope of non-intervention and, in particular, the proposed formulation

concerning "the generally recognized freedom of States to seek to influence the policies and actions of other States, in accordance with international law and settled international practice" (A/AC.125/L.13). However, the scope of domestic jurisdiction had been little discussed. It had been possible to avoid long debates on the meaning of the principle thanks to the adoption of General Assembly resolution 2131 (XX), which prescribed all forms of intervention either direct or indirect. That resolution had been regarded by the Committee and the Sixth Committee of the General Assembly as an important element for the Committee's work. The majority had considered that, having been adopted almost unanimously, it reflected a universal legal conviction and was evidence of the will of States. Accordingly nothing must be done to impair or minimize the value of the Declaration it contained. His delegation had strongly supported that view, but would not object to any expansion of the Declaration. Some delegations, mainly those who were anxious to maintain the status quo, regarded the resolution as an expression of "political intent", to use the Japanese representative's phrase, which could not be substituted for a formulation of the principle. The United Kingdom representative's objection to reproducing the substance of the resolution because of its imprecision and obscurity was unconvincing, for it was, in fact, precise and lucid.

The views on the status of the resolution put forward in the Special Committee were closely related to the general discussion among lawyers as to whether General Assembly resolutions were merely exhortations or recommendations, which were the expression of political intention without binding force, or whether they had legal effect. The majority opinion, which his delegation shared, was that they could possess legal force, but that that depended on the intention and the number of States voting in favour. Schachter, Friedman, Vallat, Kelsen and Asamuah were among the international lawyers who subscribed to that view.

The Charter was a treaty binding on all Member States and therefore a General Assembly resolution interpreting Charter principles, such as resolution 2131 (XX), was also binding. Every act of interpretation and application was part of the law-making process. Resolution 2131 (XX) was clearly intended to impose an obligation on States; it possessed legal significance and reflected a universal legal conviction. Those who opposed that view tended to think that political considerations dominated the work of the political organs of the United Nations and reduced its legal significance to nothing. The Japanese representative had recently reiterated the view

he had expressed in 1966, that resolution 2131 (XX) was quite acceptable as a statement of political intention, but that it could not be regarded as an adequate formulation of the principle of non-intervention from the point of view of international law and was not a legal instrument. Such a view completely disregarded the fact that in any legal order politics and law were inseparable, which was especially evident in the case of the decentralized international legal system, in which States were more powerful than individuals and institutions.

He did not agree with the United Kingdom representative on the need to redraft resolution 2131 (XX) so as to achieve greater clarity; he supported the Czechoslovakian representative's view that the United Kingdom proposal diminished the value of the resolution and was therefore unacceptable.

Admittedly the seven principles before the Committee were inter-related and each had to be construed in the light of the others, but he could not accept the United Kingdom representative's suggestion that repetition must be avoided. Some degree of repetition was inevitable if each of the principles was to be formulated in a comprehensive and independent way.

The Drafting Committee and the Special Committee itself should decide which proposals ought to be used as a basis for discussion, according to the number of sponsors.

Mr. de la GUARDIA (Argentina) said that his delegation had already expressed its views on the principle of non-intervention in the former Special Committees and, more particularly, at the twentieth session of the General Assembly, during the discussion of resolution 2131 (XX). That resolution constituted the best approach to the subject, although it was not perfect. Its text was a remarkable compromise achievement, reflected in its adoption by 109 votes to none, with one abstention.

The 1966 Special Committee had decided by a significant majority "that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX)" and had instructed its Drafting Committee to "direct its work on the duty not to intervene in matters within the domestic jurisdiction of any State towards the consideration of additional proposals, with the aim of widening the area of agreement of General Assembly resolution 2131 (XX)".4/

4/ Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 341.

It would have been unnecessary to recall that decision had not the United Kingdom delegation made the proposal in part III of its draft declaration. In the opinion of the Argentinian delegation, that proposal did not serve the purpose of widening the area of agreement expressed in resolution 2131 (XX), which was the stated purpose of agenda item 6 B. The United Kingdom representative had explained that he had omitted certain elements of the resolution because they were covered by other parts of his draft dealing with other principles. Despite that explanation, the delegation of Argentina maintained its position; it rejected any proposal which might have the effect of narrowing the areas of agreement already expressed in resolution 2131 (XX), instead of widening them as requested by the General Assembly in its resolution 2181 (XXI). His delegation therefore believed that it would serve no useful purpose to refer the United Kingdom proposal to the Drafting Committee, although it would not actively oppose that procedure.

One year after the adoption of resolution 2131 (XX), the General Assembly had made a new appeal to States by its resolution 2225 (XXI) to cease all forms of intervention in the domestic or external affairs of other States, and had urged them "to refrain from armed intervention or the promotion or organization of subversion, terrorism or other indirect forms of intervention for the purpose of changing by violence the existing system in another State".

That resolution had been adopted in 1966. In 1967, however, Venezuela had been obliged, as it had been in 1964, to draw the attention of the OAS to the repeated acts of intervention and aggression against it by Cuba, which reflected a persistent policy of intervention in the domestic affairs of other American States by incitement to, and support of, subversive activities directed against their Governments.

And yet, in open defiance of resolutions 2131 (XX) and 2225 (XXI), a conference which called itself a Latin American "Solidarity" Conference had recently met in the capital of Cuba and advocated subversion in all its forms on the American continent. According to a news item published in the French newspaper Le Monde, Paraguay had been chosen as the next country in which subversive activities were to be undertaken.

Those events showed the need to reaffirm the terms of resolution 2131 (XX), which had been adopted at the world level, and in view of them he wished to draw attention to operative paragraph 8 of that resolution, which read: "Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of

the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI (Pacific settlements of disputes), VII (Action with respect to threats to the peace, breaches of the peace, and acts of aggression) and VIII (Regional arrangements).

The OAS Charter, in article 15, also condemned intervention in the strongest terms, which were almost exactly reproduced in operative paragraph 1 of General Assembly resolution 2131 (XX); and article 19 added that: "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 15 and 17".

In the face of the threat to which he had referred, of generalized intervention involving the use of force, there was also the right of self-defence accorded by Article 51 of the United Nations Charter to a State victim of an armed attack. That Article of the Charter had been invoked as a warning to Cuba - a warning which had apparently remained unheeded - in resolution I of the Ninth Consultative Meeting of Ministers for Foreign Affairs of American States, held in July 1964.

Mr. SHITTA-BEY (Nigeria) observed that although at first sight it might appear easy to formulate points under the principle of non-intervention in terms acceptable to every member of the Committee, certain problems had nevertheless arisen. Some delegations interpreted the phrase "domestic jurisdiction" in Article 2 (7) of the Charter as excluding any idea of the foreign affairs of States. Others wished to extend the principle of non-intervention to both the internal and the external affairs of States. The principle was so extended in the Charter of the OAS and in the Draft Declaration on Rights and Duties of States. The reason for doing so was that certain forms of outside interference might amount to direct or indirect intervention in the domestic affairs of a State, just as intervention in the domestic affairs of a State might amount to interference with some of its external affairs. His delegation held the second view and thought that the provisions of resolution 2131 (XX) were the minimum acceptable provisions on the subject.

It might be worth considering whether the main principles to be stressed in whatever formulation the Committee might adopt should not be on the following lines:

(a) A State shall not under any pretext whatsoever interfere either directly or indirectly in the internal and external affairs of another State, except to the extent permissible to the Security Council or the General Assembly in accordance with the provisions of the Charter of the United Nations.

(b) For the purpose of this article all interference is prohibited, whether it is for the purpose of changing the social, economic or political system of another State or is directed against its territorial integrity or its sovereign rights.

In his delegation's view, the establishment or severance of diplomatic relations and the recognition or non-recognition of a State were manifestations of sovereignty, in regard to which no other State should be allowed to exert pressure. Any such pressure by one State on another constituted intervention.

Turning to the proposals before the Committee, he said that the United Kingdom proposal did not appear to fulfil the Committee's terms of reference. His delegation considered that resolution 2131 (XX) was the Committee's mandate, and it was not prepared to subscribe to any text which tended to reduce the areas of agreement already established. His delegation had co-sponsored the proposal submitted by the non-aligned countries (A/AC.125/L.48), which provided a good working basis for the Committee's discussions.

Mr. MWENDWA (Kenya) said that the principle of non-intervention was a condition precedent of peace and security which, if honoured, would lead to greater concord and co-operation among States. Any formulation of that principle must reproduce in full the substance of resolution 2131 (XX) and should include the following features: a declaration of what constituted intervention, together with an indication of the forms it might take such as political, economic or ideological pressure or propaganda; an enumeration of motives which, if established, proved an intention to intervene, however beneficial the results to the State whose sovereignty and independence was thereby violated or threatened; a list of situations which must be presumed to have been brought about by intervention, such as that in the Congo in 1964, which had led to the dismissal of Tshombe.

For lack of time, however, the Committee would probably be unable to achieve such a comprehensive formulation, in which case the text should cover the following points: intervention against the personality of a State, its political, economic or cultural elements or in its internal or external affairs; coercion in order to obtain the

subordination of the exercise of sovereign rights or to secure advantages of any kind; subversive and other activities directed against another State or its regime; the use of force or other pressures to deprive a people of its national identity; interference with promulgation or execution of laws regarding matters essentially within domestic jurisdiction; duress to obtain or perpetuate political, economic or other advantages.

The formulation should include, as an exception, assistance to peoples under colonial domination, for the sole purpose of accelerating their emancipation. Under the Charter, and even more so under resolution 2131 (XX), it was incumbent on all States to contribute to the complete elimination of colonialism in all its forms.

Armed intervention was the most blatant form of interference in the internal affairs of another State and was generally condemned. But precisely because it was open, it was likely to be limited and to fail, whereas subversive or terrorist activities organized from outside were more dangerous and should be categorically prohibited. A sovereign State could seldom identify subversive elements and seldom knew what they were likely to do and when. Developing countries should be particularly on their guard against that form of intervention, which included the use of money or other influences to build up the image of a particular individual.

Kenya was grateful for the aid offered to it by different countries, but had only accepted aid which could in no way adversely affect its independence or sovereign equlaity with the donor State. Technical assistance could be offered as a cloak for intervention in the domestic affairs of other States and should be prohibited as a form of intervention.

In formulating the duty not to intervene, the Committee should include a clause to the effect that although a right might be within domestic jurisdiction, its exercise by a State might amount to intervention. For example, a State was free to establish or break off diplomatic relations with another State, but if it sought or threatened to exercise that right in order to influence another State to establish or not to establish relations with a third State, would that amount to intervention?

It would not be sufficient to cover, as a minimum, all the points made in resolution 2131 (XX) in a preamble to the formulation of the principle, because a preamble did not have the same status as the operative part of a document. The formulation should not contain a clause providing that "every State has the right freely to choose the form and degree of its association with other States". It would be remembered that the 1966 Special Committee had rejected the proposal to

include the words "nothing in the foregoing shall be construed as derogating from the generally recognized freedom of States to seek to influence the policies and actions of other States, in accordance with international law and settled international practice and in a manner compatible with the principle of sovereign equality of States and duty to co-operate in accordance with the Charter". 5/

The Committee's formulation should reinforce the ideas in resolution 2131 (XX), and if it included some such formula as "no State may use or encourage the use of economic, political or any other type of measures to influence another State in order to obtain from it the subordination of the exercise of its Sovereign rights or to secure from it advantages of any kind", taken from paragraph 2 of the resolution but with the substitution of the word "influence" for the word "coerce", that would be a way of widening the area of agreement. On the other hand, if there was any question of curtailing the ideas expressed in the resolution, the Committee would do better to leave well alone.

Mr. ZDROJOWY (Poland) said that the principle of non-intervention was expressed in Article 2 (4) and (7) of the Charter which, together with Article 1 (2), provided an adequate foundation for its precise formulation. Non-intervention was a fundamental principle of contemporary international law and had been reflected in many international instruments such as the Charters of the Organization of American States and of the Organization of African Unity, the documents of the Bandung and Belgrade Conferences of the non-aligned countries, and in General Assembly decisions such as resolution 2131 (XX). In a divided world, intervention in the internal or external affairs of a State was a direct threat to peace. The principle of non-intervention was of special importance to smaller countries, particularly those which had emerged from colonial domination, since it was a guarantee of their sovereignty and independence. States could only possess legal equality as subjects of international law if the principle was respected. But it was not generally respected, as was shown by the armed intervention of the United States in Viet-Nam.

5/ Ibid. para. 279.

General Assembly resolution 2131 (XX) enumerated the elements of the principle satisfactorily. It represented a certain area of agreement which the Committee, by virtue of its own decision and of resolution 2181 (XXI), was called upon to widen. His delegation was resolved to preserve that area of agreement and to entertain only such proposals as provided new elements. The Committee should include in its formulation all the operative paragraphs of resolution 2131 (XX).

Some delegations held that that resolution only expressed a political conviction and therefore required careful re-drafting from a legal standpoint, with a view to formulating the principle of non-intervention in the form of a general legal obligation. It had been argued that as the resolution had been adopted by a political committee, the Special Committee should propose a legal definition to the General Assembly. For the purpose of assessing legal significance, it was immaterial which Committee of the General Assembly had recommended a resolution, and he could not accept the thesis that one adopted by a political committee could only express a political conviction. Experts from various delegations and members of the Secretariat were always on the alert to see that General Assembly resolutions complied with formal requirements, including legal ones. The Sixth Committee should not be regarded as a filter through which all decisions in legal form had to pass. Those who maintained that the General Assembly had failed to give a legal definition of non-intervention were implying that it did not know what it was condemning, but the terms of resolution 2131 (XX) did not bear out that assumption. On the contrary, the resolution explained the meaning of the principle, enumerated instances of intervention which endangered relations and constituted the absolute minimum that could be said on the matter; nothing must be adopted which would detract from its substance.

The delegation which had expressed reservations about the resolution wished to minimize its significance and it was noteworthy that they represented either colonial Powers or States that pursued or supported policies of intervention. They were taking the opportunity of re-opening questions on which the General Assembly had already taken a stand. He could not agree that the United Kingdom proposal strengthened resolution 2131 (XX) or was a better expression of the obligation. The United Kingdom representative's attitude to the resolution seemed to have changed, not on grounds of substance but for tactical reasons. His proposal differed from the resolution, as stated by the representatives of Czechoslovakia and India and by the United Kingdom representative himself. The proposal was narrower in scope than resolution 2131 (XX)

and was not designed to widen the area of agreement already attained. Hence, it did not meet the requirements laid down by the Special Committee at its 1966 session and by the General Assembly in resolution 2181 (XXI).

Mr. REIS (United States of America) said that he could not agree with the assertion made by the representative of Ghana that the entire body of customary international law was orientated to the advantage of western imperialist and capitalist Powers, though that might be true of certain portions of it. The representative of Ghana contended that the Committee's task was to universalize what he had described as western-orientated customary international law, but in fact the Committee's terms of reference had been laid down in General Assembly resolution 1815 (XVII), particularly in paragraph 2 of that resolution.

Mr. TOGO (Japan) explained that, contrary to what had been suggested by the representative of Ghana, the Japanese delegation did not deny the fact that politics and law were inseparable in the Committee's work. Political reality was always at the basis of any law-making process. Where the law did not give effect to the reality of political life within a society, it tended to become a dead letter. However, that did not mean that any decision taken through procedures of a political character could itself become law. Any society based on the principle of the rule of law, and not the rule of bare power, was provided with an intricate system of law-making. It could sometimes appear tedious and frustrating that urgent political needs should be made subject to technical and exacting processes of law-making before taking the form of law. The process, however, was indispensable in order to ensure a consitent system of law.

His delegation was well aware that international society had a less intricate and complicated system of law-making, in which politics played a greater part, but it could not subscribe to the view that a resolution adopted by the General Assembly must be regarded ipso facts as a rule of law.

The CHAIRMAN appealed to members to exercise the right of reply allowed under the rules of procedure in order to clarify points made during the discussion, rather than to argue against the views of others. He also appealed for brevity as time was short.

The meeting rose at 12.50 p.m.