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CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

Report of the Sixth Committee

Rapporteur: Mr. Gheorghe SECARIN (Romania)

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I. INTRODUCTION

1. At its 1676th plenary meeting, on 27 September 1968, the General Assembly decided to include item 87, entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States" in the agenda of its twenty-third session and to allocate it to the Sixth Committee. In accordance with General Assembly resolution 2327 (XXII) of 18 December 1967, the item had previously been included in the provisional agenda of the session.

2. The item was considered by the Sixth Committee at its 1086th, 1090th to 1096th and 1099th meetings, held on 4, 9 to 13 and 17 December 1968, respectively.

3. The Committee had before it, as a basis for its consideration of the item, the report on the 1968 session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/7326).[1/] The report was introduced in the Committee at its 1086th meeting by the Rapporteur of the Special Committee.

4. The report on the 1968 session of the Special Committee was divided into the following three chapters: introduction; consideration of the two principles mentioned in operative paragraph 4 of General Assembly resolution 2327 (XXII), with a view to completing their formulation (the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations; and the principle of equal rights and self-determination of peoples); and consideration of proposals compatible with General Assembly resolution 2131 (XX) on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations, with the aim of widening the area of agreement already expressed in that resolution.

1/ For an account of the historical background of the item, see also Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 87, document A/6955.

5. At the 1099th meeting, on 17 December 1968, the Rapporteur of the Sixth Committee, pursuant to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on the item, and brought to the attention of the Committee the financial implications of that question. At the same meeting the Committee decided that, in view of the nature of the subject matter of the item, the report should contain a summary of the legal trends which had emerged during the debate.

II. PROPOSAL

6. Afghanistan, Algeria, Austria, Burma, Cameroon, Canada, Ceylon, Chile, Congo (Democratic Republic of), Czechoslovakia, Dahomey, Ecuador, El Salvador, Ethiopia, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Jamaica, Japan, Kenya, Kuwait, Lebanon, Libya, Madagascar, Mexico, Mongolia, the Netherlands, Nigeria, Pakistan, Panama, Peru, the Philippines, Poland, Romania, Saudi Arabia, Somalia, Sudan, Syria, Uganda, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Uruguay, Venezuela, Yugoslavia and Zambia submitted a draft resolution (A/C.6/L.740). Liberia and Tunisia subsequently became co-sponsors of the draft resolution (A/C.6/L.740/Add.1). The fifty-two-Power draft resolution reads as follows:

"The General Assembly,

"Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966 and 2327 (XXII) of 18 December 1967, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

"Recalling further that among the fundamental purposes of the United Nations are the maintenance of international peace and security and the development of friendly relations and co-operation among States,

"Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and improvement of the international situation,

"Considering further that the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

"Bearing in mind General Assembly resolution 2131 (XX),

"Being convinced of the significance of continuing the effort to achieve general agreement in the process of elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

"Having considered the report of the 1968 Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States, which met at New York from 9 to 30 September 1968,

"1. Takes note of the report of the 1968 Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States;

"2. Expresses its appreciation to that Committee for the valuable work it has performed;

"3. Decides to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to meet in 1969 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue and complete its work;

"4. Requests the Special Committee, in the light of the debate which took place in the Sixth Committee during the preceding and the present sessions of the General Assembly and in the 1964, 1966, 1967 and 1968 Special Committees, to endeavour to resolve, in the light of General Assembly resolution 2327 (XXII), all relevant questions relating to the formulation of the seven principles, in order to complete, as far as possible, its work, and to submit to the General Assembly at its twenty-fourth session a comprehensive report;

"5. Calls upon the members of the Special Committee to devote their utmost efforts to ensuring the success of the session of the Special Committee, in particular by undertaking, in the period preceding the session of the Special Committee, consultations and other preparatory measures, as they may see necessary;

"6. Requests the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

"7. Decides to include in the provisional agenda of its twenty-fourth session an item entitled "Consideration of the Report on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

7. At the 1099th meeting, on 17 December, the Secretary of the Committee made a statement regarding the financial implications of the above draft resolution.

III. DEBATE

A. General comments on the work done by the Special Committee in 1968 and on the aims of the work

8. A number of representatives were of the opinion that the 1968 session of the Special Committee had represented a further significant step towards the codification and progressive development of the principles, but considered that the results achieved, although laudable, were incomplete. Of the three principles referred to it by General Assembly resolution 2327 (XXII), namely, the prohibition of the threat or use of force, equal rights and self-determination, and the duty not to intervene in matters within the domestic jurisdiction of any State, the Special Committee had only had time to study the first two, and its Drafting Committee had only been able to make a thorough study of the principle relating to the prohibition of the threat or use of force. The Special Committee had in fact concentrated its efforts at its 1968 session on this last principle, on which considerable progress had been made, although it had still not been possible to complete its formulation. Some representatives pointed out that the work of the Special Committee in 1968 had made possible a considerable rapprochement of basic positions on various important questions and the achievement of broad agreement on objectives and methods of work.

9. In general, the representatives who spoke in the debate expressed the view that the over-all results achieved so far did not justify a pessimistic attitude and reaffirmed that their respective countries would continue to lend their support to the codification and progressive development of the principles, whether in the Special Committee or in the Sixth Committee of the General Assembly. The work done had served to reaffirm the universal validity and peremptory character of the seven principles listed by the Assembly in resolution 1815 (XVII) of 18 December 1962 and had contributed towards their more precise definition. The

points of agreement which had been established represented an important contribution to the development of international law and the maintenance of international peace and security. Moreover, the exchange of views had been beneficial, as could be seen from a comparison of the successive reports of the Special Committee. Some representatives considered that the partial nature of the results achieved so far was due to methodological or technical factors, such as the procedure of consensus followed by the Special Committee or the relatively short duration of its sessions. The majority, however, attributed it either to the actual nature of the task undertaken or to reasons of a political nature.

10. Those representatives who referred to the difficulties inherent in the nature of the work emphasized that an attempt was being made to formulate rules of international law, i.e. legal obligations, relating to Charter principles which constituted the nucleus of the international legal order. These representatives felt that the slowness of the process should not lead to the abandonment of the search for legal formulations or to their replacement by texts which constituted expressions of political will or mere statements of particular philosophies, because the result of the work would then have less relevance for the regulation of the conduct of States. It was also added that in view of the quasi-legislative nature of the process, undue pressures might have a negative effect on the quality of the formulation and hence on its applicability. One of these representatives said that the difference between the verbal acceptance of obligations and real life had recently been made evident and that the ultimate goal of the work undertaken should be to bring home to Governments the importance of respect for international legality and morality.

11. Others considered that the present state of the Committee's work was the fault of those who refused to accept the changes which had occurred in international society since the adoption of the Charter in 1945 and maintained that proposals reflecting those changes lacked legal validity, despite the fact that, in international relations, legal considerations could not be dissociated from political, economic or social factors. The delay was therefore the result of a deliberate policy of obstruction being followed by circles which were pursuing imperialist and colonialist policies and supporting racist régimes practising apartheid.

12. Several representatives reaffirmed the great importance of the codification and progressive development of the principles for the promotion of the rule of law in international relations, the maintenance of international peace and security, and the development of peaceful co-operation and coexistence among nations. Although those principles were stated in the Charter, further work on them was justified by the need to affirm them, further define them and adapt them to current needs. A General Assembly declaration on the principles would make a powerful contribution of the attainment of the purposes of the United nations and would thereby strengthen the Organization. It was stated in that connexion that the efforts of the Sixth Committee and the Special Committee were proof that the principles were deeply rooted in the conscience of nations and that the international community was determined to affirm them and ensure their observance. All States, large and small, should therefore co-operate in the work in hand.

13. Some representatives stated that discussion of the principles did not involve an attempt to amend the Charter, the procedure for which was laid down in Article 108 of the Charter itself, but merely to re-examine it in the light of two decades of interpretative action by the United Nations and to draft, on that basis, rules which might reasonably be regarded as deriving from certain principles of the Charter and their application. Even if it was not always easy to draw the line between elaboration of the Charter and amendments to it, the distinction had to be respected, since it was a distinction which protected every Member State.

14. Other representatives expressed the view that the codification and progressive development of the principles, by introducing an element of precision into rules of law, represented a guarantee for all countries, particularly small and developing countries. It was essential, however, that States should genuinely intend to base their international conduct on the principles and comply in good faith with the obligations they had assumed. The principles were universally applicable principles of the Charter which no State might violate on any pretext whatsoever. In that connexion, some representatives pointed out that precision in rules of law was all the more necessary when circumstances were unfavourable to their observance, inasmuch as they might exert greater influence on decision-makers and put public opinion in a better position to judge those who flouted them.

15. It was also stated that the solution to the problems of co-operation among States having different political, economic and social systems and at different levels of economic development required a climate of peace based on respect for national sovereignty and independence, equality of States' rights, non-interference and mutual advantage. Some representatives, noting that the codification and progressive development of the principles was one of the objectives of the countries of the Third World, as proclaimed in the Programme for Peace and International Co-operation adopted by the Cairo Declaration of Non-Aligned Countries in 1964, stressed that the process of codification and development should reflect the experience and requirements of the developing countries.

16. It was also pointed out by certain representatives that the work of the Special Committee would enable new States which had not taken part in the San Francisco Conference of 1945 and had been unable to contribute to the application of the Charter by organs of the Organization during its early years to participate in a review of the basic principles of the Charter and the development of international law. One of those representatives stated that the fact of having been unable to participate in the establishment of the rules of law encountered on gaining independence was, in fact, one of the reasons for the new States' lack of confidence in the compulsory jurisdiction of the International Court of Justice.

17. Finally, several representatives emphasized that the principles were closely interrelated, both conceptually and from the standpoint of their application in international life. In the formulation of each individual principle, it was essential not to lose sight of the whole of which it was a part; to do otherwise would be to run the risk that the declaration ultimately adopted would give a distorted or unbalanced picture of the principles. One of those representatives stressed that the preamble or general provisions of the future declaration should contain an explicit statement that the principles were interrelated and that each of them was to be interpreted in the context of the others.

B. Comments on the principles entrusted to the Special Committee in 1968 under General Assembly resolution 2327 (XXII)

18. In the course of the debate some representatives refrained from repeating the comments made on previous occasions on behalf of their respective countries concerning the principles entrusted to the Special Committee in 1968. Others, however, commented once again on general aspects of those principles and on their scope, content and formulation. These comments are summarized below.

1. Principles mentioned in operative paragraph 4 of General Assembly resolution 2327 (XXII)

(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

19. A large number of representatives considered that at its 1968 session the Special Committee had made real progress, described by some as considerable or important, with regard to the formulation of this principle. Although several representatives regretted the fact that a complete text of the principle had not yet been adopted, it was generally recognized that the progress made by the Special Committee in 1968 had prepared the ground for a formulation of the principle in the near future. The points on which agreement had been reached in 1968 widened the area of agreement achieved in 1967 in the Working Group established by the Drafting Committee and had been approved by the Special Committee itself. In addition, existing areas of disagreement had been reduced and new bases of discussion had been found for future negotiations. Nevertheless, as some representatives emphasized, there were a number of difficult points still to be solved on essential issues, which would require new and serious efforts on the part of the members of the Special Committee, including, inter alia, those relating to the definition of the term "force", territorial disputes, the inviolability of State territory and non-recognition of situations brought about by the use of force, as well as those relating to the duty not to intervene in matters within the domestic jurisdiction of any State and to the exercise of the right of self-determination of peoples.

20. Stressing the paramount importance of this principle, the corner-stone of international law, several representatives emphasized the need to complete its formulation as soon as possible, since, despite the fact that it was clearly stated in Article 2, paragraph 4 of the Charter, the history of international relations was filled with frequent violations of the principle. Some added that the formulation to be adopted should be a progressive development of the content of the principle in the light of the events which had occurred since the adoption of the Charter and should strengthen the economic, social and political sovereignty of peoples. It was also said that, at its next session, the Special Committee should give priority to the consideration of the principles of equal rights and self-determination and non-intervention, so as to be in a position to arrive at a formulation of the principle concerning the non-use of force.

21. Certain representatives emphasized the relationship between this principle and the principle of the peaceful settlement of international disputes. For those representatives, as the development of international law reduced the possibility of the legitimate use of force by States, the urgency of the need for international machinery capable of centralizing the application of the law increased. From that standpoint, some of these representatives thought the agreed text on the duty of States to settle their international disputes by peaceful means was not very satisfactory. It was pointed out in that connexion, that States Members and organs of the United Nations should make fuller use of the possibilities offered by Chapter VI of the Charter.

22. There follows below a summary of the different views and comments put forward on the scope, content and formulation of the different aspects of the principle. These views and comments have been grouped in accordance with the headings of the report of the Drafting Committee,[2/] which was adopted by the Special Committee at its 96th meeting, on 30 September 1968.[3/]

(1) General prohibition of force

23. Many representatives expressed satisfaction with the agreement reached on the statement concerning the general prohibition of force and, in particular,

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2/ A/7326, para. 111.

3/ Ibid., para. 134.

with the fact that the second paragraph stated that such threat or use of force "constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues".

(2) Consequences and corollaries of the prohibition of the threat or use of force

24. Several representatives welcomed the statements of agreement on wars of aggression and propaganda for such wars. With reference to the statement on wars of aggression, mention was made of the provisions of the Charter of the Nüremberg Tribunal and its judgements and of the Nüremberg Principles and the Draft Code of Offences against the Peace and Security of Mankind prepared by the International Law Commission.

25. Some representatives expressed the view that the statement of agreement on wars of aggression could be amplified to the effect that the planning and preparation of a war of aggression were also crimes against peace, that the threat of a war of aggression involved liability under international law and that individuals who committed such crimes against peace were criminally liable. The idea of the criminal liability of individuals guilty of a crime against peace should not be interpreted, in the view of one representative, in such a way as to justify the collective punishment of soldiers and civilians who had participated in the war effort. It was also stated that the statement of agreement should be understood to mean that not only declared wars of aggression but also aggressive hostilities in general constituted a crime against peace. Finally, other representatives observed that the results achieved in the "Special Committee on the Question of Defining Aggression" would be important for a correct interpretation of the statement of agreement on wars of aggression.

26. With regard to war propaganda, certain representatives argued that the domestic law of each State should prohibit such propaganda, punish those who engaged in it and abolish any constitutional limitations there might be in that connexion. Others supported the statement of agreement because they considered that it did not restrict the right of opposition to the established authorities, a fundamental freedom of citizens which was constitutionally guaranteed. It was also said that study of the question should continue with a view to arriving at a statement which would relate that corollary to the duty to encourage the free exchange of information and ideas.

(3) Use of force in territorial disputes and boundary problems

27. The agreement of principle on the duty of every State to refrain from the threat or use of force to violate the existing frontiers of a State or as a means of settling territorial disputes and boundary problems was expressly supported by several representatives.

28. Several representatives, stressing the importance and complexity that "international lines of demarcation" had acquired, said that it was necessary to include a reference to them in the formulation. It was not a question of perpetuating such lines, but of stating the duty of States to refrain from using force in order to violate them by virtue of the principle prohibiting the use of force and the principles of good faith and peaceful settlement of international disputes. In their view, the difficulties that the inclusion of such a reference created might be avoided by indicating that the international lines in question were ones which were agreed or which had been established by an international agreement or a decision of the Security Council or in accordance with such an agreement or decision and by wording the reference in such a way that the claims or positions of interested parties were safeguarded. It was also said that the risk of perpetuating any illegal situations might be avoided if the formulation of the principle included a statement concerning the non-recognition of situations brought about by the illegal threat or use of force. Finally, some representatives referred to the need to bear in mind the particular features of the various actual cases in formulating any statement on "international lines of demarcation".

(4) Acts of reprisal

29. The statement of agreement on the duty of States to refrain from acts of reprisal involving the use of force was supported by the representatives who referred to the question, who considered it consistent with the relevant provisions of the Charter. Certain representatives said that reprisals were an act of vengeance contrary to the Charter, as the Security Council itself had recognized in one of its resolutions, and that accordingly they could not be equated with self-defence. Others said that it would have been preferable if the statement had been more clearly worded, in order to remove any doubts about the prohibition of reprisals not involving the use of armed force. In this connexion, others expressed the view that the word "force" in the statement should be interpreted

to mean "armed" or "physical" force and that an act of non-armed reprisal could be a legitimate means of redress against an illegal act by another State. It was also said that abuses would be avoided if non-armed reprisals were recognized as a legal institution and if the conditions governing them were strictly regulated. Finally, others added that the statement on acts of reprisal had to be considered in relation to those on the duty to refrain from violating existing frontiers, organizing or encouraging armed bands and instigating civil strife and terrorist acts.

(5) Organization of armed bands

(6) Instigation of civil strife and terrorist acts

30. Several representatives expressed satisfaction at the statement of agreement concerning the prohibition of organization of armed bands and the agreement in principle concerning the prohibition of instigation of civil strife and terrorist acts. Others, however, had reservations in that they felt that due account had not been taken of the relationship between those questions and the exercise by the peoples of dependent territories of their right to self-determination. They felt that a distinction must be made between the types of activities covered by those questions and assistance to colonial peoples in their legitimate struggle against the repression to which they were being subjected. One of them added that he could not agree to provisions concerning such activities unless recognition was given to the colonial peoples' right of self-defence against the use of force by the powers which were denying them the right of self-determination. It was also said that the victims of subversive and terrorist activities should be permitted to take measures of individual or collective self-defence. It was, however, emphasized that, whatever the reasons, there should not be any departure from the text of Article 51 of the Charter, which spoke of "armed attack". Finally, it was observed that the currently accepted view was that third States should not interfere in civil strife, at least by military means, even if the legitimate Government requested them to do so.

31. With regard to the inclusion of the provisions relating to the two questions in the principle of the prohibition of the use of force and in the principle of non-intervention, those representatives who supported the provisions were for the most part in favour of including them in both principles, although some felt that the best procedure would have been to include them only in the principle of non-intervention.

(7) Military occupation and non-recognition of situations brought about by the illegal threat or use of force

32. A number of representatives expressed regret that there had been no agreement concerning the inclusion of a provision affirming that the territory of a State could not be subjected to military occupation or other measures of force for any reason whatsoever and proclaiming non-recognition of situations brought about by the illegal threat or use of force. Some stated that a provision of that nature would be a barrier to territorial ambitions and would accordingly protect the inviolability of the territory and the territorial integrity of States. Certain representatives felt that the formula proposed as a basis for discussion was useful and could serve as a point of departure in reaching agreement on the question under consideration. Others, however, regarded the formula as excessively rigid, while still others rejected it on the ground that it was insufficiently comprehensive and specific. It was also suggested that, in order to facilitate agreement, the wording finally adopted could make an exception in the case of situations resulting from decisions taken at the end of the Second World War.

33. Some representatives were of the opinion that, since it was already provided in the Charter that the use of force in international relations was unlawful, what was now needed was a formulation of the legal consequences and corollaries of that fact. They held that non-recognition was the penalty that was imposed, since the unlawful use of force could not confer rights. Accordingly, the statement of the principle should clearly affirm the non-recognition of the situations in question. It was pointed out that the principle of non-recognition had been formulated for the first time at the Washington Inter-American Conference of 1889 and had been embodied in the Charter of the Organization of American States. Some representatives, on the other hand, felt that while the non-recognition of situations brought about by the illegal use of force was morally desirable, it was difficult from a strictly legal point of view to deny the existence of certain specific situations which had their origin in the unlawful use of force. One of those representatives added that he would, however, have no difficulty in agreeing to the basic principle that any enlargement of the territory of a State through the use of force was completely inadmissible under the Charter.

(8) Armed force or repressive measures against colonial peoples, the position of territories under colonial rule, and the Charter obligations with respect to dependent territories

34. Some representatives expressed regret that there had been no agreement concerning the inclusion of a provision relating to the duty of States to refrain from the use of force against dependent peoples. It was pointed out, in that connexion, that the use of force to perpetuate colonial situations was a violation of General Assembly resolution 1514 (XV). The thesis that the territory of colonies formed part of the metropolitatn territory of the colonial Power was also rejected. Some representatives contended that the principle could not be invoked in the case of territories or frontiers which were the result of colonial rule or of political agreements concluded between colonial Powers. One representative was of the opinion that there was nothing to prevent third States from offering their good offices with a view to facilitating the exercise of the right of self-determination by dependent peoples. It was added that an agreement on those questions would facilitate the formulation of the principle of self-determination. Other representatives stated that colonial situations did not properly belong within the debate on a principle which related to the prohibition of the use of force in international relations, but rather concerned Chapters XI to XIII of the Charter.

(9) Economic, political and other forms of pressure

35. Several representatives stated that the duty to refrain from the threat or use of "force" implied a duty to refrain from economic, political and other forms of pressure against the political independence or territorial integrity of a State, and urged that the Special Committee should continue making efforts to reach agreement on a broad definition of the term "force". Some referred in this connexion to the draft declaration adopted by the Committee of the Whole of the "United Nations Conference on the Law of Treaties" at the first session of the Conference in Vienna in 1968.

36. Other representatives argued that it was impossible to accept proposals that the term "force" in Article 2, paragraph 4, of the Charter, should be given a broad sense. They condemned the use of coercive measures, whether political or economic, in order to impose one State's will on another, but considered that in Article 2, paragraph 4, the term "force" meant solely "armed" force. Some said that it might perhaps be better to try to solve the difficulties involved in the

question by considering it in relation to the principle of non-intervention instead of the principle of the prohibition of the use of force. Others considered that efforts might be made to thwart economic, political and other forms of pressure by adopting special rules of an appropriate kind. Finally, some representatives, without taking a final position on the matter, stated that in considering the question, the necessity of continuing to interpret Article 51 of the Charter restrictively should nevertheless be borne in mind.

(10) Agreement for general and complete disarmament under effective international control

37. The representatives who mentioned this point supported the agreement to include the concept of general and complete disarmament under effective international control as a corollary of the principle prohibiting the threat or use of force. The desirability of formulating this corollary on the basis of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons was stressed by some representatives.

(11) Making the United Nations security system more effective

38. Some representatives expressed satisfaction with the statement of agreement concerning this question, considering that its inclusion in the formulation of the principle prohibiting the use of force would help to strengthen application of the principle. They stressed the need for all States to comply in good faith with the obligations they had undertaken with respect to the maintenance of international peace and security and to endeavour to make the United Nations security system more effective.

(12) Legal use of force

39. Representatives who referred to this question were agreed that nothing in the provisions of the principle prohibiting the use of force would affect the provisions of the Charter concerning the lawful use of force. Some took the view that a flexible approach should be adopted in formulating the statement relating to this

question. Others argued that the lawful uses of force should be clearly spelt out, because they were exceptions to the principle. With regard to the right of individual or collective self-defence provided for in Article 51 of the Charter, some said that the right existed solely in the event of "armed attack" and that the defensive reaction should be immediate and proportionate to the unlawful act giving rise to it. Pointing out that the Charter centralized the use of force in the United Nations, other representatives emphasized that regional organizations could not lawfully use force without the express authorization of the Security Council, in accordance with Article 53 of the Charter.

40. Several representatives maintained that the use of force by the peoples of dependent territories in self-defence against colonial domination and in exercise of their right of self-determination constituted a lawful use of force under the Charter and that that should be indicated in the formulation of the principle. It was stated in that connexion that colonialism was a permanent act of aggression and that oppressed peoples therefore had an inalienable right of self-defence against that form of aggression. Referring to the illegality of colonialism and the obligation of all States to help colonial peoples in their struggle to exercise their right of self-determination, some representatives asserted that national liberation movements were lawful and were in conformity with General Assembly resolution 1514 (XV). Finally, it was added that the perpetuation of specific colonial situations was not only unlawful and immoral but could also lead to breaches of the peace such as the Charter sought to avoid.

41. In the opinion of other representatives, it would be undesirable to sanction, as an exception to the principle, the right to use force in colonial matters, because that might result in serious threats to international peace and security. They pointed out that Article 2, paragraph 4, of the Charter prohibited the use of force in "international relations" and that the right of rebellion was not provided for in Article 51 of the Charter. In their view, questions relating to dependent territories were covered by Chapters XI to XIII of the Charter and not by Article 2, paragraph 4, or Chapter VII.

(b) The principle of equal rights and self-determination of peoples

42. Several representatives expressed regret that at its 1968 session the Special Committee had made no progress towards the formulation of the principle of equal rights and self-determination of peoples, having adopted a report of its Drafting Committee stating that, owing to the lack of time, it had not been able to carry out a study in depth of the proposals concerning the principle. In the opinion of some representatives, it was discouraging to see that after three sessions of the Special Committee the attempts to formulate the principle had not met with the same degree of success as the attempts to formulate other principles. In the view of certain representatives, much more work had to be done before anything like a comparable stage would be reached and a satisfactory text would emerge. It was said that that situation was perhaps due to the fact that a common basis had yet to be found for the consideration of the principle, as well as to the consensus procedure followed by the Special Committee. Other representatives considered that it might result from the difficulties inherent in one of the areas of international relations in which law and politics were more closely interrelated. However, some other representatives were of the opinion that the successive drafts submitted to the Special Committee in the course of years indicated that a rapprochement had taken place, which augured well for the future.

43. A number of representatives emphasized the need that the Special Committee would continue its efforts with a view to the formulation of the principle. In this connexion, some representatives made an appeal to those who had so far demonstrated a hesitant attitude to reconsider their position, so that a formulation could be arrived at, which reflected the experience and the present-day needs of the world. Various representatives expressed support for the recommendation of the Drafting Committee, adopted by the Special Committee, that due priority should continue to be given to consideration of the proposals concerning the principle.

44. A number of representatives referred to the historical, philosophical and political origins of the principle. It was recalled that it had been the cornerstone of the Declaration of Independence of the United States of America in 1789, of the French Revolution of 1789 and the Socialist Revolution of October 1917, in Russia. It was also stated that it had played a fundamental role

in the constitution of the Latin American States and that now formed the basis of the activities of various national liberation movements in Asia and Africa. Reference was also made to the important contribution of the Spanish jurists and theologians of the sixteenth and seventeenth centuries.

45. Several representatives recalled that the principle was embodied in the Charter, explicitly in Articles 1, paragraphs 2 and 55, and implicitly in Chapters XI, XII and XIII, and that it had been reaffirmed in resolutions of the General Assembly, in particular resolution 1514 (XV) containing the "Declaration on the Granting of Independence to Colonial Countries and Peoples", and in the International Covenants on Human Rights. In the opinion of certain representatives, the reference to the principle in Articles 1 and 55 of the Charter was only indirect. It was also said that the principle had been applied in international life as proved by the recent process of decolonization, which had enabled a large number of countries to achieve independence and sovereignty and to become Members of the United Nations; this constituted one of the greatest accomplishments of the world Organization. Some representatives declared that the principle continued to be of the greatest value to the peoples still under colonial domination.

46. Various representatives stressed that the principle could not be regarded merely as a moral or political postulate but as a natural and inalienable right which constituted one of the foundations of the United Nations and an established rule of international law. Some representatives considered that it was at the basis of the maintenance of international peace and security and the development of friendly relations and co-operation among States.

47. A number of representatives were of the view that the principle should be formulated in its widest sense. They reaffirmed the right of peoples to freely choose, without any form of foreign interference, their own political, social and economic system. Reference was also made to the exercise of sovereignty in external affairs and the right of any State to dispose freely of its natural wealth and resources. In the opinion of some representatives, the two elements which constituted the principle were closely linked: the meaning and scope of the right to self-determination should be defined in the light of the principle of equal rights; that meant that international relations should be based on the idea of

co-operation and not of subordination. Stress was also laid on the close relationship between the principle of self-determination and the principles of sovereign equality and non-intervention.

48. It was said that since the struggle waged by oppressed peoples for their national liberation, in legitimate exercise of the right of self-determination, had the backing of the Charter, the problem was of universal interest and their aims were endorsed by the international community, even if they were pursued by revolutionary means. Other representatives, however, considered that the so-called right of rebellion had of necessity to be extra-legal.

49. In the opinion of various representatives, the formulation of the principle should be based on the proposals submitted so far and those which might be submitted in the future. In this connexion, some representatives expressed general support for certain of the proposals before the Special Committee. Reference was also made to the relevant resolutions of the General Assembly and in particular to resolution 1514 (XV), whose second preambular and second operative paragraphs contained, in the view of one representative, the most appropriate statement of law of the principle. Other representatives emphasized in this regard article 1 of the International Covenants of Human Rights. In the opinion of some representatives, the formulation would be incomplete unless it included an affirmative statement of the existence of an inherent right of peoples to equal rights and self-determination, a clear imposition of a general duty on all States to respect that right, and a statement of particular duties of States to facilitate its attainment and perform or refrain from performing specific acts which in any way might hinder its exercise. It was also emphasized that the right of self-determination was not only in individual but also a collective right.

50. A number of representatives referred to the difference of views concerning the applicability of the principle; while some considered that it should be applied to all peoples, others maintained that it could only apply to peoples under colonial rule. In the opinion of some representatives, however, the principle applied equally to peoples occupying an independent State and to peoples occupying a geographical area which, but for foreign domination, could have formed an independent and sovereign State. Nevertheless, certain representatives

deemed it necessary to specify that the principle applied to peoples in territories under military occupation. While recognizing that application of the principle was most important in the field of colonialism, universal applicability was supported by certain representatives on the grounds that it was not in the field of colonialism alone that the lack of observance of the principle threatened peace and security and friendly relations and that the Charter used the word "people" in a broad sense. It was also said that paragraph 6 of General Assembly resolution 1514 (XV) reassured those who feared that the universal application of the principle would encourage secessionist movements in sovereign, independent States.

51. The opinion was expressed that, without questioning the sovereignty of States, the applicability of the principle should be recognized to peoples which were denied the enjoyment of equal rights by being excluded from participation in the life of their own States. One representative considered that the terms "colonial" and "dependent" needed to be legally defined. In his view, a possible definition might be that people was dependent when its territory was occupied by another State in contravention of international agreements or the resolutions of the Security Council and when its right to determine its own future status was expressly recognized either in General Assembly resolution 1514 (XV) or in the resolutions of the Security Council. Other representatives affirmed that the term "peoples" implied their relationship to a territory, even though they might have been unjustly expelled from it and replaced by an artificial population. It was also said that in the case of entities which did not meet the requirements for becoming subjects of international law it would be doubtful whether the concept of self-determination comprised a right to constitute themselves as sovereign and independent States.

52. Some representatives considered that there was a large measure of agreement as regards the prohibition of actions aimed at the partial or total disruption of the national unity or territorial integrity of States.

53. In the view of some representatives, colonialism, which had been deplored by all freedom-loving nations, and which was without basis in international law,

remained the most serious violation of the principle of equal rights and self-determination, as exemplified by a number of cases in Africa. In their view the liquidation of colonialism was an obligation of States under the Charter. All States should therefore render assistance to the United Nations in carrying out its responsibilities to put an end to colonialism, to set up the necessary machinery for the structural change where none existed and to return all powers to subject peoples. It was also considered that the territories of colonial or other Non-Self-Governing Territories could not constitute an integral part of the territory of the States exercising colonial rule over them or of the administering States. The view was further expressed that armed action or repressive measures against colonial peoples should be prohibited.

54. A number of representatives considered that the right of dependent peoples to struggle, by whatever means they chose, for their freedom and independence from the colonial yoke, was a legitimate exercise of the right of self-defence and could not be interpreted as violating the provisions of the Charter. In their opinion, those peoples might receive assistance from other States, in virtue of that right. Other representatives however were unable to accept the so-called right of self-defence against colonial domination. In the view of certain representatives, the use of force in self-defence against colonial domination should be considered in the context of Chapter XI and not of Article 2, paragraph 4, of the Charter. Other representatives considered that the exercise of such right invited the intervention of big Powers in the internal affairs of smaller States, thus endangering peace and security.

2. The principle set forth in operative paragraph 5 of General Assembly resolution 2327 (XXII): The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

55. Several representatives expressed regret that, owing to the lack of time at its 1968 session, the Special Committee had been unable to comply with the terms of reference given to it by the General Assembly in paragraph 5 of resolution 2327 (XXII), namely to consider proposals compatible with General Assembly resolution 2131 (XX) of 21 December 1965 containing the "Declaration on the inadmissibility

of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty", with the aim of widening the area of agreement already expressed in that resolution.

56. In the view of several representatives, resolution 2131 (XX) was the expression of a universal juridical conviction and a valid and complete formulation of international law on the principle concerning the duty not to intervene. They underlined that resolution 2131 (XX) embodied a principle which had been recognized in many international instruments for over a century and that it had been adopted without opposition. They also recalled that at its 1966 session, the Special Committee had itself decided to "abide by General Assembly resolution 2131 (XX)". Other representatives considered resolution 2131 (XX) as a significant political statement rather than a declaration of the legal principle involved. They recalled that resolution 2131 (XX) was not the only resolution relevant to the work of the Special Committee; many others, including resolutions 1514 (XV) and 2160 (XXI) had a similar relevance for the Special Committee's work. It was also significant that resolution 2131 (XX) had been adopted by the General Assembly at the same session in which the Assembly, by resolution 2103 (XX), had decided to include the principle concerning the duty not to intervene among the seven principles to be formulated by the Special Committee.

57. In the opinion of some representatives, to argue that resolution 2131 (XX) was a mere political statement and therefore had no legal validity was fallacious since it implied that the terms "political" and "legal" were mutually exclusive, an assertion which could only be interpreted as an attempt to make law the handmaid of politics. Even though the text of the resolution might be improved, as was also the case with any other legal instrument, including the Charter, it had to be admitted that documents resulting from negotiation and compromise were bound to show drafting imperfections. Furthermore, the difficulties of interpretation to which resolution 2131 (XX) might give rise could not be regarded as unique or greater than those confronting daily the national or international organs entrusted with the application of juridical norms.

58. Some representatives expressed the hope that members of the Special Committee would make serious efforts to reconcile the conflicting views existing on General Assembly resolution 2131 (XX) in order to reach a satisfactory statement on the principle concerning the duty not to intervene. This was thought possible by some representatives in view of the large measure of agreement evidenced in resolution 2131 (XX) and because this resolution contained most of the necessary elements to be included in a formulation of the principle.

59. In the opinion of several representatives, the Special Committee's task as regards the principle concerning the duty not to intervene should be the consideration of proposals compatible with resolution 2131 (XX), with a view to widening the area of agreement expressed in that resolution. Proposals such as those submitted to the Special Committee in 1967 were deemed unacceptable in that they had tended to restrict or ignore that agreement. Any new terms of reference to be given to the Special Committee should not detract from the relevant decisions taken by the Special Committee at its 1966 session and by the General Assembly at its twenty-second session. In the view of one representative, the re-examination by the Special Committee of the content or form of resolution 2131 (XX), or the consideration of any proposals on the principle, did not seem to be the method best suited for a narrowing of the existing divergences of opinion.

60. Several representatives stressed the importance of the principle concerning the duty not to intervene as the cornerstone of respect for the sovereignty and independence of States, particularly in view of the long and painful experience of cases of intervention in all forms, not only in the States which some of them represented but also in the continent of which those States formed part. It was considered that the principle was a major foundation for the development of friendly relations and co-operation among States, as well as an essential element for peaceful coexistence. It was further recognized that the principle was closely related to the maintenance and strengthening of international peace and security and was one of the foundations of contemporary international law.

61. The view was also expressed that the principle had been proclaimed by the Charter of the United Nations. Article 2, paragraph 1, embodying the fundamental principle of sovereign equality of States, implied the respect for the personality of the State and its political independence, which were incompatible with

intervention; intervention was likewise contrary to the purpose enunciated in Article 1, paragraph 2; the principle was also a consequence of the prohibition of the threat or use of force set forth in Article 2, paragraph 4, since those were the more characteristic and serious forms of intervention; finally, the prohibition of Article 2, paragraph 7, applied a fortiori to States since the Charter could not permit States to do what it prevented the Organization from doing.

67. Some representatives considered that the principle was an inseparable part of the system of principles of international law concerning friendly relations and co-operation among States. In the view of certain representatives, the principle did not prohibit assistance to colonial peoples struggling for their independence in exercise of their right of self-determination. It was said that intervention in the internal affairs of a State affected the principle of equal rights and self-determination of peoples. It was also stated that questions which had given rise to doubts in the work undertaken on the principle of the non-use of force might be clarified in the context of the principle concerning the duty not to intervene.

63. Several representatives emphasized the contribution of Latin America to the development and strengthening of the principle since the early nineteenth century, as a defence of their independence and sovereignty against the policies of the Holy Alliance and the abuses resulting from doctrines which arbitrarily distinguished between "legal" and "illegal" acts of intervention. It was recalled that the principle, which reflected the profound Latin American convictions, had been proclaimed, in the 1933 Montevideo Convention on the Rights and Duties of States, the Additional Protocol relative to non-intervention adopted by the Inter-American Conference for the maintenance of Peace, 1936, the Declaration of American Principles, 1938, the Charter of the Organization of American States signed at Bogotá in 1948 and at the Third Special Inter-American Conference held at Buenos Aires in 1967. It was also said that as a result of such long process, the consolidation of the principle of non-intervention had made possible fruitful co-operation among the States with different interests.

C. Observations concerning future work and methods of work

1. Convening and terms of reference of the Special Committee in 1969

64. It was agreed that consideration of the principles should be continued with a view to their formulation and that the best means by which the General Assembly could complete its work on the item as soon as possible was once again to invite the Special Committee, as reconstituted by General Assembly resolution 2103 A (XX) of 20 December 1965, to continue its work in 1969. The general agreement in that regard was embodied in operative paragraph 3 of the draft resolution introduced in the Sixth Committee (A/C.6/L.740 and Add.1) (see paragraph 6 above).

65. During the general debate, various views were expressed concerning the Special Committee's terms of reference for its 1969 session, including the priority to be given to the consideration of each principle, with a view to completing the Committee's work at an early date in the light of the objective of General Assembly resolution 1815 (XVII) of 18 December 1962, i.e. the preparation of a draft declaration on the seven principles of international law concerning friendly relations and co-operation among States. The general agreement reached on that point was embodied in operative paragraph 4 of draft resolution A/C.6/L.740 and Add.1 and in the statement made by the Chairman of the Sixth Committee (see paragraph 71 below) before the draft resolution was adopted.

2. The Special Committee's method of work and the organization of its future work

66. Certain representatives stated that while the Special Committee should try to arrive at a consensus, that procedure must not have the effect of causing its work to be obstructed by intransigent minorities. The effort to reach a consensus, although desirable, should not become a dogma which would enable certain minorities to paralyse the Special Committee's work or bring about the adoption of excessively vague formulations which did not meet the requirements of the existing situation or which served to perpetuate the status quo. In such cases, the vote was the only democratic method of arriving at solutions which were satisfactory to the international community as a whole. When a given proposal was supported by a large majority, it would be intolerable for a minority to prevent a decision from being

taken. In such cases, the course which should be adopted was that provided for in the rules of procedure of the General Assembly, i.e. the taking of a vote.

67. Other representatives emphasized that it was desirable for the Special Committee to continue to work on the basis of consensus, which was the best guarantee that the Committee would be successful in carrying out its task. It was essential that the work of the Special Committee should reflect the general practice of States and that, once completed, it should win the approval of a large majority in the General Assembly. Although the representatives in question acknowledged that the consensus method could give rise to abuses or lead to the adoption of excessively vague or broad formulations, they felt that it was the only appropriate method of carrying out the Committee's task. The formulation of legal norms and their incorporation into a General Assembly declaration required a broad base of agreement, since majority votes in the Assembly did not, in and of themselves, create legal norms nor did they facilitate the rapid establishment of such norms.

68. Some representatives felt that at its next session the Special Committee should concentrate its efforts and initiate discussions as soon as possible on the questions which had not yet been settled. General debate on questions concerning which a certain measure of agreement had already been reached should be avoided. Some representatives felt that the time had come to consolidate the results of the Committee's work and undertake a general review of the progress that had been made on each principle. In that connexion, some expressed the view that the texts embodying the agreements which had been reached should be submitted to the General Assembly in a comprehensive rather than a fragmentary form. Finally, other representatives, after drawing attention to the interrelationship among all the principles, cautioned the Special Committee regarding the disadvantages of the method of considering each principle separately.

3. Preparatory consultations

69. A number of representatives thought it advisable to hold preparatory consultations among the States concerned before the Special Committee's 1969 session and were in favour of including in the draft resolution to be recommended to the General Assembly a provision similar to that contained in operative

paragraph 6 of resolution 2327 (XXII). Such consultations had proved useful and valuable during the period between the Special Committee's 1967 and 1968 meetings. In the course of the consultations, it was observed by some representatives, it might even be possible to prepare working papers on controversial questions or draft texts accompanied by commentaries. Operative paragraph 5 of the draft resolution embodied the views expressed on this matter.

4. Completion of work on the item and observance of the twenty-fifth anniversary of the United Nations

70. A number of representatives expressed the hope that if all delegations continued to adopt a constructive attitude, the Committee would be able to complete its work on the item within a reasonable period of time; they further stated that the adoption in 1970 of a declaration embodying the codification and progressive development of the principles of international law concerning friendly relations and co-operation among States would be an important contribution to the observance of the twenty-fifth anniversary of the United Nations.

IV. VOTING AND STATEMENT BY THE CHAIRMAN OF THE SIXTH COMMITTEE

71. At the 1099th meeting, on 17 December 1968, the Committee adopted by acclamation the fifty-two-Power draft resolution (A/C.6/L.740 and Add.1) (see paragraph 73 below). Before the adoption of the draft resolution, the Chairman of the Sixth Committee made the following statement:

> "If the Sixth Committee approves this resolution, it is with the understanding that there is consensus in this Committee on the following:
>
> "First, the Special Committee should devote itself to completing the work on the formulations of the two principles of non-use of force and self-determination.
>
> "Secondly, if any time is left, it should address itself to other work relating to other principles.
>
> "Thirdly, the above understanding is wholly without prejudice to the positions of any delegations that have been taken with regard to any particular principle concerning friendly relations."

72. At the same meeting the representatives of Israel, France, Italy and the Union of Soviet Socialist Republics gave explanations of their votes.

RECOMMENDATION OF THE SIXTH COMMITTEE

73. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966 and 2327 (XXII) of 18 December 1967, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

Recalling further that among the fundamental purposes of the United Nations are the maintenance of international peace and security and the development of friendly relations and co-operation among States,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and improvement of the international situation,

Considering further that the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

Bearing in mind General Assembly resolution 2131 (XX) of 21 December 1965,

Being convinced of the significance of continuing the effort to achieve general agreement in the process of elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

Having considered the report of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States, which met at New York from 9 to 30 September 1968,

1. Takes note of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

2. Expresses its appreciation to that Committee for the valuable work it has performed;

3. Decides to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to meet in 1969 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue and complete its work;

4. Requests the Special Committee, in the light of the debate which took place in the Sixth Committee during the preceding and the present sessions of the General Assembly and in the 1964, 1966, 1967 and 1968 sessions of the Special Committees, to endeavour to resolve, in the light of General Assembly resolution 2327 (XXII), all relevant questions relating to the formulation of the seven principles, in order to complete, as far as possible, its work, and to submit to the General Assembly at its twenty-fourth session a comprehensive report;

5. Calls upon the members of the Special Committee to devote their utmost efforts to ensuring the success of the Special Committee's session, in particular by undertaking, in the period preceding the session, such consultations and other preparatory measures as they may see necessary;

6. Requests the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

7. Decides to include in the provisional agenda of its twenty-fourth session an item entitled "Consideration of the report on principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".
