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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 87

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the charter of the United Nations (*continued*) (A/6228, A/6230, A/6373 and Add.1):

- (a) Report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;
- (b) Report of the Secretary-General on methods of fact-finding

1. Mr. OGUNDERE (Nigeria) said that the attempt to draft principles of international law concerning friendly relations and co-operation among States could be seen as part of a general effort to eliminate the causes of war. The present political climate made it more than ever necessary to clarify the basic principles of the Charter underlying modern international law and co-operation among States with different systems and to perfect the machinery for removing causes of conflict. As the Secretary-General had stated at the opening meeting of the 1966 Special Committee, the more severe the crisis, the more essential it was to lay the foundations for a better future. He therefore hoped that all delegations would co-operate to that end.

2. The report of the 1966 Special Committee (A/6230) showed that it had reached agreement on only two principles out of the seven it had considered. Quantitatively, therefore, it might appear to have failed; but qualitatively it had had a degree of success. Decisions had been taken on some principles, and even where there had been no agreement, the Special Committee had done much to define the issues involved and thus lay the basis for agreement at a later stage. The future work of the Special Committee, if it was to be

continued, would be facilitated if representatives in the Sixth Committee, particularly those who had not been members of the Special Committee, would indicate their views on two points. First, there was the question whether or not a new Committee would be required to reopen debate on principles on which a consensus had been reached by its predecessor. Second, the requirement that agreement on a principle should be unanimous needed re-examination. That procedure, in effect, gave each representative in the Special Committee a veto power, a power which actually had been exercised against a whole text on the principle of the duty of States to co-operate with one another. The resulting frustration was noted in the statements by the Chairman of the Special Committee and the representative of Lebanon on behalf of the non-aligned group in chapter IX of the Special Committee's report. The Sixth Committee might consider the possibility of a majority vote where no substantive issues were involved.

3. On the principle of sovereign equality (*ibid.*, chap. V), the Special Committee had adopted a compromise text, but the Drafting Committee had been unable to reach agreement on several other proposals transmitted to it. His delegation had supported the points of consensus, even though it considered that they would be improved by the inclusion of a point on sovereignty over national wealth and natural resources. Such sovereignty was an essential attribute of State sovereignty, a corollary of the sovereign equality of States and a right of vital importance to the developing nations.

4. On the principle that States should settle their disputes by peaceful means (*ibid.*, chap. III), his delegation had again supported the compromise text adopted, although not fully satisfied with it. As indicated in paragraph 212 of the Special Committee's report, it would wish to see the role of the International Court of Justice stressed. The International Court was the principal judicial organ of the United Nations and the recent imperfections it had displayed did not diminish its potential as an instrument for the peaceful settlement of disputes and the promotion of the rule of law. Nigeria would also like to see the element of good faith emphasized in paragraph 3 of the points of consensus (*ibid.*, para. 248.I.3). Although paragraph 4 required States parties to a dispute to act in accordance with the purposes and principles of the United Nations, and thus with the principle of good faith, it would be noted that paragraph 3 sought to direct parties to a dispute as to what to do if they failed to reach a solution by any of the peaceful means enumerated in paragraph 2. Once such an impasse occurred, it could not be resolved unless the parties displayed good faith. His delegation would therefore

like the words "in good faith" to be inserted after the word "seek" in paragraph 3.

5. The Special Committee had been unable to reach agreement on the principle of non-intervention (*ibid.*, chap. IV), although all representatives had agreed on its importance and on the fact that it was part of the practice of States in modern times. The main difference of opinion had been over the status of General Assembly resolution 2131 (XX). Most delegations had argued that inasmuch as the resolution had been adopted nearly unanimously, with no negative vote and only one abstention, it had acquired the force of law and should not in any way be called in question. Others had argued that it had only political and not juridical force. His delegation hoped that during further negotiations the text of resolution 2131 (XX) could be improved upon so that a statement of a principle of international law would emerge.

6. First, however, it would be necessary to define "wars of aggression" and "force". The principle that States should refrain from the threat or use of force (*ibid.*, chap. II) had presented most of the difficulties the Special Committee had had to deal with. The Committee's efforts to define the terms involved would not be in vain if they provided guidance for another Special Committee. The fact that economic measures were now as effective as armed force in international life should be taken into account in formulating the principle.

7. With regard to the principle of the duty of States to co-operate (*ibid.*, chap. VI), his delegation hoped that the great measure of agreement reached in the Special Committee would lead to full agreement at a later session.

8. On the principles of equal rights and self-determination and of the fulfilment in good faith of Charter obligations (*ibid.*, chaps. VII and VIII), the Special Committee had succeeded in bringing out the issues involved in a way that would serve as a basis for future negotiations. Regarding the principle of good faith, his delegation considered it necessary to restate the principles *pacta sunt servanda* and *bona fides* in the light of the work done by the International Law Commission on the draft articles on the law of treaties (see A/6309), particularly in areas where initial bad faith made treaties void or voidable.

9. Lastly, his delegation considered that if a new Special Committee was to be successful, its terms of reference should take account of the following considerations. First, it should be clearly stated that its work consisted not only in codification but in the progressive development of the principles. Second, a more realistic attitude should be taken to the interrelationship between the principles, especially those of sovereign equality, non-intervention and the prohibition of the threat or use of force. Such an approach had yielded good results in the International Law Commission's work on the law of treaties. Third, greater objectivity was needed if the rule of law was ever to supersede the pursuit of immediate political ends.

10. Mr. ENGO (Cameroon) recalled, as Chairman of the Drafting Committee of the 1966 Special Committee, the friendly atmosphere that had prevailed at the

former's discussions. In order to facilitate the free exchange of ideas, no records had been kept and no mention had been made in its final report of the views held by individual delegations. Paragraph 4 of that report (see A/6230, para. 567) stated, *inter alia*: "The intensive discussions in the Drafting Committee and its working groups have demonstrated that the differences between the various viewpoints have been materially reduced". Although complete success had proved impossible, there had been wide—in some cases almost unanimous—agreement on most of the principles and individual problems in question. The minority that had prevented a full consensus had faced some obvious difficulties; a number of delegations had lacked sufficient time for reflection, and others had been unable, in the time available, to communicate with their home Governments.

11. His delegation felt that another opportunity should be given to the Special Committee to conclude the work it had begun. So far as possible, the same members who had participated in the earlier deliberations should be permitted by their respective Governments to attend the new meetings. The Special Committee itself should be encouraged to concentrate on those principles and individual items on which a consensus was imminent, although he did not mean to suggest that other principles should be ignored. He hoped that during the current session members of the Sixth Committee would continue to hold informal consultations concerning the seven principles, with a view to widening any possible areas of agreement.

12. The first of the principles to be considered by the Special Committee had been that of the sovereign equality of States. The consensus text prepared for that principle had been the result of a compromise, and his delegation felt that although the new Special Committee should not reopen any of the matters dealt with in that text, there were important aspects of the principle itself that should be re-examined in full. It considered, for example, that the right of States to dispose freely of their national wealth and natural resources should be given special attention, and it subscribed to the view expressed in the report (*ibid.*, para. 376) that the economic aspect of the principle of sovereign equality could not be separated from its political and legal aspects. After all, the political independence of the new States was meaningless if the exercise of a State's sovereignty over its natural resources and general economic life was in any way hampered or made subject to the dictates of some power or force external to the State. To omit a provision to that effect would weaken the protective function of the generally accepted norms of international law.

13. The next principle on which a consensus had been reached had been that of the pacific settlement of international disputes. His delegation welcomed that consensus and recommended that the principle should not be the subject of further discussion unless it proved possible to widen its scope.

14. In view of the conflicts and tensions of modern international life, it was difficult to draft a legal text on such a principle as the third, namely, the duty not to intervene in matters within the domestic jurisdiction of any State. In referring that topic to the Drafting

Committee, the Special Committee had stated that the former was to be bound by the provisions of General Assembly resolution 2131 (XX) and that it should make only drafting changes. Bound by those terms of reference and hampered by a lack of agreement as to what drafting changes could be made, the Drafting Committee had had no choice but to return the document to the Special Committee unaltered. The principle of non-intervention was perhaps one on which no immediate consensus could be expected; obviously, a great deal of work remained to be done in order to define such terms as "intervention" and "personality of a State".

15. His delegation was fully aware of the difficulties involved in the discussion of the principle that States should refrain in their international relations from the threat or use of force. Yet that topic should not be abandoned merely because it was a difficult one; for the prohibition of the use of force was a prerequisite for peaceful coexistence among States. He was convinced, in the light of the experience of the 1966 Special Committee, that the possibility of a consensus was not too remote. In his delegation's view, a special effort should be made to define such terms as "threat", "force" and "territorial integrity of a State".

16. His delegation noted with regret that the Special Committee had made no progress whatsoever with respect to the principle of equal rights and self-determination of peoples. Nevertheless, the inalienable right of all peoples, irrespective of race or creed, to self-determination, freedom and the exercise of full sovereignty over their national territory was so fundamental that no law would be complete unless it recognized that right. While countries continued to be deprived of that right, the world would know no peace. His delegation hoped, therefore, that every Member of the United Nations and every State that claimed to be civilized would take positive steps to rid the world of the last vestiges of colonialism. It also hoped that when that topic came up before the Special Committee again, all those nations that had suffered oppression and humiliation under colonialist domination would be given an opportunity to express their views.

17. With regard to the remaining principles, he noted that the duty of States to co-operate with each other and the duty to fulfil their obligations in good faith were essentially not subject to dispute. Nearly every delegation had reaffirmed its conviction that the rule pacta sunt servanda was indispensable in international law, inasmuch as the success of any law rested on the legal concept of good faith. The aspect of that rule with which the Sixth Committee was concerned appeared to relate specifically to obligations assumed by States in

accordance with the Charter of the United Nations. He was quite aware that there were certain problems connected with that topic that required detailed examination, such as the validity of treaties, the question of their interpretation, modification, termination and the like; but in his view those were collateral matters that should not be allowed to obscure the basic principle at stake.

18. So far as the future work of the Special Committee was concerned, he emphasized that the seven principles should not be considered in isolation but that the interrelationship between them should be borne constantly in mind. During the deliberations of the 1966 Special Committee, several members had urged that the discussion of a particular principle should be suspended until such time as some other principle had been considered. He had observed, for example, that two working groups had been attempting to do the same thing at the same time. He recommended, therefore, that the close liaison that had existed between different working groups in the Drafting Committee should be maintained and, in fact, strengthened at future meetings.

19. On the general question of the codification of international law, his delegation noted with regret that there was a divergence of views as to the approach that the Special Committee should adopt in dealing with the seven principles under discussion. Although some considered that that work should be limited to codification alone, his delegation insisted, with the great majority, that the codification and progressive development of modern international law should go hand in hand, because only in that way could international law reflect the thought of the present generation. At one time it had been possible to speak carelessly of acceptable rules of international law "recognized by civilized nations"; that had been a convenient formula for those who considered themselves the centre of world civilization. But the situation had changed. New nations had cast off the yoke of colonialism and had attained full independence. Those nations had their own cultures, ideas of legality, experience and problems, and it would be unrealistic to demand arbitrarily that they should conform to the practices of the older world. In conclusion, therefore, he urged the countries of that older world to stop claiming rights derived from defunct institutions, to give back to the developing nations something of what had been taken from them in their colonialist past and to look forward into the future to an era when States would enjoy a climate devoid of fear and conducive to genuinely friendly relations.

The meeting rose at 4.25 p.m.