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CONTENTS

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. STANKEVICH (Byelorussian Soviet Socialist Republic) said that the universal aspiration of the peoples for peace and security made it the duty of all States, without exception, to maintain good neighbourly relations and to observe strictly the principles of international law. The principles stated in Article 2 of the Charter, which sought to strengthen friendly relations and co-operation among States, were laid down in paragraph 6 of that Article as universal peremptory norms and thus applied to all States, whether or not Members of the United Nations.

2. In seeking to formulate those principles, it must not be forgotten that throughout history the plans of mankind had been thwarted repeatedly and legal rules had remained a dead letter. The danger that that might again be the case had undoubtedly been present in the minds of the signatories to the United Nations Charter, because when they established an organization to serve the cause of peace after the bitter war against Hitler, they had, at the same time, solemnly proclaimed the obligation of all States, without exception, to respect the principles which alone could liberate mankind from the scourge of war and guarantee the dignity of the human person. After them, the many States that had acceded to the Charter had in turn accepted the fundamental principle of carrying out in good faith the obligations deriving from that instrument.

3. In view of that principle's cardinal importance and of the errors of the past, his delegation considered that attention must be drawn to the dangerous enterprises upon which certain imperialist States had launched since the signing of the Charter at the risk of plunging the world into that most terrible of catastrophes, thermonuclear war. The world had seen those States, under cover of false statements of peaceful intentions, engage in aggression, piracy, corruption and blackmail. Those who were employing poison gas and napalm against peoples struggling for independence were not only violating justice by hampering the triumph of that cause but were contravening the duty of non-intervention. Those were acts which should not be overlooked by the jurists whose task it was to consider the principles of international law concerning friendly relations and co-operation among States. Far from being alien to a juridical debate, as some had claimed, those acts must be taken into consideration if the Committee really wished to advance the codification and progressive development of international law; for the disclosure of all infractions of the principles under consideration would make it easier to formulate complete and precise rules that would leave no possible loop-hole for the instigators of war.

4. In a long series of interventions in the domestic affairs of other countries—in Korea, in Cuba, in the Dominican Republic and now in Viet-Nam, where their activities bordered on genocide—the imperialists had applied a doctrine, the existence of which accounted for the little success achieved so far in the consideration of the principles concerning friendly relations and co-operation among States. He referred in that connexion to the resolution in which the United States House of Representatives had declared, on 20 September 1965, that the United States had the "right" to intervene by force in the internal affairs of the Latin American countries. The United States also had an "Asian doctrine" based on the right of intervention it had arrogated to itself as a Pacific Power. According to US News & World Report, the United States, pursuant to that doctrine, "would not remain inactive if the communists attempted to seize power in an Asian country"; and, of course, for the United States, those who fought for independence, sought to free themselves from economic and political domination and struggled against the scourges of injustice and imperialism were communists.

5. Two instruments were being used to apply that policy: one was military aid, regarded as a protective shield but in reality merely an expression of the

policy of force; the other was economic aid, which in fact constituted a means of exerting pressure and sought to bring about economic enslavement. Those means made it possible, for example, to support a Government such as that of General Ky, which would not remain in power for one moment without American money and bayonets. They were used in various ways, in disregard of the Geneva Agreements, to violate the integrity of the territories bordering Viet-Nam.

6. That doctrine and the situation which its application brought about were, beyond question, obstacles to peaceful co-existence and to the development of the principles of international law, which were incompatible with such a policy. Despite the opposition of some States to the adoption of international norms designed, among other things, to condemn economic pressure, the use of force, the suppression of the struggle for independence, and so forth, five years of work on the principles concerned had produced practical results with regard to the sovereign equality of States (see A/6230, chap. V) and the peaceful settlement of disputes (ibid., chap. III). Although there were perhaps gaps in the statements of those two principles, they were approved by all States. In addition, the 1966 Special Committee had succeeded in achieving many points of consensus on the other principles; and it was his personal belief that the existing difficulties could be surmounted and a text submitted to the General Assembly that could win adoption. His delegation, therefore, was wholeheartedly in favour of establishing a new Special Committee along the general lines indicated in General Assembly resolution 2103 (XX) to continue work on all seven principles.

7. The draft submitted to the 1966 Special Committee by the Czechoslovak delegation in document A/AC.125/L.16 (see A/6230), together with the amendments of the non-aligned countries, constituted a solid basis on which to draft a declaration. Account would have to be taken, of course, of the proposals already formulated and of all new proposals. In that connexion, his delegation welcomed the amendment (A/AC.125/L.10) in which the representatives of Cameroon and Nigeria had proposed adding to the statement of the principle of sovereign equality an affirmation of the right of States freely to dispose of their national wealth and natural resources (ibid., para. 359). That right was a corollary of sovereignty. Although the Western countries still refused to realize that times had changed and that they could not continue indefinitely exploiting their economic privileges and making enormous profits while the developing countries were correspondingly impoverished, they would be forced to face the facts, for the new States were prepared to defend their national wealth. It was better for them to contribute to what was a necessary development by supporting the codification of that principle.

8. In his delegation's opinion, the principle of sovereign equality also included the right of each State to remove from its territory any foreign military bases that might be situated there. Accordingly, it approved the amendment of the United Arab Republic (ibid., para. 362) in which that element was added to the statement of the principle. The presence of a foreign military base in the territory of another State not only violated the principle of the non-use of force but was a breach of the Charter obligations to act in such a way as to strengthen peace and security. In that connexion, he pointed out that the maintenance of the United States military base at Guantanamo against the will of the Cuban Government was a permanent provocation and a source of strife in the Caribbean. He thought that the declaration should contain, besides the proposed addition, a provision prohibiting aircraft carrying nuclear bombs and other types of weapons of mass destruction from crossing national frontiers. Jurists could not ignore the possibility of such catastrophic accidents as the one involving the United States bomber that had lost its bombs at Palomares, in Spain, producing dangerous nuclear radiation in the area. Moreover, such a provision would be in line with those of the Moscow Treaty of 5 August 1963 banning nuclear weapons tests in the atmosphere, in outer space and under water.

9. His delegation declared itself satisfied with the wording given to the principle of the peaceful settlement of disputes, but it would have preferred to include the following formula: "International disputes shall be settled on the basis of the sovereign equality of States, in the spirit of understanding and without the use of any form of pressure". Only too often, in fact, the allegedly peaceful settlement of a dispute was in reality imposed by one of the parties on the other by means of threats.

10. The principle of the prohibition of the threat or use of force was one of the fundamental principles of the Charter of the United Nations, and particularly of Articles 1 and 2 of that instrument. To combat aggression, the Charter envisaged enforcement measures on the one hand and preventive measures on the other, and it was in the context of the latter that the renunciation of force should be proclaimed as a principle and the use of force made an international crime. However, if the search for peace was not to prove a failure, it was just as important to outlaw propaganda for war, the repression of liberation movements and all forms of pressure that were used instead of armed force for similar purposes. In order to constitute a work of codification, in the full sense of the word, the formulation of that principle must not be a mere statement of the various propositions contained in the Charter but must take into account the important texts that had appeared since its adoption.

11. The duty not to intervene in the internal affairs of States, which was another vital principle of the United Nations Charter, had been reaffirmed at many conferences and in the texts of numerous agreements. A very clear definition of the principle was given in the Declaration contained in General Assembly resolution 2131 (XX). The Special Committee, which was a subsidiary organ of the Assembly, was not called upon to review that text, which had been adopted by 109 votes after a lengthy discussion. On the contrary, it was obliged to include the text in its formulation without changing its substance. To revise it as some delegations had proposed (ibid., chap. IV), under the pretext that the Declaration was more political than juridical in nature, would be to take a step backward and to forget how inseparable law and politics were in that sphere, with the former often serving as the instrument of the latter.

12. Mr. SINCLAIR (United Kingdom) said he wished to stress at the outset the importance of the seven principles set out in General Assembly resolution 1815 (XVII). They formed the very heart of the Charter system for the maintenance of international peace and security within a framework of order and stability. It was the Committee's task to engage in a searching study of those principles and to clarify and formulate their essential legal content, with a view to the adoption of a declaration containing an enunciation of them. The conflict and dissension that had riven world order for the past twenty years were due precisely to differences of views with respect to the interpretation and application of certain of those principles. That was what made the Committee's task so urgent and so difficult. Delegations had undoubtedly made strenuous efforts to reach a general agreement on the formulation of the legal elements of the seven principles, and for that purpose they had tried to establish new methods of codification and progressive development. The members of the Committee, however, were neither academic theorists nor mere technicians in juridical procedure. They had to bear in mind the concrete problems confronting their respective Governments. The content of the principles was such that beneath any proposal of substance might lurk not only abstract differences of ideology but profound cleavages of view with respect to past, current or future international disputes. Accordingly, in considering any proposal, however generally worded, delegations must consider its specific applications.

13. His delegation was one of those that had consistently drawn attention during the work of the Special Committee to the distinction between proposals incorporating lex lata and proposals de lege ferenda. The Committee, of source, was not bound to limit itself to the consideration of the former to the exclusion of the latter, and his delegation, for its part, was prepared to consider any proposal that purported to state what the legal interpretation of the Charter ought to be. Unfortunately, whereas the 1964 and 1966 Special Committees had been able to make a certain amount of progress in producing formulations expressive of lex lata, they had consistently encountered serious difficulties when considering proposals de lege ferenda. That was because certain delegations had persistently advanced, under cover of alleged progressive development of the principles of the Charter, propositions that were political rather than juridical in content and had been designed to stretch the principles of the Charter to fit the dimensions of a particular ideological system. To attempt in that way to set up unclear political principles as legal norms in order to obtain short-term advantages for certain countries was a distortion of the concept of progressive development.

14. His delegation's idea of progressive development was altogether different. Although it believed with conviction that international law was a dynamic and not a static discipline, it nevertheless sought to establish a balance between the antinomies of stability and change. His delegation was aware, of course, of the profound political developments that had occurred in the world over the past twenty years, and it welcomed the contributions that had been made to the development of international law within the framework of the Charter by the new States that had been created as a result of decolonization; but it would remind those States that it was precisely the Charter principles now under discussion that guaranteed their independence and territorial integrity. Bearing current political realities in mind, his delegation also realized that the formulae to be worked out must stand the test of time. The Committee's task was to draw up basic rules of conduct for the community of States; to adopt what was asserted to be a legal principle because it served the immediate interests of a particular State would in the long run lead to disaster. Moreover, it would be just as dangerous to cherish the illusion that jurists could solve all contemporary international problems merely by drawing up a declaration on the principles of international law concerning friendly relations and co-operation among States. The more modest the Committee's objectives, the more enduring would be its work. If it succeeded, by common agreement, in elaborating the legal elements of the basic Charter principles it was studying, taking into account the practice of States and of the United Nations over the past twenty years, it would have made a significant contribution to the development of international law.

15. He then reviewed the results achieved by the 1966 Special Committee with respect to each of the seven principles. He paid tribute to its work and noted that its members had displayed, both in the meetings of the plenary Committee and the Drafting Committee and in the informal discussions in the working groups, a spirit of conciliation of which the Committee's report (A/6230) gave only an imperfect idea.

16. It had been the principle of sovereign equality of States that had been discussed at greatest length. The 1966 Special Committee had based its work on the consensus text agreed upon by the 1964 Special Committee at Mexico City[1] and had taken into consideration the comments on that text made during the twentieth session of the General Assembly. The text had been somewhat amended and would undoubtedly have been expanded if unanimity, which had seemed very near in the working groups and in the Drafting Committee, could have been reached on some proposals which, in his delegation's opinion, should have been included in the formulation. They concerned, in particular, the question of sovereignty over national wealth and natural resources.

17. One of the main difficulties of that principle arose precisely because it was linked to the essential personality of the State, which was central to international law and to relationships between States. That raised the question to which activities of States and to which relationships of States should the principle of sovereign equality expressly apply. Some delegations had proposed that reference should be made in that connexion to certain activities which they regarded as being of special importance—for example, experiments having harmful effects on other States. Other delegations, although acknowledging that such subjects were important, had not considered them so important that they should be singled out for special

[1] See Official Records of the General Assembly, Twentieth Session, Annexes, agenda items 90 and 94, document A/5746.

mention in the statement of the principle of State sovereignty. There was in that matter a difference more of emphasis than of content, and further discussion of that principle might be expected to lead to agreement.

18. Concerning the principle of the prohibition of the threat or use of force (ibid., chap. II), he recalled that after a very lively debate there had seemed to be substantial agreement in the Special Committee on the basic formulation of the prohibition of the use of force, which stemmed directly from Article 2, paragraph 4, of the Charter, and on certain corollaries, such as the condemnation of wars of aggression as crimes against the peace and the prohibition of armed reprisals. Divergencies of view had appeared, however, concerning the definition of the word "force". There had been general agreement that the use of force included the use of irregular or volunteer forces as well as regular military forces. That was the effect of the eleven-Power text (ibid., para. 26), subparagraph (d) of the Chilean proposal (ibid., para. 28) and the Italian and Netherlands proposal (ibid., para. 29), and also of the text on which the 1964 Special Committee had so nearly agreed at Mexico City.[2] He considered it obvious that the existence in a State of camps for the training of terrorists and saboteurs for infiltration across frontiers into other States constituted just as dangerous a form of the use of force as a declared armed attack; any definition of the term "force" must therefore cover that type of activity, which was all too frequent at the present time.

19. The other question that had arisen had been how far the concept of force extended—whether it should include, for example, political and economic pressure. He considered that any discussion of that question ought to start from the Charter, for the study concerned was not a study of international law in general but—to use the words of operative paragraph 1 of General Assembly resolution 1815 (XVII)—a study of "the principles of international law concerning friendly relations and co-operation among States and the duties deriving therefrom, embodied in the Charter of the United Nations which is the fundamental statement of those principles". So far as the text of the Charter was concerned, it was apparent that the term "force" as used in Article 2, paragraph 4, and in Article 44 involved only armed force; any other interpretation would be inconsistent with the words used by the drafters of the Charter. Even aside from the intentions of the Charter, there were difficulties of definition in the expanded concept of force, as the Hungarian representative had conceded (925th meeting). As relations among States became steadily more intimate, the influence that they had on one another must increase. Those who proposed to say that that influence, carried to a certain point, amounted to unlawful pressure and thus to a use of force, which was perhaps the greatest crime known under the United Nations Charter, owed it to the community to define clearly the conduct that they wished to condemn. He had referred to only a few aspects of a vast subject, and his delegation looked forward to continued study of it, in the hope that the various views expressed could be brought forward in an agreed formulation.

20. Several delegations, including his own, felt that the text adopted by the Special Committee for the principle of peaceful settlement of disputes (ibid., para. 248) represented only the minimum points on which the Committee had been able to agree. The Sixth Committee's work on that principle, which was a central and essential element of the Charter, should not be discontinued because that partial formulation had been achieved; on the contrary, further efforts must be made to expand the scope of agreement.

21. In connexion with the principle of non-intervention, the Special Committee had become involved in procedural discussions on the question of how far it was bound by the terms of General Assembly resolution 2131 (XX). He recalled that his delegation, which had abstained from the vote on that resolution, had been unable to approve the Special Committee's direction to the Drafting Committee to abide, in the statement of the principle, by the text adopted by the General Assembly except for some drafting changes; for it had not seen why in the legal study of that principle the Special Committee should adopt automatically and without any consideration of substance a text written in quite different circumstances. It had, nevertheless, decided to participate in the discussions in the Drafting Committee, but it could only regret that that Committee had failed to adopt any drafting changes or additional proposals and had restricted its study in that manner.

22. In the Special Committee's discussion on the principle of co-operation (ibid., chap. VI), the proposals submitted had raised first the question of the universality of co-operation. Under the proposal of which the United Kingdom had been a co-sponsor (ibid., para. 416), the duty of States to co-operate in accordance with the Charter was an obligation restricted to Members of the United Nations only, so that it would be possible to include specific references to various fields of United Nations activities, including, in particular, those set out in Article 55 of the Charter. In addition, his delegation had wished to refer to co-operation in the matter of disarmament, and it had been willing to discuss that matter by reference to the duties of States generally. With so wide a scope, however, the formulation of the principle became somewhat looser and thinner in content, and the legal basis of the obligation was less easy to establish in international law. His delegation regretted that it had not been possible, mainly for lack of time, to reach agreement on that principle.

23. With respect to the principle of self-determination (ibid., chap. VII) the United Kingdom Government, which had expressed its views in the written comments that it had submitted,[3] looked forward to participating actively in the formulation of that principle at a further meeting of the Special Committee.

24. As to the principle of good faith (ibid., chap. VIII) —which had been generally recognized as the fundamental rule underlying all treaty obligations in article 23 of the International Law Commission's

[2] Ibid., document A/5746, chap. III.

[3] Ibid., document A/5725/Add.4.

draft articles on the law of treaties (see A/6309) and also in the United Nations Charter, in particular, Article 103 of that instrument—difficulties had arisen in the Special Committee when certain delegations had insisted on taking up controversial questions involving some technical rules concerning the validity of treaties. Those rules would be considered in depth by the conference on the law of treaties, the convening of which had been recommended at the current session. It would therefore be unwise to press particular views on questions that would have to be resolved at the conference. That did not mean, however, that efforts should not be made to achieve a generally acceptable formulation of that principle.

25. His delegation, which had played an active role in the deliberations on the seven principles in the Sixth Committee and in the Special Committee's two sessions, thought that a third session of the Special Committee should be convened in 1967 to continue the work on the formulation of the seven principles. It did not think that the results obtained so far could be regarded as a failure. It was convinced, on the contrary, that the dialogue should be continued in an effort to resolve the issues that had arisen in the consideration of the seven principles, and it hoped that the General Assembly would be able at its next session to adopt a draft declaration containing generally agreed statements submitted by the new Special Committee.

26. The CHAIRMAN, stressing the slow pace of the work on the item under discussion, suggested that the list of speakers should be closed at the next meeting.

It was so decided.

The meeting rose at 5.25 p.m.

Litho in U.N. 77601—May 1967—2,050