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CONTENTS

Chairman: Mr. K. Krishna RAO (India).

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: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (continued) (A/7326)

1. Sir Kenneth BAILEY (Australia) said that he would make some comments on the Special Committee's programme of work, since it appeared certain that the Sixth Committee would extend it into 1969. He wished to point out first that the Special Committee's function was not to draft a treaty or amendments to the Charter, but to give a legal exposition of the seven Charter principles referred to it for study; the hope of the General Assembly in setting up the Special Committee had been that such recommendations as the Assembly might adopt as the result of that Committee's work would express the consensus of Members of the Organization, that they would be adopted in the practice of States and would accordingly become part of the law of nations. That being the case, although his delegation did not consider any of the four texts on which agreement had been reached entirely satisfactory, it believed that enough time had been spent on detailed statements of the basic arguments and that the Special Committee should now proceed to review the results it had achieved. It should consider first whether the formulation of each principle was wide enough for acceptance as a chapter in a declaration of legal principles and, if not, whether there was a reasonable prospect of extending the area of agreement.

2. His delegation, like the Canadian delegation, believed that the area of agreement on the principle prohibiting the threat or use of force in international relations was broad enough for it to be considered as a separate legal chapter in a declaration of the seven Charter principles. Some of the matters which had been discussed at length in the Special Committee did not appear to be relevant to the formulation of the principle as expressed in the Charter. They were undoubtedly important, but they could properly be considered only in the context of a revision of the Charter. He mentioned, as an example, the idea that the word "force" in Article 2, paragraph 4, of the Charter included not only armed force but also forms of political or economic pressure. The report of the Special Committee did, however, mention other matters which were plainly within the ambit of Article 2, paragraph 4, of the Charter and on which agreement might profitably be sought, such as, for instance, the threat or use of force in territorial or boundary disputes.

3. His delegation's position on the principle of equal rights and self-determination of peoples was, however, quite different. Much more work remained to be done on that principle. If progress towards its formulation had been very slight as compared with that achieved in the case of the principle he had just discussed, that was largely the fault of the Charter itself. The principle prohibiting the threat or use of force was dealt with in detail in the Charter, not only in Article 2 but also in Chapters VI, VII and VIII. The principle of equal rights and self-determination of peoples was, however, referred to only in Articles 1 and 55, and then only indirectly. That was the only guide the Special Committee had in evolving a legal formulation of that principle. While progress so far had not been encouraging, that was largely due to the fact that the principle involved one of the areas of international relations in which law and politics were closely interrelated. For that reason all that could ultimately be expected would be a broad formulation of the principle.

4. It was his conviction that the so-called "right to rebel" was necessarily extra-legal; no system of law could recognize a right of rebellion or revolution. No rules aiming at the dismemberment of existing States could be made compatible with the Charter, which was expressly based on the sovereign equality of all Members of the United Nations. The Charter was a highly realistic document, which mankind should content itself with applying through the machinery it had established.

5. On the subject of the Special Committee's methods of work, he said that the representative of the Soviet Union, speaking of the future work of the Special Committee, had declared (1092nd meeting) that the principles of coexistence would be adopted with or without the agreement of the States which he was then condemning. That, of course, had been a reference to the well-established provision that the consensus method employed by the Special Committee was without

prejudice to the rules of procedure of the General Assembly, which provided for the adoption of resolutions by majority vote. He, for his part, would merely observe that majority votes in the General Assembly did not, in themselves, create rules of general international law or provide a short route to the creation of such rules. The only occasion on which the Special Committee had had recourse to a majority vote on a legal point of substance had, unfortunately, created difficulties whose effects were still being felt. General Assembly resolutions might serve as the foundation for rules of general international law, but only in so far as they reflected the general practice of States. That was the goal towards which the Special Committee should constantly work.

6. JONKHEER VAN PANHUYS (Netherlands) said that he wished to make some remarks on the two principles discussed by the Special Committee at its 1968 session. The degree of agreement already reached on those principles was, in his view, an important contribution to the development of the law of international peace and security, and the fact that representatives of States belonging to different parts of the world and of different political systems had attempted to formulate a common legal language on such questions was a favourable augury for the cause of peace.

7. In connexion with the principle prohibiting the threat or use of force, he would deal with the concept of "war of aggression" as an "international crime", with the question of reprisals and with international lines of demarcation. He wished to point out, in connexion with the first of those questions, that some recent interpretations treated war as a situation rather than an act; if that interpretation was accepted, the language of the Czechoslovak proposal (see A/7326, para. 22), which referred to "the planning, preparation, initiation and waging of wars of aggression" was more accurate than a simple reference to a "war of aggression". The term "international crime against peace", which occurred in all the proposals submitted to the Special Committee and was equivalent to the term "crime under international law", employed in Article I of the 1948 Convention on the Prevention and Punishment of Genocide, had been used in many treaties concluded at the time of the League of Nations. The Sixth Committee was not, of course, bound by such precedents and the recent development of international law seemed, in any event, to have given a wider meaning to the term. According to Barondon[1] and Brownlie,[2] the term, at the time of the travaux préparatoires, had probably not implied any individual criminal responsibility. It was questionable, in fact, whether it was possible to speak of crimes committed by States, as distinct from those of individuals acting on their behalf. His delegation considered that the branding of certain acts as international crimes implied, in any case, that all States had a duty to refrain from such acts and to punish those who attempted their commission. Moreover, the non-observance of that duty resulted in the responsibility of the State concerned, with the implication that it had a duty to make reparation for the losses caused by the unlawful action in question. In modern law, however, the criminal responsibility of individuals was present in addition to that of States and Governments, as was shown, in particular, by the Charter of the Nürnberg Tribunal,[3] the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal formulated by the International Law Commission in 1950 (Principle VI),[4] and the draft Code of Offences against the Peace and Security of Mankind produced by that Commission in 1951.[5] He quoted article 6 (a) of the Charter of the Nürnberg Tribunal, which defined crimes against peace as "planning, preparation, initiating or waging of a war of aggression ... or participation in a common plan or conspiracy for the accomplishment of any of the foregoing..." and observed that that wording, despite the criticisms to which it had been subjected, had at least the merit of identifying the specific acts for which the individual citizen could be held responsible.

8. In his delegation's opinion, the rather vague term of "waging" a war of aggression should not be interpreted as warranting the imposition of a collective punishment on the soldiers in the field and civilians supporting the war effort. That had certainly not been in the minds of the drafters of the Nürnberg Charter. In that connexion, he referred to the term "the command of State" used by Pieter Drost in his book on the crime of State,[6] a term that covered both the superior orders which individuals might in certain circumstances invoke as a mitigating factor and general duties arising from the legislation of the State, which must a fortiori offer a means of defence, if not an absolute defence, in view of the sanctions general provided in such laws.

9. Turning next to the question of the prohibition of reprisals, which some delegations thought should be extended to acts other than those of a military nature (see A/7326, para. 64), he expressed his delegation's doubts about the propriety of outlawing acts which, in the legal tradition (according to the treatise on international law by Oppenheim and Lauterpacht[7] were measures taken by one State against another State in order to obtain justice for an international delinquency, such acts being otherwise illegal. Such outlawry would be an innovation which would be highly unrealistic, for it was most unlikely that a State which could not obtain reparation by amicable means would be prepared to go on carrying out its international obligations as though nothing had happened. Indeed, the cause of the development of international law would be much better served if the institution of non-armed reprisals was recognized as a legal institution. It was in fact the exercise of a right which, in accordance with generally accepted views, was subject to strict conditions. First, such

1/ See P. Barondon, Le système juridique de la Société des Nations pour la prévention de la guerre (Paris, Genève & Pedone, 1933), p. 280.

2/ See Ian Brownlie, International Law and The Use of Force by States (Oxford, Clarendon Press, 1963), p. 156.

3/ See The Charter and Judgment of the Nürnberg Tribunal (United Nations publication, Sales No.: 49.V.7).

4/ See Official Records of the General Assembly, Fifth Session, Supplement No. 12, part III.

5/ Ibid., Ninth Session, Supplement No. 9, chapter III.

6/ Pieter N. Drost, The Crime of State, Penal Protection for Fundamental Freedoms of Persons and Peoples (Leyden, A. W. Sythoff, 1959).

7/ See L. Oppenheim, M.A., LL.D., and H. Lauterpacht, LL.D., International Law—a Treatise, 7th ed. (London, Longmans, Green and Co., 1952), vol. II (Disputes, war and neutrality), p. 136.

reprisals were admissible solely in cases where the State against which they were directed had committed acts which constituted violations of international law in respect of the State engaging in the reprisals. Secondly, they were admissible only if negotiations for the purpose of obtaining reparation had been conducted in vain.[8] Thirdly, they must be proportionate to the wrong done and to the amount of compulsion necessary to obtain reparation.[8] That requirement, in particular, was essential to the concept of reprisals as an institution of international law. The obligations arising from treaties must also be taken into account, especially those establishing international organizations, with regard to the settlement of disputes.

10. At the same time, there was no denying that the right of reprisal could give rise to abuse, especially in the case of a dispute between a powerful State and a weak one. That sole possibility, however, should not necessarily lead to the abolition of the right, unless better remedies could be offered to the injured State. However that might be, the best way of preventing the abuse of reprisals was to underscore the conditions to which their exercise was subject. From the point of view of the progressive development of international law, it might be possible to strengthen those conditions by extending the jurisdiction of the international organs entrusted with the peaceful settlement of disputes. His delegation would like the Special Committee to consider the possibility of endorsing, in an international legal instrument such as a treaty, a rule of international law which, as was implied in the international law already in force, prohibited a State from applying reprisals if it was not willing to submit the dispute to a settlement by international arbitration or adjudication or, if appropriate, by fact-finding bodies.

11. He thought that it was useful to point out that all the instruments in which the use of force had been outlawed had left room for the right of self-defence and that a comparison might usefully be made between the institution of non-armed reprisals and the right of self-defence. The latter right was subject to strict conditions, in particular with regard to the principle of proportionality, which was mentioned in the thirteen-Power proposal submitted to the Special Committee on the Question of Defining Aggression (see A/7185/Rev.1, para. 9). Such a comparison might at least be useful as a warning against over-rash conclusions concerning the wisdom of abolishing non-armed reprisals.

12. Referring to paragraph 70 of the report (A/7326), which recorded a suggestion to the effect that the elimination of any specific reference to territorial and boundary questions would have the advantage of disposing of the questions arising in connexion with "international lines of demarcation", he said that that attitude was rather like that of the ostrich. He thought it was better to acknowledge the fact that it was difficult to lay down any general rules concerning the inviolability of the "territory" of a State, which was an important element in any definition of the prohibition of the threat or use of force. In some cases, the "international lines of demarcation" had only a strictly defined temporary character; in others, their recognition might have been imposed on one State by another as the result of an act of aggression. From the legal point of view, their violation in such cases was of a less serious nature than the violation of State frontiers and might not even be unlawful. It was different, however, if their establishment had constituted the beginning of a political settlement of a dispute worked out, for example, under the auspices or through the mediation of the Security Council. If it proved possible for the Special Committee to reach agreement on the formulation of a rule concerning the inviolability of international lines of demarcation, the rule would have to be subject to the context of the special circumstances of the case at issue. An example was to be found in the joint proposal submitted to the Special Committee by Italy and the Netherlands in 1966,[9] in which the words "or other international lines of demarcation" in item 2 (c) could be deleted and replaced by a separate phrase stating: "A similar duty exists with regard to other international lines of demarcation, subject, however, to the context of the special circumstances of the case at issue, including the terms, and validity, of the treaty or agreement in which the lines of demarcation have been agreed upon."

13. Turning to the principle of equal rights and self-determination of peoples, he pointed out that one of the reasons for the failure of the Special Committee to arrive at a consensus might be the fact that some representatives, whether purposely or not, had identified the principle of self-determination with the principle of decolonization, while others had sought to formulate a definition of the right which would make it applicable to cases other than those created by colonialism. It was true that since 1945 an important set of rules of general international law had come into existence which, inter alia, imposed on States administering dependent territories the duty to grant self-government to the peoples of those territories. He reviewed briefly the factors that had contributed to the creation of that customary international law, which corresponded to the opinio juris of the world community. On the other hand, there were some States in which there were elements which had taken on the form of national minorities and it might be asked whether the set of rules developed in relation to colonial cases were valid in their case. It was doubtful, however, whether under the Charter, or under general international law, any rule in the strict sense had emerged conferring upon any minority in a State the right in all circumstances to proclaim and realize its independence and sovereignty. Many of the newly established States refused to recognize that right for national minorities as they might exist within their territories. That attitude was reminiscent of the uti possidetis principle established by the Latin American countries after their emancipation. The reluctance of certain States to apply the principle of self-determination on a general basis was of course understandable. In practice, the principle of equal rights and self-determination of peoples had nearly always been applied, in the past, to territories that were geographically distinct from the metropolitan State, and the claims of national minorities seemed to be much more complicated, involving such considerations as

[8] Ibid., p. 142.

[9] See Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 29.

the unity and security of the State as a whole and the viability of the new entity to be set up.

14. Those, however, were matters which did not relieve the Special Committee of its duty to try to formulate rules which could be applied to all comparable situations. It should be borne in mind that in Articles 1 and 55 of the Charter no differentiation was made between "nations" and "peoples". Nor could it be said that, while in respect of the colonial situation clear rules for the exercise of self-determination had come into existence, only a vague principle, devoid of any juridical meaning, could be invoked for other peoples who were not subjected to colonial rule in the classical sense of the term. The principle of self-determination was enshrined in the Charter and was therefore a legal principle, binding upon Members of the United Nations, and probably on other States too. Furthermore, the International Covenants on Human Rights had gone a step further and used the term "the right" of self-determination.

15. Although his delegation recognized the difficulties surrounding the problem, it felt that a solution could be facilitated by the acceptance of a differentiation which took account of the various conceivable cases. Two categories of situations could be distinguished. The first would include situations in which the "nation" claiming the right to exercise self-determination was a clearly identifiable entity, as, for example, in the case of countries under colonial rule. It could therefore include States or countries which were members of a federal union, even when the constitution of that union had not expressly conferred on its members the right of secession, since the capacity of an entity to exercise the right of self-determination might be presumed from the mere fact that it had joined a federation.

16. The second category would include all situations involving groups that lived within a State and had certain features distinguishing them ethnically or culturally from the majority of that State's population, while geographical and constitutional factors made it doubtful that they could be considered separate entities capable of becoming subjects of international law. An extreme example of that category would be a national minority whose members were not living in one region or province but were scattered throughout a country. It was in cases of that type that such factors as the unity and security of the State as a whole and the viability of the entity in question should be taken into account. Less far-reaching modes of self-determination might be applied in such cases; for example, the majority State might be required to refrain from discrimination against the members of the minority or to grant them the right to be consulted with regard to the enactment of laws and statutes or the conclusion of treaties affecting their rights and interests. It could be argued in such cases that in the evolution of international law many of the rights accorded to minorities in the minority treaties concluded during the period between the two world wars had become rules of unwritten international law.

17. The difficulties of applying the suggested distinction in borderline cases should not prevent it from being maintained wherever it served a useful purpose. Some justification for that distinction could be found in Principle IV approved by the General Assembly in its resolution 1541 (XV) of 15 December 1960 relating to the obligation to transmit information in respect of "a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it". Similar terms had been used in the United States proposal contained in paragraph 137 of the report (A/7326). Whatever usefulness such criteria might have, however, they should not be followed blindly.

Mr. Secarin (Romania), Rapporteur, took the Chair.

18. Mr. SIDDIQ (Afghanistan), after noting the terms of reference of the Special Committee under General Assembly resolution 1815 (XVII), expressed his conviction that the realities of current international life made it necessary, more than ever before, to clarify the meaning of the Charter principles underlying modern international law and co-operation between States with different political, economic and social systems.

19. His delegation had expressed its views on a number of occasions with regard to the four principles on which agreement had been reached, and he would therefore confine his remarks to the three remaining principles. He regretted that at its 1968 session the Special Committee had been unable to formulate the principle prohibiting the threat or use of force, to which Afghanistan attached great importance, or to complete the formulation of the principle of equal rights and self-determination of peoples and the principle of non-intervention. He emphasized that the principle prohibiting the threat or use of force should not be interpreted as being applicable to disputed territories or boundaries which formed remnants of colonial domination or political arrangements made by colonial Powers. That was an essential consideration in cases in which the peoples had been prevented from exercising their legitimate right of self-determination. Support given to the cause of such peoples could not be regarded as violation of the territorial integrity of a country or as intervention in its internal affairs if the country in question, against the will of the peoples it had oppressed and before they had an opportunity for freely determining their own fate, claimed that the areas it was occupying as a colonial Power were an integral part of its own territory. His delegation also believed that the term "force" should be understood to mean not only armed force but also economic, political and other forms of pressure which had the effect of undermining the territorial integrity or political independence of a State. It shared the view that wars of aggression constituted an international crime against peace and humanity and that situations resulting from the illegal use of force should not be recognized. Lastly, it believed that it was the duty of all States to refrain from any use of force against peoples struggling for their inherent right of self-determination and independence, on the basis of General Assembly resolution 1514 (XV).

20. The principle of equal rights and self-determination of peoples was no longer considered merely a moral or political postulate but was recognized as inherent and undeniable right of peoples which must be respected for the maintenance of international

peace and security. Finally, with regard to the principle of non-intervention, he regretted that the Special Committee had not been able to widen the area of the agreement already expressed in General Assembly resolution 2131 (XX).

21. In conclusion, his delegation favoured renewing the Special Committee's terms of reference, in the hope that it would succeed in formulating the remaining three principles.

22. Mr. YASSEEN (Iraq) wished to comment first on the Special Committee's methods of work, particularly on its procedure of consensus. Although, in his view, it was quite reasonable for the Special Committee, like the Sixth Committee or the General Assembly, to endeavour to reach a consensus, or at least agreement by a large majority, on each item, nevertheless consensus should not be sought at the expense of substantive content. The general acceptance of a proposition was not an end in itself and was useless if it related to points which were indisputable or no longer disputed; in other words, consensus should not serve to perpetuate the status quo or obstruct progress.

23. Secondly, he expressed support for renewing the terms of reference of the Special Committee, since it would be highly desirable to complete the declaration on the seven principles before the celebration of the twenty-fifth anniversary of the Charter. In particular, with regard to the principle of non-intervention, he favoured keeping the terms of reference stated in operative paragraph 5 of General Assembly resolution 2327 (XXII), under which the Special Committee would confine itself to considering proposals compatible with General Assembly resolution 2131 (XX); the application of that criterion would make it possible to safeguard past gains without obstructing the gradual development of the principle or possible improvements in its wording.

24. Lastly, he wished to comment on the substance of the principle prohibiting the threat or use of force. While it was necessary to declare that States should not resort to the threat or use of force—which was, in fact, clearly stated in the Charter—it was even more necessary to formulate a statement of the legal consequences of resorting to the threat or use of force, that is, to stress penalties and responsibilities. It must be emphasized that the obligation not to use force was not just a moral but a legal obligation. Consequently, the territory of a State must not be subjected to military occupation or other forms of the use of force on any pretext whatever, and situations resulting from the unlawful threat or use of force must not be recognized. Since the use of force was unlawful in character, the same was naturally true of its consequences. For that reason, non-recognition of such situations was essential. It was hardly surprising that, as such new rules were evolved, some States refused to acknowledge their consequences, which were unfavourable to them, and tried at all costs to cling to the outmoded rules of the old order.

25. In conclusion, he repeated his delegation's position that the movements for liberation from foreign domination, which were a world-wide phenomenon, represented the peoples' exercise of their right of self-determination and self-defence. They were also in accord with General Assembly resolution 1514 (XV) and thus were actually the fulfilment of an international duty.

26. Mr. GONZALEZ GALVEZ (Mexico) recalled that at the Sixth Committee's previous session (998th meeting) he had mentioned the political and legal reasons why various very important proposals regarding certain principles of international law concerning friendly relations and co-operation among States had been rejected. His delegation had believed that one reason why some States which had recently joined the international community refused to accept the compulsory jurisdiction of the International Court of Justice was because they were rebelling against an international legal order which they had not established and of which they had merely been passive subjects. His delegation had at that time suggested a far-reaching solution which would have enabled those new States to take part in the formulation of international law, which had evolved from a mere repetition of precedents to the status of a science.

27. In the present international situation, it was fitting to recall another proposal: the joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands, which had been before the Special Committee at its 1966 and 1967 sessions,[10] to the effect that Member States and United Nations organs should make fuller use of the means for the peaceful settlement of disputes set forth in Chapter VI of the Charter. That proposal had been rejected, other delegations maintaining that negotiation was preferable. However, that question was of major importance and deserved thorough consideration when violations of the fundamental principles of the United Nations Charter were occurring with increasing frequency and could cast doubt on the validity of the Charter as a means of maintaining world peace.

28. Indeed, what could a small country do in the United Nations in the face of an international conflict when, under the collective security system embodied in the Charter, a great Power could easily veto a decision of the Security Council and when the balance of forces—which had, inter alia, spawned the aberrant theory of spheres of influence—opposed the consideration of many problems whose solution was essential to the maintenance of world peace? Was it enough merely to denounce the violation of a principle, to condemn the action of a State and thereby convert the United Nations into a mere association of States, a forum where divergent views were aired, a debating society? Should opinion be mobilized to bring the matter before the General Assembly? Or should an army be sent to assist the country under attack, thereby launching a crusade in defence of freedom or some political or economic system?

29. Those solutions, particularly the last-named, were not the ones to be adopted. It was an indisputable fact that no State today was geographically or politically isolated from conflicts. Small countries and great Powers alike were vulnerable to the effects of a future war, which almost inevitably would be global and total.

10/ Ibid., Twenty-second Session, Annexes, agenda item 87, document A/6799, para. 371.

30. While it was true that small Powers did not have their own means of action within international organizations to ensure the maintenance of peace, nevertheless, the above-mentioned situations certainly gave them the opportunity to act decisively to maintain or re-establish peace.

31. The difficulty in trying to apply the provisions of Chapter VII of the Charter regarding collective security in an international society characterized by monolithic political forces made it nearly impossible to consider adopting enforcement measures. Rather, an effort should be made to strengthen the machinery for the peaceful settlement of disputes and conflicts. That was the type of action the small countries should take, for they possessed many votes and hence could exert moral and political pressure, which would be difficult to resist, on behalf of peaceful and constructive solutions.

32. However, that did not mean that the role which the Charter had assigned to the great Powers in such matters should be ignored. As the Minister for Foreign Affairs of Mexico had said in the general debate during the current session of the General Assembly (1681st plenary meeting), it would be desirable if the permanent members of the Security Council abstained more frequently, so as not to hamper the possible settlement of a dispute. In the case of some resolutions, such abstention would leave the way open for many solutions which those States could not accept for reasons of prestige. By accepting that formula, the permanent members would simply be acknowledging the fact that no State, no matter how powerful, could expect all conflicts to be resolved according to its own wishes.

33. It was important to improve methods for the peaceful settlement of disputes, not only in the situations already mentioned, but also in respect of the codification and progressive development of international law. The draft convention on the law of treaties and the draft agreement on liability for damage caused by the launching of objects into outer space at present being drawn up by the Committee on the Peaceful Uses of Outer Space were outstanding examples.

34. Turning to the report of the Special Committee, and particularly to its consideration of the principle prohibiting the threat or use of force, he stressed how essential it was to arrive at a complete formulation of that principle. In the present circumstances, that was a categorical imperative which should allow States no leeway for interpretation. Had the Special Committee's work been conducted in a more favourable atmosphere, it might have been able to arrive at a more complete formulation of the principle; nevertheless, considerable progress had been made and it had been possible to define areas of disagreement and to highlight points on which agreement had been or could be reached.

35. The basic problem to which that principle always gave rise involved the various definitions of the term "force". In 1964, the representative of India had said that there was no legal obstacle to including certain types of economic, political and other forms of pressure under that term. However, the United States representative had at the time presented decisive arguments against that view, asserting that the San Francisco Conference had rejected a proposal that would have included so-called economic aggression under Article 2, paragraph 4, of the Charter, and that several General Assembly resolutions appeared to suggest that the word "force" should be understood to mean "armed force".

36. His own delegation had not yet taken a final position on the question and would continue to give careful consideration to the arguments advanced. However, it felt that Article 51 of the Charter should be construed as narrowly as possible. In other words, there was no fact or situation which allowed acts other than armed aggression to be cited as justification for legitimate self-defence. The idea of force should not cover economic, ideological or indirect aggression and should be used solely to describe the most serious crimes against peace. Furthermore, in view of its belief that Article 51 should be of limited scope, his delegation could not agree to the inclusion of armed reprisals under legitimate self-defence. Reprisals carried out after an act of aggression had taken place were actually acts of vengeance and thus ran counter to the purposes of the Charter, as had been noted in Security Council resolution 188 (1964) of 9 April 1964. That was why a clause on that important question should be included in the formulation of the principle prohibiting the threat or use of force.

37. The principle of the non-recognition of territorial changes resulting from the illegal use of force had first been formulated at the First International Conference of American States held at Washington in 1889 and 1890 and had been reaffirmed many times prior to its embodiment in article 17 of the Charter of the Organization of American States. His delegation attached great importance to that principle, and its statement thereon appeared in paragraph 116 of the report of the Special Committee.

38. His delegation also regretted that it had not been possible to include the following two proposals in the formulation of the principle prohibiting the threat or use of force. The first, which his delegation had sponsored, was aimed at replacing the text of the corollary on disarmament by a formula based on article VI of the Treaty on the Non-Proliferation of Nuclear Weapons; [11] the second, which had been submitted to the Drafting Committee by the Swedish delegation, would have included in the formulation of the principle a paragraph stating that any use of force to prevent a dependent people from exercising its right to self-determination was a violation of the United Nations Charter.

39. There was no doubt that the principle of equal rights and self-determination of peoples should be given priority at the next session of the Special Committee since, owing to lack of time, it had not been found possible to consider any of the proposals concerning it. It was a field in which the international lawyer had to break new ground and not try to consolidate the existing law, created to preserve colonialism. The problem of the independence of colonial countries could not be hidden away much longer. Legal solutions would have to be developed which took account of current trends, and proposals made to bring

[11] See General Assembly resolution 2373 (XXII), annex.

out clearly the fact that the right of peoples to self-determination should be expressly authorized in the principle prohibiting the threat or use of force.

40. As for the principle of non-intervention, the major legal and political principles were not conceived in a vacuum, and each people attached importance to them in accordance with the course of its history. It was for that reason that the principle of non-intervention was so deeply anchored in the consciousness of the Mexican people, which belonged to a continent where intervention had historically run riot. Latin America had become independent at a period when international society had been thought of exclusively from a European standpoint. The few independent countries of Asia and Africa, and the Latin American nations, lived on the periphery of the so-called "civilized nations", at least with respect to the application of the principle of sovereign equality of States. Inequality of strength, inequality of treatment, real inequality of rights, such were the relationships which had then prevailed between the major Powers and the young Latin American republics.

41. As a result, there were two distinct and opposite concepts of the principle of non-intervention. The first made a distinction between licit and illicit intervention, the former comprising inter alia the financial control of insolvent debtor States and intervention for so-called humanitarian reasons or to protect foreign nationals and their property.

42. On the other hand, from the time Latin America became independent, its statesmen had adopted another concept which repudiated all forms of intervention; in 1825, Santander had made an unequivocal statement on that point in his reply to the historic appeal by the liberator Bolivar. It was naturally in periods of crisis that the most characteristic formulations appeared, such as the immortal maxim of Benito Juárez: peace is respect for the rights of others.

43. During the twentieth century, the history of Pan-americanism had been primarily that of the constant and prolonged struggle by the Latin American countries to proscribe intervention in the American continent. At the historic Sixth International Conference of American States at Havana in 1928, the Latin American attitude had clashed with the intransigent views of the United States Secretary of State, Charles Evans Hughes, who even at that period still claimed to make a distinction between intervention and what he called temporary intervention. Some years later, F. D. Roosevelt had adopted a good-neighbour policy, and a categorical formulation of the principle of non-intervention was, for the first time, unanimously accepted at the Seventh International Conference of American States, held at Montevideo in 1933, although its application was limited by a United States reservation of a general nature. It was only in 1939, at the Buenos Aires Inter-American Conference, that the principle had been definitively and fully established.

44. Those historical reminders explained the position of his delegation with respect to the principle of non-intervention. The definitive establishment of a formula acceptable to all, which had served as a basis for fruitful co-operation among the American States, was a genuine experience such as the Latin American continent could offer to the international community in cases where a similar conflict of interests occurred. The antagonisms which had been overcome and the problems which had been solved were neither different from nor greater than those encountered by the United Nations in preparing General Assembly resolution 2131 (XX) on non-intervention.

45. The position of his delegation took account of a second factor which could be entitled: "Foundations of the non-intervention principle in the United Nations Charter". It was vital, in fact, to study the provisions of that instrument, on which that principle was unquestionably founded, in view of the fact that the lengthy debates on the subject in the Special Committee had come to nothing and that a very important delegation had even held that the principle did not exist either explicitly or implicitly in the Charter.

46. In the first place, it should be remembered that the first of the principles which was to serve as the supreme standard for the Organization's activities was that set forth in Article 2, paragraph 1, of the Charter, namely that the Organization was based on the principle of the sovereign equality of all its Members. It followed inter alia from that principle that States were equal in law, that each State had an inherent right to full sovereignty and that the personality of the State and its political independence must be strictly respected.

47. As the competent committee of the San Francisco Conference had explained, intervention was thus incompatible with the respect for the personality of the State and its political independence which was implicitly contained in the principle of sovereign equality established by the Charter.

48. There was reason to note also that an important place among the purposes of the Charter was given to the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. It was hardly necessary to emphasize how incompatible intervention was with respect for that principle.

49. Next, there were two other provisions of the Charter from which it could be legally deduced that they involved the principle of non-intervention, namely Article 2, paragraph 4, which forbade the threat or use of force—the most serious and most characteristic forms of intervention—and Article 2, paragraph 7, which forbade the Organization itself to intervene in matters essentially within the domestic jurisdiction of any State. If the Charter decreed such a prohibition for the Organization itself, it followed a fortiori that the prohibition also applied to its Member States.

50. In the third place, his delegation had based its position on the adoption by the General Assembly on 21 December 1965 of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, which was contained in its resolution 2131 (XX). That Declaration proclaimed a principle which was not new in the international order, since it had been laid down in numerous international in-

struments for a century and a half. The unanimous support it had received gave it a universal value.

51. Lastly, his delegation considered that, although it must be recognized that the texts of Assembly resolution 2131 (XX), and of the Charter, could be improved upon, it was natural that any document resulting from negotiations between representatives of States with opposing interests should present imperfections of form. However, difficulties in interpreting resolution 2131 (XX) should prove no more serious than those which had to be resolved daily by all the courts and political organs in the world which had to apply legal standards. Many important legal terms had an approximate sense and had to be interpreted in a reasonable way, taking account of the particular period and of the political, economic, social or legal context in which they were applied.

52. In conclusion, with those basic premises his delegation reaffirmed its well-known position on that question; nevertheless, it understood that other delegations held different views on the matter. Therefore, as his delegation had stated at the twenty-second session (see 998th meeting), it would be prepared to negotiate, not on the form and content of General Assembly resolution 2131 (XX), but on any additional proposal which might be submitted and on the best way to resolve that irreconcilable difference of opinions, which, in due course, might endanger the entire implementation of the seven principles.

The meeting rose at 1.10 p.m.

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