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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. Mr. DEBERGH (Belgium) noted with satisfaction that the Special Committee had been able at its 1968 session to widen the area of agreement on the principle prohibiting the threat or use of force. Although the progress achieved had been modest, his delegation considered that the Special Committee's work had been of positive value, and would therefore not oppose the extension of its mandate. With regard to the future work programme, his delegation believed that the Special Committee should attempt first to complete consideration of the principle prohibiting the threat or use of force and should then concentrate on the formulation of the remaining two principles on which no agreement had as yet been reached. Finally, it should reconsider all the texts adopted in order to harmonize them with decisions taken at a later stage.

2. In view of the very delicate nature of the quasi-legislative competence of the General Assembly, any undue haste in the completion of the Special Committee's work would inevitably have an adverse effect on the quality, and above all on the applicability, of the formulations. Although some delegations had understandably expressed some impatience at the slow

rate of progress achieved, it should be borne in mind that in legal work of that kind valid results could be achieved only through a lengthy and patient process of comparative study, careful negotiation, and compromise. So far, only four of the seven principles which the Special Committee had been instructed to consider had been embodied in more or less satisfactory formulations, and even those would always be subject to revision in the light of the changing international situation. Moreover, the close interrelationship of the principles made it impossible to consider them separately and in the abstract. Any failure to act otherwise might result in texts which, although impressive from the political point of view, were too vague and impractical to serve the purposes of international law. There was also the risk that such texts might be unduly influenced by one particular political or economic philosophy. If they were not acceptable to all States, they would not have universal application, and, far from contributing to the promotion of friendly relations and co-operation among States, they would merely add to international confusion and misunderstanding.

3. His delegation welcomed the Special Committee's reaffirmation, in the light of Article 2 of the Charter, of the principle that the threat or use of force should never be employed as a means of settling international issues. The prohibition of propaganda for wars of aggression raised serious difficulties of definition, and his delegation urged strongly that the Special Committee, in its further consideration of that question, should give close attention to the amendment submitted by the Netherlands and Italy (see A/7326, para. 25), which linked the principle to that of the free exchange of information and ideas as a prerequisite for mutual understanding among peoples.

4. His delegation associated itself with the Special Committee's agreement in principle that every State had the duty to refrain from the threat or use of force in territorial disputes and boundary problems, and considered that the formulation of that point should be as comprehensive as possible and should therefore include a reference to international lines of demarcation—a valuable invention of international law and a legal fact in the creation of which the United Nations had many times played a part. The risk that international lines might sometimes serve to perpetuate an illegal situation would be minimized by the inclusion of a formula concerning the non-recognition of situations brought about by the illegal threat or use of force.

5. His delegation hoped that, in its further consideration of the principle of equal rights and self-determination of peoples, the Special Committee would not lose sight of the fact that the principle of self-

determination, as set forth in the Charter, was not confined to the context of colonialism.

6. Mr. GORDILLO (Peru) said that the 1968 session of the Special Committee had been fairly fruitful, since the areas of agreement on the principle prohibiting the threat or use of force had been considerably widened. His delegation regretted that owing to lack of time the Special Committee had been unable to carry out a study in depth of the principle of equal rights and self-determination of peoples—a principle which had played a leading role in the history of the American States.

7. Regarding the principle of non-intervention, he drew attention to the fact that the General Assembly, in resolution 2327 (XXII), had requested the Special Committee to consider proposals compatible with General Assembly resolution 2131 (XX), not to produce a new formulation of that principle. His delegation believed that resolution 2131 (XX) should be taken as the basis for further attempts to widen the area of agreement on that principle.

8. The principle of non-intervention, which was based on the sovereign equality of States, was one of the greatest American contributions to international law. Ever since achieving their independence, the Latin American States had been the victims of innumerable interventions, both by European monarchies seeking to recover their former colonies and by the United States of America for a variety of reasons, equally condemnable. The history of the Americas was a history of heroic struggle against intervention. The only defence of the weak countries against the interventionist policies of the great Powers lay in respect for legal international order. The young Latin American republics were all united in the struggle to defend their sovereignty and newly won independence. At the Congress of Panama in 1826, and at subsequent inter-American conferences, Peru had firmly upheld the principle of non-intervention. At the Seventh International Conference of American States, held at Montevideo in 1933, the principle had been adopted definitively as a legal norm and had been reaffirmed in the subsequent inter-American legal instruments enumerated in the preamble of General Assembly resolution 2131 (XX). The adoption of that resolution had been due largely to the efforts of the Latin American countries, in co-operation with the States of Africa and Asia, which were similarly aware of their vulnerability in the face of big-Power politics.

9. His delegation could not fail to notice that it was the countries least qualified to pronounce judgement concerning the principle of non-intervention that challenged the legal validity of General Assembly resolution 2131 (XX). The Declaration contained in that resolution embodied the new legal order and was designed to safeguard the sovereignty and independence of States against outside intervention, while not presenting an obstacle to legal collective action taken in conformity with the principles of the United Nations Charter.

10. His delegation believed that the Special Committee at its next session should complete the formulation of the two outstanding principles and should consider the possibility, on the basis of concrete

proposals, of widening the area of agreement on the principle of non-intervention.

11. Mr. ALCIVAR (Ecuador) said that, at the seventeenth session of the General Assembly, the Sixth Committee had been divided on the question of the desirability of expediting the progressive development and codification of the principles. At that time, against the background of the Caribbean crisis of October 1962, certain Latin American delegations, including his own, had felt that a precise statement of those principles, which could serve as a universally applicable norm of international law, was essential. With the co-operation of the African and Asian delegations, and after negotiations with the socialist and the Western countries, they had finally achieved the unanimous adoption of General Assembly resolution 1815 (XVII), in which the Assembly had decided to undertake a study of the principles. The actual establishment of the Special Committee, under General Assembly resolution 1966 (XVIII), had likewise been the result of difficult negotiations, and the unanimous adoption of that resolution had been obtained at the cost of dangerous compromise. Since the Special Committee, unlike the International Law Commission, consisted of representatives of States, there was a serious risk that a consensus could be obtained only by sacrificing legal considerations to political interests. As a small country, Ecuador found that price too high.

12. He endorsed the statements made by the representatives of Mexico (1095th meeting) and Peru concerning the history of interventionism in Latin America. His delegation agreed that General Assembly resolution 2131 (XX) contained a valid legal formulation of the principle of non-intervention. The argument that it was a political statement and therefore had no legal validity was fallacious, since it implied that the terms "political" and "legal" were antithetical. Such an assertion could be interpreted only as an attempt to make law the handmaid of power politics. His delegation firmly believed that General Assembly resolution 2131 (XX) was a valid legal instrument. It could therefore not accept any dilution of the Special Committee's terms of reference regarding the principle of non-intervention as laid down in General Assembly resolution 2327 (XXII). The present item was one of the most important on the agenda of the General Assembly and one vital for the survival of mankind.

13. Mr. JAFRI (Pakistan) said that, as its report showed, the Special Committee, despite its failure to produce an agreed formulation of the principle prohibiting the threat or use of force, had made substantial progress in narrowing the area of disagreement. He regretted that the Special Committee had not had sufficient time to consider in detail the principle of equal rights and self-determination of peoples.

14. In view of the history of the discussion of the seven principles identified for codification, it might be asked why the Special Committee had not achieved agreement on the principle prohibiting the threat or use of force, that of the peaceful settlement of international disputes, and that of non-intervention. It must be recognized that the cause was the mistrust prevalent in the contemporary international situation and the

breakdown in communications resulting from the fact that the same expression sometimes carried different meanings, depending on the State using it.

15. With regard to the question whether an agreed text on any one of the seven principles would really facilitate its application to any particular situation, he felt that there was hardly any situation of friction or conflict which did not involve more than one of those principles, because they were linked together not only conceptually but also operationally. Accordingly, the clarification of any one principle would not be helpful in dealing with specific situations unless the other principles were also carefully elucidated and codified. Until the Special Committee had approved a comprehensive declaration on all seven principles, there was a risk of misplacement of emphasis and therefore of a loss of perspective. The United Nations Charter itself, though imperfect, implied an integral approach to which all Member States had subscribed and the balance of which could be upset only at some risk.

16. In his view, the following criteria should be applied in evaluating the result of the Special Committee's work. The formulation of any principle should take account, not of the immediate political interests of any State or group of States, but of the interest of the rule of law in an evolving world order. The formulation of any principle should contain an unambiguous reference to the interdependence of that principle and the other fundamental principles involved. His delegation therefore hoped that the following paragraph would be included in the draft declaration: "The above principles are interrelated and each principle should be construed in the context of the other principles".^{1/} Lastly, the formulations should not weaken the normative content of the Charter.

17. With regard to the method employed by the Special Committee, his delegation was somewhat sceptical of the validity of a procedure by which partial formulations were presented merely because they had obtained general agreement, even though it was generally recognized that the principles as a whole required fuller definition.

18. With regard to the meaning of the term "force", he wondered whether a formulation would be balanced if it focused upon the use or encouragement of irregular or voluntary forces without at the same time making it clear that the use of police or military forces in suppressing movements for the exercise of the right of self-determination was equally impermissible. Neither the Special Committee nor the working groups had reached agreement on the application of the rule prohibiting the organization of armed bands or the instigation of civil strife or terrorist acts to situations where peoples of dependent territories were deprived of their right to self-determination.

19. The words "colonial" and "dependent" had never been legally defined. The use of the term "subjugated" was also unsatisfactory because it suggested the absence of a resistance movement. To be legally usable, those terms must be purged of any racial or

continental connotation. A possible definition might be that a people was dependent when its territory was occupied by another State in contravention of international agreements or Security Council resolutions, and when its right to determine its own future status was expressly recognized either in General Assembly resolution 1514 (XV) or in Security Council resolutions.

20. He believed that further meetings of the Special Committee would be useful in making real progress towards a generally acceptable formulation of all seven principles.

21. Mr. SIYOLWE (Zambia) recalled that the question of friendly relations and co-operation among States had been one of the fundamental principles of the League of Nations as well as of the United Nations. In view of the tremendous importance of the seven principles, he regretted that those who had drafted the United Nations Charter should be the first to abuse it. Peace could hardly be expected unless all States, and especially the "missile countries", fulfilled in good faith the obligations they had assumed under the Charter. Yet the big Powers had disregarded situations where force was being used to deprive the peoples of the dependent territories of their right to self-determination. Economic, political or any other form of pressure against the political independence or territorial integrity of a State or territory should be considered as one of the worst kinds of aggression, because it deprived people of their dignity and their right to self-determination.

22. He regretted that the Special Committee had not reached agreement on the concept of the self-defence of peoples against colonial domination in the exercise of their right of self-determination. Whether or not States considered that principle as an international legal concept of high priority, their early recognition of it would serve the cause of human dignity and peace, because all territories under minority régimes in Africa and elsewhere would eventually be free.

23. His country felt that any nation which considered power or wealth or ideology more important than man and his dignity was doomed to failure, because all over the world the peoples were asking for a return to a man-centred, and not a missile-centred, society. The illegal régimes of South Africa, Southern Rhodesia and South West Africa must be condemned again by all States Members of the United Nations, because their very existence contravened the seven fundamental principles. The Special Committee must therefore continue its work on that item, bearing in mind that all seven principles were interlinked and that none could or should be treated separately.

24. His delegation was distressed that the Special Committee had been unable to reach a consensus on the principle prohibiting the threat or use of force, that of equal rights and self-determination of peoples, and the duty of States to co-operate with one another, for those principles had a bearing on the maintenance of peace and the advancement of the well-being of man.

25. His delegation hoped that a declaration embodying all seven principles could be approved in time for the twenty-fifth anniversary of the United Nations. Although twenty years had elapsed since the adoption

^{1/} See Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 87, document A/6799, para. 454.

of the Universal Declaration of Human Rights, many Africans were still denied their most elemental rights. It was deplorable that the threat or use of force had become an instrument of political control in southern Africa. His country was surrounded by colonialist, imperialist and illegal racist régimes, all of which showed gross disregard for the principles of international law concerning friendly relations and co-operation among States. Moral sanctions and mere paper guarantees were not enough to correct injustices; his country was more interested in social justice than in legalism. In its last desperate effort to maintain its illegal power in Africa, Portugal had violated his country's territorial integrity on numerous occasions. Yet so far the great Powers had not condemned Portuguese atrocities in Africa. The United Nations must take its obligations as international peacemaker more seriously.

26. Mr. MESLOUB (Algeria) said that his country, as a member of the Special Committee, had expressed its views on the seven principles in that body; he would now merely reiterate certain positions of principle on questions on which he felt no compromise was possible.

27. In 1968, the Special Committee had achieved only very modest results; it had hardly taken up the principle of non-intervention or the principle of equal rights and self-determination of peoples, which were of particular importance to his delegation. While time had been lacking, the meagre progress had also been due to fundamental divergencies over the very substance and the essential components of those principles.

28. The Special Committee had, however, made some progress on the formulation of the principle prohibiting the threat or use of force and its corollaries, and the emergence of a number of areas of agreement opened up the possibility of arriving at a text acceptable to all. However, his delegation regretted that the formulation of that principle did not include a provision relating to the non-recognition of situations brought about by the illegal threat or use of force. Such a provision would have made it easier to stipulate that the territory of a State might not, on any grounds whatever, be the object of military occupation or any other coercive measures.

29. His delegation could not support a formulation which failed to guarantee to the peoples of the Non-Self-Governing Territories the right to free themselves from colonial domination by all means possible, including the use of force. General Assembly resolution 1514 (XV) prohibited all armed action or repressive measures of all kinds against peoples exercising the right to self-determination.

30. His delegation regretted that some countries had not recognized the right of peoples to self-defence, thus deliberately, in some cases, contributing to the perpetuation of régimes which were defying the international community. Thanks to the connivance of some Powers, the minority régimes of Pretoria and Salisbury were continuing to keep their indigenous populations in subjection, refusing them their inalienable rights to self-determination. A similar phenomenon was taking place in the Middle East,

where virtually a whole people had been ejected from their territory by force and had become refugees in other States. The peoples of the so-called Portuguese Territories were fighting against the most reactionary type of colonial domination. It was the duty of all States to assist those peoples. Words alone carried no conviction of any real desire to co-operate in building international legal order founded on the principles with which the Special Committee was concerned.

31. His delegation had drawn attention to the negative factors characterizing the present international situation because it felt that certain circles deliberately willed the maintenance of a situation which furthered their designs and because it hoped that one day those circles would join their efforts to those of the peace-loving countries. Only in that way could real progress be made towards the establishment of a just and equitable international society. It was in that spirit that his delegation would support the prolongation of the Special Committee's mandate.

32. Mr. JAZIC (Yugoslavia) said that the progress made by the Special Committee at its 1968 session was all the more commendable in view of the fact that general political conditions had been far from encouraging. The importance of the principle prohibiting the threat or use of force was so great that all efforts should be directed towards its final formulation and the widest possible acceptance of its legal content. The principle must embody all forms of the use of force. The only exceptions that could be made to the prohibition of the use of force were its use in legitimate self-defence, in collective security measures undertaken by the United Nations and in the exercise of the right of peoples to self-determination and national independence.

33. The formulation of the principle should also include a definition of the term "force", a prohibition of political, economic and other forms of pressure in violation of the Charter, a statement that the territory of a State might never, on any grounds whatsoever, be the object of military occupation or other coercive measures, and the non-recognition of situations brought about by the illegal threat or use of force. The formula contained in the report of the Special Committee could serve as a useful basis for discussion in the coming year. At the same time, it should be recognized that, however perfect the formulation adopted, force could not be eliminated from international relations until States abandoned the threat or use of force as an instrument for imposing their will upon others.

34. His delegation supported the Special Committee's recommendation that it should in its future work give priority to the principle of equal rights and self-determination of peoples. His delegation believed that the recognition of the right of peoples to self-determination and independence should be supplemented by two further principles: the duty of colonial countries to allow peoples to realize their aspiration by peaceful means, and the right of people under colonial domination to fight for their liberation by all possible means if the colonial Powers refused to recognize their right to self-determination and independence.

35. His delegation favoured prolonging the mandate of the Special Committee, so that it could complete

its work by the twenty-fourth session of the General Assembly. It should give priority to the two principles on which it had as yet no agreed texts, and if possible finish all its remaining work.

36. If the Special Committee succeeded in completing the formulation of all seven principles by 1970, the Sixth Committee might consider the adoption of a declaration. Such a declaration would be a significant contribution towards universal respect for the Charter and the progressive development of international law.

37. Mr. ROSSIDES (Cyprus) said that the Special Committee's agreement on the statement that a war of aggression constituted a crime against the peace, for which there was responsibility under international law, demonstrated once again the need for a definition of "aggression" and the need for progress on the draft Code of Offences against the Peace and Security of Mankind and the question of an international criminal jurisdiction—questions which had remained in abeyance pending a definition of aggression. His delegation did not agree with the view that the work of the Special Committee made a definition of aggression unnecessary.

38. He welcomed the agreement reached in the Special Committee on the fact that States had a duty to refrain from acts of reprisal involving the use of force and to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands, including mercenaries, for incursion into the territory of another State. A distinction had rightly been drawn between such incursion and aggression. It was also encouraging to note the agreement reached that States should refrain from involvement in civil strife and terrorist acts in another State. Still more important was the agreement on the need for States to comply with their obligations under the generally recognized principles and rules of international law and to strengthen the United Nations security system. It would be impossible to attain the goal of disarmament unless the rule of law prevailed.

39. The areas on which no agreement had been reached were, in his delegation's view, less important. The question of the legal use of force need not necessarily be considered in the context of Article 2, paragraph 4, of the Charter. It was covered by Article 51. His delegation could support the formulation proposed by the Drafting Committee to the effect that "nothing in the foregoing paragraphs is intended to affect the provisions of the Charter concerning the lawful use of force".

40. Similarly, no agreement had been reached on a statement concerning military occupation and non-recognition of situations brought about by the illegal threat or use of force. There was, however, no need for such a statement. Since the Charter prohibited the use of force, it naturally followed that situations brought about by its use could not be recognized.

41. His delegation adopted a sympathetic attitude towards the inclusion of a formulation to the effect that the use of force by peoples in dependent territories was lawful self-defence against colonial domination. The right to self-determination occupied a prominent place in Chapter XI of the Charter, in the International Covenants on Human Rights and in the

resolutions of the General Assembly. There was no peaceful remedy available to the dependent peoples when that right was violated, so that they had to repel forcible domination and subjugation by force. However, that was a question which should be considered in the context of Chapter XI and not Article 2, paragraph 4, of the Charter.

42. With regard to the principle of non-intervention, the Special Committee should abide by the formulation in General Assembly resolution 2131 (XX), which had been adopted without a dissenting vote, unless it was able to produce a better formulation.

43. The Special Committee should complete its work on the remaining principles before it in 1969 and should be given sufficient time to do so. A complete formulation of the seven principles of international law concerning friendly relations and co-operation among States should be ready in time for the twenty-fifth anniversary of the founding of the United Nations.

44. Mr. OSTROVSKY (Union of Soviet Socialist Republics), replying to the statement made by the Australian representative (1095th meeting), said that the latter had quoted passages but had failed to quote other equally important passages of the Soviet statement. He had said that his delegation considered it more tragic than ironic that many States necessarily had to take steps to defend their vital interests. Subversive action by international forces against one State called for equal and opposite counteraction. All such questions were part of a complex and must be seen in their proper context.

45. Mr. KAMAT (India), replying to observations made by the Ethiopian representative at the 1092nd meeting, said that in 1968 the Committee had had to confine its report to the three principles on its agenda for reasons of economy and in order to comply with General Assembly resolutions on documentation. He hoped, however, that a more comprehensive report could be prepared at the Special Committee's next session.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression (concluded) (A/7185/Rev.1; A/C.6/L.734)

46. Mr. DADZIE (Ghana) inquired whether any results had been achieved during the private consultations on the subject of the date of the 1969 session of the Special Committee on the Question of Defining Aggression.

47. After a discussion in which Mr. STAVROPOULOS (Legal Counsel), Mr. DARWIN (United Kingdom), Mr. ALCIVAR (Ecuador), Mr. ROSENSTOCK (United States of America), Mr. ROSSIDES (Cyprus), Mr. QUERALTO (Uruguay), Mr. DADZIE (Ghana), Mr. GONZALEZ GALVEZ (Mexico), Mr. ROBERTSON (Canada), Mr. MUTUALE (Democratic Republic of the Congo), Mr. OSTROVSKY (Union of Soviet Socialist Republics) and Mr. FRANCIS (Jamaica) took part, the CHAIRMAN suggested that further consultations should be held on the subject.

It was so decided.

AGENDA ITEM 88

Report of the United Nations Commission on International Trade Law on the work of its first session (continued) (A/7216; A/C.6/L.648 and Add.1, A/C.6/L.673, A/C.6/L.738/Rev.1 and Add.1)

48. Mr. STAVROPOULOS (Legal Counsel) explained the financial implications of the suggestion made by the Chairman of the Fifth Committee that the Chairman or one of the other officers of the United Nations Commission on International Trade Law should introduce that Commission's report each year in the Sixth Committee. In accordance with General Assembly resolution 1798 (XVII) of 11 December 1962, the United Nations would pay the travel and subsistence expenses of the person concerned, and the annual cost was estimated at \$2,500.

49. Mr. DADZIE (Ghana), Chairman of the United Nations Commission on International Trade Law at its first session, introducing draft resolution A/C.6/L.738/Rev.1 and Add.1, said that the Democratic Republic of the Congo, Nigeria and Zambia had asked to be included among the sponsors of the text (see A/C.6/L.738/Rev.1/Add.2). The text, which was the outcome of informal consultations, took into account a number of comments and suggestions made during the debate. Because certain objections had been raised,

particularly regarding the costs involved, paragraph 4 of the draft resolution merely approved "in principle" the proposal to establish a register of international instruments and other documents. A final decision would not be taken until the Commission had considered the matter further, in the light of the discussions at the current session of the General Assembly. The sponsors had decided on the provisions in paragraphs 4 and 5 of their text in the light of the fact that the Commission would have to produce rapid results.

50. Paragraph 6 (b) had been included to meet the wish expressed by many members of the Trade and Development Board at its seventh session that the Commission should add international shipping legislation to its list of priority topics. Paragraph 6 (f) raised a new idea. It was felt that it would be best for the Commission to consider the possibility of issuing a yearbook now rather than at a later stage in its work. The General Assembly would naturally have to give its final approval if it was decided to issue such a publication.

51. The revised draft resolution reflected the views of the majority of the members of the Sixth Committee and should be adopted without difficulty.

The meeting rose at 6.20 p.m.