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Report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States

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I. Introduction

A. ADOPTION AND ORGANIZATION OF THE REPORT

1. The 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States met at United Nations Headquarters, pursuant to General Assembly resolution 2103 A (XX) of 20 December 1965, from 8 March to 25 April 1966. On 23 April 1966, the Special Committee considered and approved the draft report presented by its Rapporteur,[1] subject to the inclusion in the final version of the decisions of the Special Committee.

2. The introduction to the report, contained in chapter I, briefly recalls the background of the work of the 1966 Special Committee, and it then describes the composition, terms of reference and organization of the session of the Committee. Chapters II to VIII deal successively with the seven principles of international law referred to the Committee by the General Assembly in its resolution 2103 (XX). These chapters commence with the texts of written proposals and amendments submitted to the Committee on the particular principles with which they deal, then give a summary of the debate in the Committee on those principles and conclude with an account of the decisions of the Committee. Chapter IX contains an account of the conclusion of the work of the Special Committee with respect to those principles before it on which it was unable to arrive at any agreed formulations.

B. BACKGROUND OF THE WORK OF THE 1966 SPECIAL COMMITTEE

3. The item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" was discussed by the General Assembly at its seventeenth, eighteenth and twentieth sessions (see also para. 9, below). These discussions resulted *inter alia* in the adoption of General Assembly resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963 and 2103 (XX) of 20 December 1965.[2]

[1] Documents A/AC.125/L.38 and Corr.1, Add.1 and Corr.1, Add.2, Add.3 and Corr.1, Add.4 and Corr.1, Add.5, Add.6 and Corr.1, and Add.7, mimeographed.

[2] Other resolutions adopted in connexion with the item are resolution 1816 (XVII) of 18 December 1962, on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law and resolutions 1967 (XVIII) of 16 December 1963 and 2104 (XX) of 20 December 1965 on the question of methods of fact-finding. As these resolutions were not within the mandate of the 1966 Special Committee they are not set out in the body of the present report.

4. By operative paragraph 1 of its resolution 1815 (XVII), the General Assembly recognized:

"... the paramount importance, in the progressive development of international law and in the promotion of the rule of law among nations 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, notably:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"(*d*) The duty of States to co-operate with one another in accordance with the Charter;

"(*e*) The principle of equal rights and self-determination of peoples;

"(*f*) The principle of sovereign equality of States;

"(*g*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;".

5. By operative paragraph 3 of resolution 1815 (XVII), the General Assembly decided to study, at its eighteenth session, the following four principles:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"(*d*) The principle of sovereign equality of States;".

6. Discussion of these four principles at the eighteenth session resulted, *inter alia,* in the adoption of General Assembly resolution 1966 (XVIII) by which the Assembly decided:

"To establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States—composed of Member States to be appointed by the President of the General Assembly...".

In operative paragraph 1 of the same resolution, the Assembly referred the four principles set out in opera-

of Assembly resolution 1815 (XVII), having full regard to matters on which the previous Special Committee was unable to reach agreement and to the measure of progress achieved on particular matters;

"(*b*) To consider the three principles set forth in paragraph 5 of General Assembly resolution 1966 (XVIII), with particular regard to:

"(i) The practice of the United Nations and of States respecting the application of the principles laid down in the Charter of the United Nations;

"(ii) The comments submitted by Governments on this subject in accordance with paragraph 6 of resolution 1966 (XVIII);

"(iii) The views and suggestions advanced by the representatives of Member States during the seventeenth, eighteenth and twentieth sessions of the General Assembly;

"(*c*) To submit a comprehensive report on the results of its study of the seven principles set forth in resolution 1815 (XVII), including its conclusions and recommendations, with a view to enabling the General Assembly to adopt a declaration containing an enunciation of these principles;".

15. In the first preambular paragraph of its resolution 2103 B (XX) the General Assembly recorded that it had:

"... *considered* the item entitled 'Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities'."

In the operative paragraph of that resolution, the Assembly requested:

"... the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, reconstituted under paragraph 3 of resolution 2103 A (XX) ..., to take into consideration, in the course of its work and in drafting its report, the request for the inclusion in the agenda of the item mentioned in the first preambular paragraph above and the discussion of that item at the twentieth session of the General Assembly".

16. In the discharge of its mandate, the 1966 Special Committee had available to it the report of the 1964 Committee (A/5746), the documentation provided to the 1964 Committee, and the relevant records of the seventeenth, eighteenth, nineteenth and twentieth sessions of the General Assembly. The Special Committee also had available to it the records of the twentieth session of the Assembly on items 99 and 107 of the agenda of that session, respectively entitled: "Peaceful settlement of disputes" and "The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty". A list of this documentation is contained in annex II of the present report.

E. Organization of the session of the 1966 Special Committee

17. By operative paragraph 6 of its resolution 2103 A (XX), the General Assembly requested:

"... the Special Committee to meet at United Nations Headquarters as soons as possible and to report to the General Assembly at its twenty-first session".

18. The 1966 Special Committee held fifty-two meetings in the course of a seven-week session from 8 March to 25 April. At its first meeting, on 8 March 1966, it elected the following officers:

Chairman: Mr. K. Krishna Rao (India)

First Vice-Chairman: Mr. Vratislav Pěchota (Czechoslovakia)

Second Vice-Chairman: Mr. Armando Molina Landaeta (Venezuela)

Rapporteur: Mr. W. Riphagen (Netherlands)

The Secretary-General of the United Nations opened the session of the Special Committee. Thereafter, he was represented by Mr. C. A. Stavropoulos, Legal Counsel. Mr. C. A. Baguinian, Director of the Codification Division of the Office of Legal Affairs served as Secretary. After his departure from Headquarters on 11 April 1966, Mr. G. W. Wattles, Deputy Director of the Codification Division, served as Secretary.

19. At its second and third meetings on 9 March 1966, the 1966 Special Committee discussed the organization of its work. It adopted, at its third meeting, a plan of work (A/AC.125/2) designed to allow for the consideration, in the time available to it, of all seven principles of international law before it. Under this plan of work the Committee agreed to adopt a *seriatim* approach to the seven principles, and to attempt to complete its work on each principle within a certain number of meetings allocated to each principle. Considering the progress achieved by the 1964 Special Committee, and taking into account that the General Assembly had adopted, at its twentieth session, on the recommendation of its First Committee, a "Declaration on the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty" (resolution 2131 (XX) of 21 December 1965) (see also paras. 292-300 below), the 1966 Committee decided to discuss the principles in the following order:

The principle of sovereign equality of States;

The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

The duty of States to co-operate with one another in accordance with the Charter;

The principle of equal rights and self-determination of peoples;

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

While the principles were discussed in the order set out above, the present report, in view of the previous history of the item, describes the work of the 1966 Special Committee on the principles in the order contained in paragraph 3 of General Assembly resolution 1815 (XVII) and paragraph 5 of General Assembly resolution 1966 (XVIII) (see paras. 5 and 7 above).

20. In its plan of work the 1966 Special Committee, taking into account the size of its agenda and of the

general debate on the principles considered by the 1964 Committee both at the eighteenth session of the General Assembly and in the 1964 Committee, decided that no general debate should be held on those principles. Instead, it was agreed that members of the Special Committee, in the time reserved for discussion on these principles, would confine themselves to comments on any proposals still before the 1966 Special Committee in the report of the 1964 Committee, or any new proposals introduced before the 1966 Committee.

21. In the course of the discussion of the organization of its work, the 1966 Special Committee also decided that consideration should be given as to whether a drafting committee should be established at an early stage. At its second meeting, on 9 March 1966, the Special Committee entrusted its Chairman with the task of holding informal discussions on the possible establishment of a drafting committee and its composition and terms of reference. At the tenth meeting of the Committee, on 15 March 1966, the Chairman announced that he believed a consensus to exist on three points: first, any drafting committee should reflect the balance in membership of the Special Committee; secondly, such a balance could be achieved in a drafting committee consisting of sixteen members; and, thirdly, the drafting committee should be a negotiating and drafting body and not a decision-making body. It should make its recommendations to the Special Committee immediately after it had finished its consideration of each principle referred to it and the Special Committee should take such action as it deemed fit on those recommendations. In the light of these three points, the Special Committee requested its Chairman to nominate the members of the Drafting Committee and its Chairman.

22. At the eleventh meeting of the 1966 Special Committee, on 15 March 1966, the Chairman nominated the following members to serve on the Drafting Committee: Argentina, Australia, Cameroon, Czechoslovakia, France, India, Japan, Kenya, Lebanon, Mexico, Sweden, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. He suggested that Algeria should take the place of India on the Drafting Committee when that Committee considered the principle of non-intervention. Algeria should also take the place of Lebanon for the principle relating to the prohibition of the use of force, and the place of Kenya for the principle relating to self-determination. The Chairman further suggested that, during the absence of the representative of Sweden from New York, his place on the Drafting Committee should be taken by Italy. The representative of Italy should continue to serve on the Drafting Committee until the completion of that Committee's work on the particular principle before it at the time of the return of the representative of Sweden. The Chairman also suggested that the Rapporteur might attend all meetings of the Drafting Committee, and other delegations not represented on that Committee might do likewise. Should any such delegation wish to make a statement on a particular point, it should be permitted to do so after addressing a request to that effect to the Chairman of the Drafting Committee. Finally, the Chairman nominated Mr. Paul Bamela Engo (Cameroon) as Chairman of the Drafting Committee. The Chairman's nominations and suggestions were approved unanimously by the Special Committee.

23. At the thirty-sixth meeting of the Special Committee, on 4 April 1966, the Chairman suggested that, since the representative of Italy had informed him that he would be unable to replace the representative of Sweden on the Drafting Committee, during the entire period of the absence of the latter from New York, the place of Sweden for the relevant time should be taken by the Netherlands. It was so agreed.

II. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations[5]

A. Written proposals

24. Five written proposals concerning the principle considered in the present chapter were submitted by Czechoslovakia;[6] jointly by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia; jointly by Australia, Canada, the United Kingdom of Great Britain and Northern Ireland, and the United States of America; by Chile; and jointly by Italy and the Netherlands. The texts of the foregoing proposals are set out below in the order of their submission to the Special Committee.

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[5] An account of the consideration of this principle by the 1964 Special Committee appears in chapter III of its report (A/5746).

[6] Part I of a draft declaration covering all the principles referred to the 1966 Special Committee. This draft declaration was prefaced by the following preamble:

"*The General Assembly,*

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

"*Recognizing* that peaceful coexistence of States, irrespective of their different political, economic and social systems, is an imperative necessity,

"*Noting* that the conditions prevailing in the world today, marked by profound political, economic and social changes and by enormous scientific progress, give increased importance to the role of general international law and to its fundamental principles governing peaceful coexistence of States,

"*Emphasizing* that strict and undeviating observance of the principles of international law concerning peaceful coexistence of States is of paramount importance for the maintenance of international peace and security,

"*Considering* that the progressive development and codification of these principles, so as to secure their universal and effective application, would promote the fulfilment of the purposes of the United Nations,

"*Recalling* its Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) and its Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131 (XX)),

"*Conscious* of the significance of the emergence of many new States and of their valuable contribution to the progressive development of international law and its codification,

"*Mindful* of its authority to consider the general principles of international co-operation in the maintenance of international peace and security and to encourage the progressive development of international law and its codification,

"*Solemnly declares* the following Principles of International Law concerning Peaceful Coexistence of States, the strict and undeviating observance of which is an essential condition in order to ensure that nations live together in peace with one another:".

The preamble was not discussed in the Special Committee.

25. Proposal by Czechoslovakia (A/AC.125/L.16, part I):

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

"2. Accordingly, the planning, preparation, initiation and waging of wars of aggression constitute international crimes against peace, giving rise to political and material responsibility of States and to penal liability of the perpetrators of those crimes. Any propaganda for war, incitement to or fomenting of war, and any propaganda for preventive war and for striking the first nuclear blow is prohibited.

"3. Every State has the duty to refrain from all armed actions or repressive measures of any kind directed against peoples struggling against colonialism for their freedom and independence.

"4. Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State.

"5. Every State has the duty to refrain from economic, political or any other form of pressure aimed against the political independence or territorial integrity of any State, and from undertaking acts of reprisal.

"6. All States shall act in such a manner that an agreement for general and complete disarmament under effective international control will be reached as speedily as possible and will be strictly observed, in order to secure full effectiveness for the prohibition of the threat or use of force.

"7. Nothing in the foregoing paragraphs affects the use of force either pursuant to a decision of the Security Council made in conformity with the Charter of the United Nations, or in the exercise of the right to individual or collective self-defence if an armed attack occurs, in accordance with Article 51 of the Charter of the United Nations, or in self-defence of peoples against colonial domination in the exercise of the right of self-determination."

26. Joint proposal by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia (A/AC.125/L.21 and Add.1):

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; such threat or use of force shall never be used as a means of settling international issues.

"2. The term 'force' shall include:

"(*a*) the use by a State of its regular military, naval or air forces and of irregular or voluntary forces;

"(*b*) all forms of pressure including those of a political and economic character, which have the effect of threatening the territorial integrity or political independence of any State.

"3. Wars of aggression constitute international crimes against peace. Consequently any propaganda which encourages the threat or use of force against the territorial integrity and political independence of another State is prohibited.

"4. The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

"5. No threat or use of force shall be permitted to violate the existing boundaries of a State and any situation brought about by such threat or use of force shall not be recognized by other States.

"6. The prohibition of the use of force shall not affect either the use of force pursuant to a decision by a competent organ of the United Nations made in conformity with the Charter, or the right of States to take, in case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter, or the right of peoples to self-defence against colonial domination, in the exercise of their right to self-determination.

"7. Nothing in the present chapter shall be construed to include peoples and territories under colonial rule as an integral part of a State."

27. Joint proposals by Australia, Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.125/L.22) (this proposal contained in full the text of Paper No. 1 (I) in paragraph 106 of the report of the 1964 Special Committee,[7] with certain additions which appear in italics in the text given below):

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

"(*a*) Wars of aggression constitute international crimes against peace.

"(*b*) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursions into the territory of another State or *across international lines of demarcation, and to refrain from acts of armed reprisal or attack.*

"(*c*) Every State has the duty to refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State or across international lines of demarcation, or from conniving at or acquiescing in organized activities directed towards such ends, when such acts involve a threat or use of force.

"(*d*) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State or *other international lines of demarcation,* or as a means of solving its international disputes, including territorial disputes and problems concerning frontiers between States.

"3. Nothing in the foregoing paragraphs is intended to affect the provisions of the Charter concerning the lawful use of force, *when undertaken by or under the authority of a competent United Nations organ or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence.*"

28. Proposal by Chile (A/AC.125/L.23):

"With reference to the principle set forth in Article 2, paragraph 4, of the Charter of the United Nations, and having regard to the mandate entrusted to the Committee by the General Assembly resolutions 1815 (XVII) and 1966 (XVIII), the following is proposed:

"(*a*) The formulation of this principle shall not be limited to a commentary on the Charter in the light of its existing provisions but shall take into account the practice followed by States and by the United Nations during the past twenty years;

"(*b*) The expression 'in their international relations' in the above-mentioned Article 2, paragraph 4, shall exclude from the prohibition the domestic activities of States but the prohibition shall become applicable in the case of a community of human beings struggling for its freedom and independence. Thus the threat or use of force by a colonial Power against a group of human beings under its domination which is struggling for its freedom and self-determination shall be prohibited;

"(*c*) The expression 'threat of force' shall refer to any action, direct or indirect, whatever the form it may take, which tends to produce in the other State a justified fear that

[7] See paragraph 8 above, for a summary of the proceedings in the 1964 Special Committee relating to Paper No. 1. The discussion in the 1966 Special Committee on the status of Paper No. 1 is contained in paragraphs 45-52 above.

it or the regional community of which it is a part will be exposed to serious and irreparable harm;

"(*d*) The term 'force' shall be broadly understood to cover not only armed force, whether individual or collective whether by means of regular or irregular forces and whether by means of armed bands or volunteers, but also all forms of political, economic or other pressure; it shall likewise cover reprisals, which are condemned by the Security Council's resolution of 9 April 1964 (S/5650) as incompatible with the Purposes and Principles of the United Nations.

"(*e*) The prohibition of the threat or use of force not only shall be established in the interests of the territorial integrity or political independence of all States but also shall be directed against any intention to resort to such threat or use of force in any aspect of international life; it shall constitute a standard of conduct or behaviour of States in their reciprocal relations and it shall apply to all the acts which they carry out, whether or not in the interests of the international community, whether or not in compliance with a treaty or in response to a violation thereof and whether they are directed against a Member or a non-member of the United Nations;

"(*f*) The prohibition shall therefore include all types of wars of aggression, the use of force in connexion with frontier problems and propaganda for war or for the use of force in any of its forms;

"(*g*) Whatever the scope and content of the expression 'threat or use of force', legitimate individual or collective self-defence as provided for in Article 51 of the Charter may be resorted to only if an armed attack occurs, without prejudice to the legitimate right of a State which has been threatened with or subjected to a form of force not constituting armed attack to take reasonable measures for its security and the defence of its vital interests and without prejudice to the obligation immediately to report to the competent international authority the threat or pressure to which it has been subjected and the measures taken;

"(*h*) An exception to the principle set forth in Article 2, paragraph 4, of the Charter shall also be made in cases of the use of force by order of a competent organ of the United Nations or under its authority, or by a regional agency acting with the express authorization of the Security Council (Article 53);

"(*i*) It shall be expressly declared that contemporary international law in no way recognizes the relevancy or validity of *de facto* situations brought about by the illegal threat or use of force; and

"(*j*) The practical means of giving effect to Article 2, paragraph 4, of the Charter is to work for general and complete disarmament, with the agreement of all the Powers of the world, without exception, under effective international control and with the prior and fundamental agreement that, even in the event of an armed conflict, the use of all types of nuclear and thermonuclear weapons shall be prohibited as a crime against humanity."

29. Joint proposal by Italy and the Netherlands (A/AC.125/L.24):

"1. The prohibition of the threat or use of force, contained in Article 2, paragraph 4, of the United Nations Charter, must be considered as the expression of a universal legal conviction of the international community.

"2. Accordingly:

"(*a*) Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) War of aggression constitutes a crime against peace;

"(*c*) In particular, every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State or other international lines of demarcation;

"(*d*) Every State has the duty not only to refrain from the direct threat or use of regular armed forces, but also:

"(i) To refrain from organizing or encouraging the organization of irregular or volunteer armed forces or bands within its territory for incursions into the territory of another State, and

"(ii) To refrain from instigating, assisting, or organizing civil strife or committing terrorist acts in another State, or from conniving at, or acquiescing in, organized activities directed towards such ends, when such acts involve a threat or use of force;

"(*e*) Every State has the duty to refrain from armed reprisals.

"3. Nothing in the foregoing paragraphs affects the lawful use of force in conformity with the relevant provisions of the United Nations Charter.

"4. In order to ensure the more effective application of the foregoing principle, the Members of the United Nations:

"(*a*) shall endeavour to make the United Nations security system fully effective and shall comply in good faith with the obligations placed upon them by the Charter with respect to the maintenance of international peace and security;

"(*b*) should endeavour, to the extent compatible with their relevant constitutional provisions, to prevent the propaganda for aggressive war, or incitement thereto;

"(*c*) shall comply fully and in good faith with the obligations set forth in the United Nations Charter with respect to the political development of dependent territories, and shall do their utmost, also in the light of General Assembly resolution 1514 (XV) and other relevant resolutions, to ensure the peaceful exercise of self-determination by the inhabitants of dependent territories.

"5. In order to promote the development of the rule of law in the international community, all States should endeavour to secure the early conclusion of a universal treaty of general and complete disarmament, accompanied by the provisions necessary for the effective supervision and control of disarmament measures, for the maintenance of peace and security and for the peaceful settlement of international disputes; and in the meantime shall endeavour to carry out such agreed collateral arms control and disarmament measures as would be susceptible of reducing international tension and of ensuring progress towards general and complete disarmament."

B. Debate

1. *General comments*

30. The principle of the prohibition of the threat or use of force was discussed by the Special Committee at its eighteenth, nineteenth and twenty-first to twenty-sixth meetings, between 21 and 25 March 1966. In the course of the debate on the proposals before the Special Committee, certain representatives made general comments on the principle, and on the manner in which the Committee should proceed. The sponsors of various proposals also made some general remarks on the basis for and purpose of their proposals.

31. It was generally agreed that the principle under discussion was the most important one before the Special Committee, and the corner-stone of peaceful relations among States. The use of force had been the main source of the suffering of mankind. Reviewing the history of the principle, it was recalled that only a few decades ago international law had in effect permitted the use of force in international relations. It had recognized the *jus ad bellum* and had sanctioned the situations resulting from war, the only valid consideration being which State had won. The situation was now different; present-day international law prohibited aggressive war and the use of force against the territorial integrity and political independence of any State. This was a change of immense significance, particularly when

it was borne in mind that, at the turn of the century, the law of war constituted the major part of international law. Thus, at the second Hague Peace Conference in 1907, only two of the fourteen documents signed at the Conference had dealt with peaceful relations. It was the Latin American jurists who had subsequently developed the idea that force should not be the basis of relations among States. They had developed the Drago doctrine, barring the use of force for the recovery of public debts. That concept had therefore been incorporated in The Hague Convention of 1907[8] and confirmed afresh in the Briand-Kellogg Pact of 1928 (General Treaty for the Renunciation of War).[9] The principle prohibiting the use of force had received a severe setback with the Second World War, but had reappeared with the formation of the United Nations. It was clearly stated in Article 2, paragraph 4, of the Charter and had been reflected in a large number of international instruments during the last twenty years. Now that the principle had been accepted, it was important that it should be given flesh and blood and should be legally defined in order that peaceful relations among States might be consolidated. The establishment of the prohibition of the threat or use of force had destroyed the traditional separation between international law in time of peace and in time of war.

32. It was also said that, in the Preamble to the Charter, the peoples of the United Nations had affirmed their determination to save succeeding generations from the scourge of war and to unite their strength to maintain international peace and security. As long as some nations were more powerful than others, it was essential to protect the weak against abuse of power by the strong, and that was one of the purposes of the prohibition of the use of force.

33. Speaking on the manner in which the Special Committee should proceed, a number of representatives expressed the view that it was not sufficient to paraphrase and restate the Charter. Full expression should also be given to developments over the last twenty years, and to major international instruments adopted during that time, such as the charters of the Nürnberg[10] and Tokyo[11] International Tribunals (1945 and 1946), the resolutions of the General Assembly, and the Declarations of Bandung (1955),[12] Belgrade (1961)[13] and Cairo (1964).[14] It was also said that the objective of the Special Committee in formulating principles of international law should be to guide and instruct the leaders of States on the conduct of relations with other States. Consequently, the Committee should use language that would be understood by such men and not by jurists alone.

34. Several representatives said that all proposals should be judged by the extent to which they took into account the present situation, and the progress and evolution of international law. In this context, the Special Committee's task was to establish a clear system of juridical guarantees of peaceful coexistence, and it was required to submit conclusions and recommendations enabling the General Assembly to adopt a declaration. The Committee should therefore prepare a draft declaration for the Assembly's consideration. The adoption by the General Assembly of a solemn declaration would open up new approaches to legal problems within the context of a new awareness of the needs of the contemporary international community.

35. Other representatives drew attention to the need for the Special Committee to confine itself to a study of principles of international law derived from the Charter and General Assembly resolution 1815 (XVII) of 18 December 1962, and not of moral and political principles. This requirement derived from paragraph 2 of resolution 1815 (XVII). The Committee should not yield to the temptation to set up, as "legal principles" principles which had nothing to do with law. The Special Committee would be well advised to follow the methods of the International Law Commission. The subjects studied by the Commission received all the attention they needed, and the Commission had never found it necessary to set up political doctrines as rules of international law. The Committee would be wrong to use its work to amend the Charter; while that instrument might have defects, and many new States had not taken part in drafting it, it was in the essential interests of all Member States to follow the amendment procedure laid down in the Charter itself.

36. It was also said that to enunciate principles *de lege ferenda* disguised as statements of the *lex lata* and to include in existing law elements not in conformity with the present state of the law, would only lead to confusion. The Special Committee must distinguish the work of codification—which implied some degree of progressive development—from that of legislation. It would be unconstitutional for the Committee to undertake legislative work and it would be to no practical purpose.

37. It was argued, furthermore, that a simple majority vote would not result in the formulation of rules of international law. The Committee should strive to reach general agreement, in accordance with the sixth preambular paragraph of General Assembly resolution 2103 A (XX) of 20 December 1965. While the Committee might be entitled to take decisions by a majority vote—and some of the proposals before it seemed designed to lead it to do so on matters of deep disagreement—that method of procedure was certainly not the best one. Any principles it adopted had to command unanimous or almost unanimous support if they were to be acceptable as part of international law. The United Nations was based on the principle of the sovereign equality of States; consequently, on most matters, Member States were not ruled by a majority vote without their consent. If the Organization wanted to interpret the Charter in the light of changing circumstances, it could do so only through a consensus.

38. In response to arguments of the foregoing nature, some representatives said that one of the principal tasks of jurists was to express reality in legal terms. The Special Committee should not therefore merely reaffirm and explain the Charter provisions. To do so would be to ignore the development of international law in the spirit of the Charter. International law could not be entirely divorced from the political context of the contemporary world; it was the sum of the norms governing relations between States, which were political

[8] J. B. Scott, *The Hague Peace Conferences of 1899 and 1907* (Baltimore, Johns Hopkins University Press, 1909), vol. II, *Documents*.

[9] League of Nations, *Treaty Series*, vol. XCIV.

[10] United Nations, *Treaty Series*, vol. 82.

[11] International Military Tribunal for the Far East, *Judgement*, annex No. A-5.

[12] *American Foreign Policy, 1950-1955* (Washington, D.C., 1957), vol. II.

[13] *Journal of the Belgrade Conference*, No. 5, 6 September 1961.

[14] A/5763, mimeographed.

entities, and thus such norms could be defined only in a political context.

39. It was also said that the Special Committee was to perform the task of progressive development of international law and its codification entrusted to the General Assembly by Article 13 of the Charter. There was no question of revising the Charter, except by the special procedure provided for that purpose. However, proposals should not be rejected out of hand, simply because they were alleged by some delegations to be contrary to the Charter.

40. The representative of Czechoslovakia, introducing his draft declaration (see para. 25 above), said that it was based on the idea that the purposes and principles of the Charter should govern the behaviour of States and that peaceful coexistence among States, whatever their political, economic or social systems, was essential if mankind was to prosper or even survive. The draft declaration was based on progressive legal concepts. It sought to embody the basic idea that any declaration adopted by the Assembly should translate into law the duty of all nations to adopt an uncompromising attitude against war, colonial domination and anything which might endanger the security, well-being and freedom of nations. It also sought to reshape the principles of international law so that they correspond more closely to the needs of the international community, taking into account, in particular, the important contribution which newly independent States had made to the development of those principles.

41. In explanation of the joint proposal of Argentina, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia (see para. 26 above), the sponsors said that they had attempted to take into account views put forward on the subject by international lawyers and by Governments and in documents emanating from various regions of the world. The draft set out to prohibit force as a means of settling international issues, and to define the meaning of the term "force"; it made clear that force could be tolerated only as an instrument for the preservation of peace. It had been prepared on the basis of the provisions of the Charter and the evolution of the juridical system of the United Nations in such a way as to reflect the contemporary needs of the majority of States.

42. Sponsors of the joint proposal of Australia, Canada, the United Kingdom and the United States (see para. 27 above) said that their proposal proceeded from the basic assumption that a certain degree of progress had been made by the 1964 Special Committee on the formulation of the prohibition of the threat or use of force, as reflected in Paper No. 1 prepared by the Drafting Committee of the 1964 Committee (see also paras. 45-52 below). Although some delegations might consider the formulation of points of consensus in Paper No. 1 as incomplete, these sponsors still thought that it constituted a clear expression of existing law. They had therefore taken it as the basis for their efforts, making certain improvements which they consider necessary, in the form of certain additions to the text of Paper No. 1, from which, however, nothing had been deleted.

43. The representative of Chile explained that his proposal (see para. 28 above) was based on the understanding that the formulation of the prohibition of the threat or use of force should not be limited to a commentary on the Charter, but should take account of the practice followed by States and by the United Nations during the past twenty years. The proposal was also based on the understanding that the principle in question protected the territorial integrity and political independence of all States and was also directed against the threat or use of force in any aspect of international life. The principle constituted a standard of conduct of States in their reciprocal relations and applied to all acts, whether or not such acts were in the interest of the State which carried them out, whether or not they were carried out in implementation of a treaty or in response to a violation of it, and whether they were directed against a Member or a non-member of the United Nations.

44. With respect to the joint proposal of Italy and the Netherlands (see para. 29 above), its sponsors explained that its provisions had been drawn up to take account of: the points of consensus contained in Paper No. 1 prepared by the Drafting Committee of the 1964 Special Committee; other important points not included in that consensus; and the need to make a clear distinction between *lex lata* and *lex ferenda*. The proposal was meant to contribute to a new consensus by admitting statements of progressive development of the law while at the same time making it clear that there was a certain gradation in the legal character of the various norms enunciated in the proposal.

2. *Status of Paper No. 1 by the Drafting Committee of the 1964 Special Committee*

45. As already mentioned in paragraph 8 of chapter I of the present report, the Drafting Committee of the 1964 Special Committee had prepared, with respect to the principle of the prohibition of the threat or use of force, a draft text formulating points of consensus, and a list itemizing the various proposals and views on which there was no consensus but for which there was support (Paper No. 1, A/5746, para. 106). However, the 1964 Special Committee had given priority to, and had adopted, another Drafting Committee paper (Paper No. 2, A/5746, para. 106), stating that there was no consensus on the scope or content of the principle concerned.

46. There was considerable discussion in the 1966 Special Committee as to the place it should accord in its work to the points of consensus set out in Paper No. 1 prepared by the 1964 Drafting Committee.

47. Some representatives were of the view that Paper No. 1 of the 1964 Drafting Committee should be taken as the basis for the work of the 1966 Special Committee. They said that although that text had not received any formal stamp of approval from the 1964 Special Committee, that Committee had very nearly agreed on the compromise text of points of consensus. The United States delegation which had accepted that text *ad referendum* in the 1964 Drafting Committee, had by the end of the 1964 session been unable to agree to one phrase; subsequently, however, at the twentieth session of the General Assembly, the United States delegation to the Sixth Committee had announced its willingness to accept all those points, and thus the text in question had eventually been approved by all who had participated in the session of the 1964 Special Committee.

48. In support of the same point of view, a number of representatives said that the text in Paper No. 1 of the 1964 Drafting Committee represented a substantial

"measure of progress", to which the 1966 Special Committee was required to give "full regard" in accordance with operative paragraph 4 (*a*) of General Assembly resolution 2103 A (XX). It had been properly before the 1964 Special Committee since that Committee had had to adopt a motion for priority before the later document of the Drafting Committee had been adopted. It was further said that Paper No. 1 represented a formulation of *lex lata*, to which the 1966 Special Committee might seek to add some additional points on which consensus could be achieved, even if they were presented as being expressions of the *lex ferenda* rather than of *lex lata*.

49. It was argued that it would be a retrograde step to discount entirely the measure of progress which had been achieved after long and arduous negotiations in the 1964 Special Committee, in its Drafting Committee and informal working groups. Furthermore, it would not assist the work of the 1966 Special Committee to revert to proposals on which it was clear from the report of the 1964 Special Committee that no consensus could be reached. While every delegation had the right to submit such proposals, it was questionable whether they were consistent with the intent of the General Assembly as expressed in resolution 2103 A (XX).

50. One representative was of the opinion that, while the text in Paper No. 1 represented a real effort to reach agreement, the 1966 Special Committee should not treat it as a kind of *res judicata*, in view of the provisions in the sixth preambular paragraph of General Assembly resolution 2103 A (XX), which stressed the significance of continuing efforts to reach agreement "at every stage" of the process of elaboration of the principle.

51. Another representative thought that the 1966 Special Committee should not consider itself bound by the points agreed upon in 1964, and he said that his delegation, like others at that time, had had reservations on parts of the text which could not be considered in isolation from other provisions which should have been included.

52. Other representatives stressed that the only text adopted by the 1964 Special Committee indicated that it had been unable to adopt any consensus. One representative said that, as he recalled the situation in 1964, the Drafting Committee's text of "points of consensus" had been introduced in the 1964 Special Committee on the understanding that it would be validly before the Committee only after all members of the Drafting Committee had given their final agreement. The United States delegation had not agreed to the text and therefore it had, legally speaking, "fallen by the wayside". His own delegation, which had not been on the Drafting Committee in 1964, could not accept any text on which it had not been able to express its views or to vote.

3. *Meaning of the term "in their international relations"*

53. The proposal of Chile (see para. 28 above) contained a provision to the effect that the expression "in their international relations" excluded from the prohibition on the threat or use of force the domestic activities of States, but that the prohibition should become applicable in the case of a community of human beings struggling for its freedom and independence.

54. Such discussion of the phrase "in their international relations" as took place was within the context of the legal uses of force, in particular, the use of force in self-defence against colonial domination. The debate on this topic is therefore to be found in paragraphs 136-153 below. In addition, one representative suggested that the Special Committee should consider the possibility of mentioning, in any formulation that it adopted, that the prohibition on the threat or use of force did not in any way affect the use of force within a State.

4. *Meaning of the terms "threat of force" and "use of force"*

55. The proposal of Chile (see para. 28 above) contained a provision in sub-paragraph (*c*) to the effect that the expression "threat of force" should refer to any action by a State which tended to produce in another State a justified fear that it or the regional community of which it was a part would be exposed to serious and irreparable harm.

56. A few representatives commented on the terms "threat of force" and "use of force". One representative said that his delegation understood that the term "threat" referred to a previous announcement of an act of violence for the purpose of intimidating a State into changing its policies. Such threats could be issued verbally through the Press or by radio, or they could take the form of acts of commission or omission. The fact that a State might concentrate its troops in a border area, for example, might constitute a threat to another country. Acts of omission could also constitute threats, as for example, through the complete or partial interruption of economic relations and of means of communication. The same representative said that attention should be given to the question of provocation, although it was not expressly mentioned in the Charter. In the view of his delegation, it should be placed on the same footing as the threat or use of force. One State might provoke another State into actually attacking it, so as to present the latter State as the guilty party under international law. Provocation could be considered as lying half-way between the "threat" and the "use" of force. It was particularly pernicious since it involved an analysis of the real motives for the use of force and such analysis was not always based on objective criteria.

5. *General statement of the prohibition of the threat or use of force*

57. Paragraph 1 in the proposals of Czechoslovakia; of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia; and of Australia, Canada, the United Kingdom and the United States (see paras. 25-27 above) contained general statements of the prohibition of the threat or use of force transcribing the words of Article 2, paragraph 4, of the Charter. The second of these proposals also contained an addition to the effect that "such use of force shall never be used as a means of settling international issues". Sub-paragraph (*c*) in the proposal of Chile (see para. 28 above) was to the effect that the prohibition of the threat or use of force should, beyond the express provisions of Article 2, paragraph 4, of the Charter, extend to any intention to resort to the threat or use of force in any aspect of international life. Paragraphs 1 and 2 (*a*) in the proposal of Italy and the Netherlands (see para. 29 above), was to the effect that the prohibition contained in Article 2, paragraph 4, of the Charter must be considered as a universal conviction of the international

community. This statement was then followed by a transcription of Article 2, paragraph 4, of the Charter.

58. It was generally agreed that a general statement of the principle of the prohibition of the threat or use of force, transcribing Article 2, paragraph 4, of the Charter, but extending the obligation therein to all States and not only Members of the United Nations, would be acceptable to all members of the Committee. It was said that the addition, in one formulation, of reference to the fact that use of force should never be used as a means of settling international issues was simply a corollary of the acceptance of the principle contained in Article 2, paragraph 4, of the Charter. One delegation supported the addition of these words as reflecting the ideas set forth in the Briand-Kellogg Pact and the Rio de Janeiro Anti-War Treaty.[15]

59. With respect to the proposal which formulated Article 2, paragraph 4, of the Charter as a "universal legal conviction", it was said that this provision, far from reflecting legal scepticism as had been suggested by one representative, was designed to extend the prohibition, as a rule of general international law, beyond the circle of the States Members of the United Nations to all States.

6. *Definition of the term "force"*

(a) *Armed force: regular and irregular or volunteer forces; armed bands and indirect aggression*

60. The proposal of Czechoslovakia (see para. 25 above) made only general reference to "armed force" and did not seek to define the forms of such force coming within the scope of the prohibition of the threat or use of force. Paragraph 2 in the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia (see para. 26 above) contained a provision to the effect that the term "force" included the use of regular military, naval or air forces and of irregular or voluntary forces. Sub-paragraphs 2 (*b*) and (*c*) in the proposal of Australia, Canada, the United Kingdom and the United States and sub-paragraph 2 (*d*) in the proposal of Italy and the Netherlands (see paras. 27 and 29 above) contained provisions relating to the organization of irregular or volunteer forces or armed bands for incursion into the territory of another State and to acts encouraging civil strife in other States and acts of terrorism. Sub-paragraph (*d*) in the proposal of Chile (see para. 28 above) referred to armed force, whether individual or collective and to regular or irregular forces, armed bands and volunteers.

61. The various definitions of armed force were not the subject of much direct discussion in the Special Committee, although some references were made to these definitions in the debate on other subjects, such as the inclusion, in the term "force", of economic, political and other forms of pressure and the legal uses of force. Two related points, which occasioned some direct comments or were the subject of certain separate provisions, namely acts of reprisal and violation of international lines of demarcation, are considered separately below, in paragraphs 90-97.

62. Some representatives, speaking directly on the definitions of "armed force", expressed the view that there should be no difficulty in including therein regular military, naval or air forces and irregular or volunteer forces. Other representatives said that the term "armed force" did not cover irregular or volunteer forces. One representative suggested that the reference to "civil strife" in two of the proposals might be omitted, and the matter dealt with under the principle of non-intervention, in view of the provisions on this subject in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty adopted by the General Assembly on 2 December 1965 (resolution 2131 (XX)).

63. In answer to a question why terrorism had been included in some of the enumerations of armed force, it was said that terrorism was so common today that it was impossible not to condemn it equally with the use of force in other forms. It was also said that the terms of Article 2, paragraph 4, of the Charter were very broad, and the enumeration, without limiting the generality of those terms, of certain forms of armed force was intended to provide particular examples of uses of force which were "inconsistent with the purposes of the United Nations".

(b) *Economic, political and other forms of pressure or coercion*

64. Paragraph 5 in the proposal of Czechoslovakia (see para. 25 above) and sub-paragraph 2 (*b*) in the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia (see para. 26 above) contained provisions to the effect that economic, political and other forms of pressure against the territorial integrity or political independence of any State were prohibited uses of force. In sub-paragraphs (*a*) and (*d*) of the proposal of Chile (see para. 28 above) provisions were included to the effect that the principle under consideration should be formulated in the light of the practice of States and of the United Nations during the past twenty years and that the term "force" should be broadly understood to cover not only armed force, but also all forms of political, economic or other pressure.

65. Extensive discussion took place in the 1966 Special Committee, as had been the case in the 1964 Special Committee, on whether the term "force" was limited to armed force or extended to economic, political and other forms of pressure. The issue was once more debated in the light of the interpretation and legislative history of Article 2, paragraph 4, of the Charter and other relevant Charter Articles, and of developments since the Charter and the current requirements of the world community.

66. Those representatives who supported the inclusion in the term "force" of economic, political and other forms of pressure said that Article 2, paragraph 4, of the Charter was not limited to armed force. The authors of the Charter would have qualified the term "force" by the word "armed" in that Article if such a limitation had been their intention, as was clear from other Articles of the Charter. Express reference to "armed force" appeared in the Preamble and in Articles 41, 42, 43, 44 and 46 of the Charter, where it was clearly the intention to limit the term "force". Distinguished jurists, such as Kelsen,[16] supported the view that the use of force under Article 2, paragraph 4, of

[15] League of Nations, *Treaty Series*, vol. CLXIII.

[16] M. Kelsen, *The Law of the United Nations* (New York, Praeger, 1950).

the Charter included both use of arms and violations of international law which involved an exercise of power in the territorial domain of other States without the use of arms.

67. Other representatives, however, said that Article 2, paragraph 4, was limited by its authors to armed force. This was clear from the rejection by the San Francisco Conference of an amendment by Brazil to extend the prohibition contained in Article 2, paragraph 4, by adding the words "and the threat or use of economic measures". Furthermore, in addition to the evidence contained in *travaux préparatoires*, the text of the Charter itself did not support the argument that its authors had, in all instances, qualified the term force by the word "armed", where this had been their intention. For example, Article 44 opened with the words "When the Security Council has decided to use force". That the "force" here referred to was clearly "armed force" emerged from the remainder of the Article which referred to "the employment of contingents".

68. It was further argued that the same conclusion emerged from the seventh preambular paragraph of the Charter, which referred to ensuring, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest. The principles accepted in that paragraph were those obliging Member States to refrain from the threat or use of force, and the methods instituted to ensure the force was not used except in the common interest were the methods provided in Article 42 of the Charter. It followed, therefore, that the "force" which the United Nations could use in accordance with the provisions of Chapter VII were the same as the force which Members were prohibited from using under Article 2, paragraph 4.

69. It was said that, while no one would wish to defend pressure which had the effect of threatening the territorial integrity or political independence of States, such pressures should be discussed in connexion with the principle of non-intervention, and not in connexion with Article 2, paragraph 4, of the Charter. The question of methods of coercion not involving armed force was covered by other Articles of the Charter and it did no service to the task of the codification and development of international law to create unnecessary overlapping. Forms of pressure not involving the use of armed force could not be put on exactly the same level as the use of armed force. They were not treated on the same level in any legal system; and, indeed, the Preamble of the Charter, by referring to the "scourge of war", clearly considered the threat or use of armed force as a distinct form of reprehensible conduct.

70. One representative saw no legal difficulty in including certain economic and political pressures in the definition of force. However, in view of the link between the principle of the prohibition of the use of force and the provisions of Article 51 of the Charter relating to self-defence, he stressed that his delegation did not want the extension of the term "force" to affect the scope of those provisions, which should be as limited as possible.

71. Many representatives emphasized the need to interpret the term "force" in the light of developments subsequent to the drafting of the Charter. One of these representatives argued that interpreting terms sometimes meant extending their meanings. Thus, for example, the primary meaning of the term "force" used in the Charter was obviously armed force, but new forms of force had arisen which the drafters of the Charter would certainly have taken into consideration if they had existed twenty years earlier. If a choice had to be made between stretching words or opening the way to violations of the rights of States, it was the first alternative which should be selected. Another representative, sharing a similar view, said that the key to the definition of the term "force" in Article 2, paragraph 4, of the Charter was to be found in the words appearing in that paragraph "in any other manner inconsistent with the Purposes of the United Nations". If the term "force" was defined in relation to that phrase, the limited definition was unacceptable in 1966.

72. It was further said that the realities of the international situation required an interpretation of the term "force" extending beyond armed force. It was idle to pretend that pressures of an economic and political character did not constitute a use of force as harmful as armed force itself and that such pressures were equally incompatible with the spirit and purposes of the United Nations Charter. They could easily aggravate an international dispute and thus lead to breaches of the peace and pose a threat to international peace and security. The developing and newly independent countries could not forget that such forms of pressure had long been used to coerce them, against their will. Proof of that was to be found, for example, in the records of the United Nations Conference on Trade and Development: economic exploitation, political interference, threats to withdraw technical assistance—all those means had been employed to compromise the sovereignty of the developing States. The Special Committee should make it clear what it was that actually contributed to the deterioration of relations among States, and impaired friendly relations and co-operation. In the contemporary world the importance of economic relations among States was so great that economic pressures could often have a serious impact on States, and powerful States could strangle weaker States to the point of threatening their political independence and territorial integrity.

73. Reference was made to the fact that the Bandung, Belgrade and Cairo Declarations and the Charter of the Organization of African Unity[17] had all recognized the duty of States to refrain from economic or other forms of pressure.

74. It was also argued that, in interpreting the Charter, it was necessary to take into account the views of the majority of Member States, and that a broad definition of the term "force" should be found. The definition should be broad enough to cover the principle of the renunciation of the threat or use of force and the principle of non-intervention. The demarcation line between those two principles should be indicated on the basis of the separate domains to which each related: that of territorial integrity and political independence in the case of the first principle, and that of the free and unhindered development of States within the context of such independence and integrity in the case of the second.

75. On the other hand, it was argued that, apart from basic legal objections to the inclusion of economic and political pressures in the definition of force, there was no legally satisfactory definition of economic and political pressures. The fact that such terms might give rise to differences of interpretation might in certain

[17] United Nations, *Treaty Series*, Volume 479.

circumstances itself constitute a threat to peace. No useful purpose would be served by any tendency on the part of the Special Committee to turn any of the principles before it into a more or less indiscriminate catalogue of legal, moral and political wrongs.

76. One representative drew attention to the fact that article 2 of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (General Assembly resolution 2131 (XX)) prohibited economic, political and other forms of coercion. He suggested that, since the Committee had decided (see para. 341 below) to abide by resolution 2131 (XX) in its elaboration of the principle of non-intervention, it was perhaps unnecessary to refer to such forms of coercion in the principle on the prohibition of the threat or use of force.

7. *Wars of aggression*

77. All the proposals before the Special Committee contained provisions relating to wars of aggression: paragraph 2 in the proposal of Czechoslovakia; paragraph 3 in the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia; sub-paragraph 2 (*a*) in the proposal of Australia, Canada, the United Kingdom and the United States: sub-paragraph (*f*) in the proposal of Chile; and sub-paragraph 2 (*b*) in the proposal of Italy and the Netherlands (see paragraphs 25-29 above). The second, third and fourth of these proposals contained formulations to the effect that wars of aggression constituted crimes against peace. The proposal of Czechoslovakia contained provisions on State and individual responsibility for the planning, preparation, initiation and waging of wars of aggression. The proposal of Chile referred to the prohibition of all types of wars of aggression.

78. It was generally agreed that wars of aggression constituted crimes against peace, as recognized in the charters of the International Military Tribunals of Nürnberg and for the Far East. However, some representatives expressed doubts as to whether any formulation adopted by the Special Committee should refer to the responsibilities of States or of individuals in this connexion. It was said that there was very considerable disagreement on the precise definition of aggression and many distinguished jurists had so far failed in the attempt to find a satisfactory definition of that concept. In the absence of such a definition, no international tribunal could satisfactorily establish whether or not penal liability, or even political and material responsibility, had been incurred. Reference to such liability or responsibility did not necessarily make the condemnation of wars of aggression more effective.

79. On the other hand, certain representatives said that reference to the planning, preparation, initiation and waging of wars of aggression and to the material and penal responsibility arising out of these actions was in full accord with article 6 (*a*) of the charter of the Nürnberg Tribunal and articles 5 and 6 of the charter of the International Military Tribunal for the Far East. The ideas expressed in these articles were now generally accepted in international law and had been confirmed by General Assembly resolution 95 (I) of 11 December 1946. It was important to state that wars of aggression constituted crimes against peace and also to mention the responsibility of States and leaders for such crimes. A legal doctrine which defined a crime but did not mention the penal liability of its perpetrators would be incomplete.

80. It was also said that the term "aggression" was in current use in various international instruments and in statements and declarations of States. It appeared in Chapter VII of the Charter of the United Nations and in the charters of the International Military Tribunals. The contention that no agreement existed on the basic concept of aggression was unfounded: although there was a divergence of opinion on some subsidiary elements of the concept, its substance—armed attack by one State upon another—was incontestable. The definition of "aggression" in the London Convention of 1933[18] had gained general recognition, and had served the Nürnberg Tribunal as a guide. In momentous cases of armed attack, such as those resulting in the Second World War, everyone had easily determined which State was the aggressor and which the victim.

81. One representative, who preferred a broader elaboration on the subject of wars of aggression rather than a reference to them solely as crimes against peace, suggested that the Statute and Judgements of the Nürnberg Tribunal could serve as a good basis for such a formulation. Another representative suggested that the word "international" before the word "crimes" in certain proposals should be omitted. It seemed superfluous in view of the nature of the acts, and could give rise to doctrinal arguments concerning the lawfulness of incriminating individuals, about which there should be no doubt.

8. *War propaganda*

82. Four of the proposals before the Special Committee containing provisions on wars of aggression were linked with provisions prohibiting war propaganda or propaganda encouraging the threat or use of force against the territorial integrity or political independence of States: Czechoslovakia (in paragraph 2 of its proposal; see para. 25 above); Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, the United Arab Republic and Yugoslavia (in paragraph 3 of their proposal; see para. 26 above); Chile (in sub-paragraph (*b*) of its proposal; see para. 28 above). The proposal of Czechoslovakia included in this prohibition any propaganda for striking the first nuclear blow. The proposal of Italy and the Netherlands (see para. 29 above) contained a separate paragraph (*b*) to the effect that States should endeavour, to the extent compatible with their relevant constitutional provisions, to prevent propaganda for aggressive war.

83. Representatives favouring one or other of these formulations said that no delegation could deny the harm that propaganda of the foregoing nature could do to relations among States; incitement to rebellion, lies and calumnies were flagrant examples of violations of the primary rules governing such relations. Many United Nations bodies had affirmed that States should desist from propaganda against other States in order to promote friendly relations and co-operation among States. In its resolution 110 (II) of 3 November 1947 the General Assembly had strongly condemned war propaganda. The effect which war propaganda could have on international relations could not be exag-

[18] League of Nations, *Treaty Series*, vol. CXLVII.

gerated; one had only to recall the role assigned to it by the Government of the Third Reich.

84. Several representatives said that their national legislation prohibited war propaganda, and provided heavy penalties for those who engaged in such propaganda. Propaganda should not be confused with freedom of speech. All States had limited freedom of speech in certain areas. It was therefore entirely reasonable to prohibit propaganda for war. Aggressive war was a crime. Propaganda for aggressive war was therefore propaganda for the commission of a crime. Incitement to crime was certainly not legally permissible, or compatible with constitutional provisions in various States. In international law the prohibition of war propaganda was a logical corollary of the prohibition of the threat or use of force, as it was part of the preparation for a war of aggression and was thus an illegal act.

85. Certain representatives, while supporting a condemnation of the use of propaganda for the purpose of provoking conflicts among States, considered that peoples who had been despoiled of their territories could legitimately expect to be supported in their struggle for liberation. Action taken to inform world opinion about the misdeeds of colonial Powers should not be interpreted as war propaganda. On the contrary, the purpose of such action was to expose a situation based on injustice and supported by force, and to support the struggle of peoples under foreign domination in the exercise of their right of self-determination.

86. One representative said that any formulation on war propaganda should seek to reconcile the control of such propaganda with certain fundamental rights and freedoms. Other representatives did not favour mention of any prohibition of war propaganda in the formulation of the principle concerned. It was said that such a prohibition was controversial, and should therefore be omitted. While propaganda inciting to war or preventive war was reprehensible, most of the proposals before the Special Committee were silent on the subject of propaganda directed towards the violent overthrow, by subversive means, of established Governments in other States. In addition, whether or not particular material constituted propaganda for war was inevitably a matter for subjective interpretation. The question of the condemnation of war propaganda did not arise from Article 2, paragraph 4, of the Charter, and there was no need to formulate in juridical terms the political and moral condemnation of the General Assembly contained in its resolution 110 (II).

87. It was also said that if the proposals before the Special Committee were intended to cover the expression of private political views they would create serious constitutional difficulties for some States. Furthermore, while a State could, by official utterances on its behalf, become an accomplice to the violation of Article 2, paragraph 4, of the Charter, the question of a legal duty to prevent propaganda was quite another matter. It raised grave constitutional questions for countries with effective guarantees of the right of free speech.

88. Some comment was also made on the reference, in one of the proposals before the Special Committee, to the question of propaganda for striking the first nuclear blow. Several representatives said that a specific mention of such propaganda was necessary because of the disastrous effects of nuclear weapons. On the other hand, it was argued that whether or not particular material was propaganda to this effect would involve a subjective interpretation.

89. One representative thought that the Special Committee should consider, in connexion with the principle under discussion, the special character of nuclear and thermonuclear weapons from the point of view of the international juridical order, notwithstanding the fact that the question was under consideration in other organs. While the solution might be found by the total prohibition of such weapons, this did not exclude a legal expression of disapproval of the use of nuclear weapons, which was today the gravest form of the use of force and should therefore be defined by the international community as an international crime.

9. *Acts of reprisal*

90. Paragraph 5 in the proposals of Czechoslovakia; sub-paragraph 2 (*b*) in the proposal of Australia, Canada, the United Kingdom and the United States; sub-paragraph (*d*) in the proposals of Chile; and sub-paragraph 2 (*e*) in the proposal of Italy and the Netherlands all contained provisions prohibiting acts of reprisal, or acts of armed reprisal and attack (for text, see paras. 25-29 above).

91. There was no extensive discussion of these provisions in the Special Committee, all the representatives who spoke on the subject being in favour of some formulation on this matter. It was said that, as the Security Council had expressly declared reprisals to be incompatible with the purposes and principles of the Charter in its resolution 188 (1964) of 4 April 1964, the Special Committee should mention a prohibition of reprisals in any text on the principle under consideration. It was also suggested that the relationship between the violation of frontiers or lines of demarcation, and the reaction which it provoked, should be brought out in the prohibitions of such violations and of armed reprisals.

10. *Use of force in territorial disputes and boundary claims*

92. All the proposals before the Special Committee (for text, see paras. 25-29 above) contained provisions prohibiting the use of force in territorial disputes and boundary claims. The proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia (see para. 26 above) also contained a phrase in its paragraph 5 relating to the non-recognition of situations brought about by such use of force. The comments made on this latter point are considered in paragraphs 98 to 103 below, in connexion with a similar provision by the same sponsors in paragraph 4 of their draft. The proposals of Australia, Canada, United Kingdom and United States (see para. 27 above) and of Italy and the Netherlands (see para. 29 above) made express reference to "international lines of demarcation" in their formulations of this prohibition. This reference was also contained in sub-paragraphs 2 (*b*) and (*c*) of the first of the proposals just mentioned. For purposes of convenience, comments made on it are grouped in the present section.

93. It was generally agreed that the use of force to violate the boundaries of a State should be included in any formulation adopted by the Special Committee. Several representatives stressed that it was the policy of their Governments to settle territorial disputes by peaceful means, and attention was drawn to the fact

that formulations on the matter under discussion appeared in the charter of the Organization of African Unity and in the programme for peace and international co-operation adopted at Cairo in 1964.

94. The point which gave rise to most discussion was whether the formulation to be adopted by the Special Committee should contain express mention of "international lines of demarcation". One representative asked why this reference had been inserted in several proposals. He trusted that it was not the intention of the sponsors to propose that demarcation lines should fall within the concept of territorial inviolability or to sanction under international law demarcation lines that included portions of other States and lands of other peoples, or make demarcation lines, which included armistice lines, into final boundaries.

95. In reply, it was said that the term "boundary" was ambiguous, and might raise the question whether the prohibition of the threat or use of force extended to such lines of demarcation. There were situations in which the maintenance of peace depended on respect for international lines of demarcation, which were, however, not official frontiers. Some of these lines were under United Nations supervision and the Organization had, in fact, encountered greater difficulty in connexion with international lines of demarcation than in connexion with national frontiers.

96. It was also argued that it was not the aim of the provisions referring to such lines to imply some kind of guarantee of territorial integrity. Such lines had been established in accordance with international law and *de facto* divided the exercise of territorial sovereignty between two States for the duration of the existence of the lines. The question of the prohibition of force across these lines was unrelated to the question of their duration. The point of making the prohibition explicit in respect to such lines was to help ensure that they would serve their purpose which, in many cases, had been to bring about a halt in the use of force so that the methods of peaceful settlement envisaged in the Charter could operate.

97. The representative who had requested the above explanations, however, continued to be of the view that explicit reference should not be made to international lines of demarcation. He did not see how words that had no standard definition in international law could be turned into a legal concept. An armistice agreement did not terminate a state of belligerency. Concern naturally arose when it was proposed that international lines of demarcation were to be equated with the concept of State boundaries and hence with territorial inviolability. Difficult political issues were also involved.

11. *Inviolability of State territory and non-recognition of situations brought about by use of force*

98. Paragraph 4 in the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia (see para. 26 above) contained a provision on the inviolability of State territory and prohibiting military occupation or other measures of force by one State against the territory of another State. It also provided that no territorial acquisitions or special advantages obtained by force or other means of coercion should be recognized. A provision on non-recognition of situations brought about by the illegal threat or use of force was also contained in sub-paragraph (*i*) of the proposal of Chile (see para. 28 above).

99. It was explained that the first of the above-mentioned proposals reproduced the text of article 17 of the Charter of the Organization of American States of 30 April 1948[19] and a number of representatives welcomed express reference to the inviolability of State territory, which was also referred to in the charter of the Organization of African Unity and the Cairo Declaration. Differences of opinion emerged, however, over the question of non-recognition of situations brought about by the threat or use of force.

100. In favour of a provision on this latter point, it was said that it was already included in many international instruments and declarations. It appeared in articles 5 (e) and 17 of the charter of the Organization of American States and articles 9 and 11 of the draft Declaration on the Rights and Duties of States.[20] Non-recognition of territorial acquisitions obtained by force was simply a juridical and obligatory consequence of the inviolability of the territory of a State. An explicit reference to such non-recognition would protect the smaller States which had been victims of coercive measures which had resulted in the arbitrary detachment of parts of their national territory. Territorial questions should not be resolved by force, and it would be in the interest of the peaceful settlement of such questions to declare that territorial acquisitions acquired by force should not be recognized.

101. On the other hand, it was argued that, while the doctrine of non-recognition of factual situations was superficially attractive, it was doubtful whether it would work in practice. It was the task of the Special Committee to create norms which could be valid in the practical conduct of international relations, and the Committee should not blind itself to the realities of the modern world. Furthermore, past history had shown that the doctrine of collective non-recognition was not satisfactory. In the case of hostilities, States would be bound by such a doctrine to take a stand on which State was guilty of resorting to force, so that its acquisitions should not be recognized. Given the different evaluations which could arise in such situations, the doctrine of non-recognition could have serious political and juridical consequences. If it were to have retroactive application, for example to 1945, its consequences could be disastrous.

102. It was also said that, where there was an illegal use of force, States might take one of three attitudes: first, conduct amounting to support—after the fact—of the illegal conquest; second, *restitutio in integrum* by means of the application of force, possibly by United Nations organs; and third, efforts to remedy the wrong done by peaceful means, which implied resignation for the time being to the fact that a territory was under the power of a particular Government. The first attitude was obviously reprehensible, but the choice between the second and the third was a difficult matter of political judgement concerning the situation existing at the time. It was difficult to exclude *a priori* the third attitude of trying to find a peaceful solution; yet, taken literally, the duty of non-recognition would do so.

103. In response, it was argued that all that was being proposed was that the acts of an aggressor should

[19] United Nations, *Treaty Series*, vol. 119.

[20] *Yearbook of the International Law Commission, 1949*, vol. I (United Nations publication, Sales No.: 57.V.I.).

not be recognized. It could not be agreed that, in the supposed interests of international peace and security, recognition should be given to situations brought about by the threat or use of force. Such a practice would be an open invitation to aggression.

12. *Disarmament*

104. Paragraph 6 in the proposal of Czechoslovakia; sub-paragraph (*j*) in the proposal of Chile; and paragraph 5 in the proposal of Italy and the Netherlands (see paras. 25, 28 and 29 above) contained provisions relating to disarmament as a means, *inter alia*, of giving practical effect to Article 2, paragraph 4, of the Charter. Certain representatives were of the opinion that current international law permitted one to speak of "a law of disarmament", and they stressed the importance which their Governments attached to general and complete disarmament, which was an essential and urgent requirement for the elimination of the threat or use of force in international relations, particularly in view of the enormous development of nuclear weapons.

105. One representative declared that Lenin had stated disarmament to be an ideal of socialism in 1916, and that his Government had proposed general and complete disarmament at the Genoa Conference in 1922, this being the first occasion on which an official proposal on the subject had been made at the international level. The armaments race was a luxury which modern society could not afford when thousands were dying of hunger and millions of others went uneducated. Another representative referred to proposals by his Government for the establishment of a denuclearized zone in Central Europe.

106. The aforementioned representatives also stressed that the idea of disarmament, which must be universal, was no novelty for the United Nations. Article 11 and Article 47, paragraph 1, of the Charter mentioned the need to achieve disarmament, and many resolutions had been adopted on the subject, including General Assembly resolutions 41 (I) of 14 December 1946, 808 (IX) of 4 November 1954, 1378 (XIV) of 20 November 1959, 1884 (XVIII) of 17 October 1963 and 1908 (XVIII) of 27 November 1963. Furthermore, the aim of disarmament was proclaimed in the preamble of the Moscow Treaty of 5 August 1963 banning nuclear weapon tests in the atmosphere, in outer space and under water.[21] In the light of the decisions of the United Nations, and the rules of international law relating to the question of disarmament—such as the rules governing neutralization and demilitarization of territories and those relating to outer space and demilitarized zones—disarmament had become a legal as well as a political question.

107. Other representatives, however, while upholding the need for disarmament, were opposed to provisions on the subject which attempted to transform into a rule of international law something which properly belonged to the subjective will of States. They were also opposed to provisions which asserted or implied a duty on the part of States to disarm or to adopt particular kinds of disarmament measures. The Special Committee's task was to discuss the elements of the duty to refrain from the threat or use of force in accordance with the Charter. It was also clear that the Charter neither specifically nor by implication required that States should disarm or agree to particular disarmament measures. Furthermore, the postulation of a duty to disarm would not be very meaningful, nor would it facilitate disarmament negotiations. The Special Committee should avoid any action which might prejudge the results of negotiations on disarmament taking place in other bodies properly charged with responsibility in the field of disarmament, such as the Eighteen-Nation Committee on Disarmament.

108. One representative considered that provisions relating to disarmament might more logically be considered in connexion with the principle concerning the duty of States to co-operate with one another.

109. Some representatives considered that the Special Committee should adopt a provision on disarmament which took into account the fact that disarmament was a political objective and not a legal duty under the Charter or general international law. In this regard, one of these representatives said that disarmament must be universal, and not limited to Members of the United Nations: it could be envisaged not only in general terms but also in terms of partial or collateral measures. A treaty of general and complete disarmament must be accompanied by adequate international control, and by parallel steps, particularly with regard to peace-keeping, the settlement of international disputes and peaceful change. Disarmament was thus closely bound up with sweeping reforms in international law.

13. *Provisions relating to dependent territories*

110. Various provisions relating to dependent territories were contained in a number of the proposals before the Special Committee. Except for provisions concerning a right of peoples to self-defence against colonial domination, which is considered in connexion with the legal uses of force (paras. 136 to 153 below), these provisions relating to dependent territories are contained in the present section of this report under a number of sub-headings. Much of the discussion in the Special Committee bearing on these latter provisions took place within the context of the debate on the legal uses of force. The views summarized here should therefore be read in conjunction with those contained in paragraphs 136-153 below, dealing with the use of force in self-defence against colonial domination.

(a) *Armed force or repressive measures against colonial peoples*

111. Paragraph 3 in the proposal of Czechoslovakia and sub-paragraph (*b*) in the proposal of Chile (see paras. 25 and 28 above) contained provisions to the effect that every State has a duty to refrain from all armed actions or repressive measures of any kind directed against peoples struggling against colonialism.

112. Representatives who supported the inclusion of a provision of this nature said that the rights of colonial peoples must be safeguarded. The Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960) condemned any armed action, or repressive measures of all kinds, directed against peoples exercising their right to self-determination. There could scarcely be peace among nations until policies which disregarded the inherent right of peoples to decide their own destiny were terminated. Several recent international conflicts were attributable to the use of force against dependent peoples, and the United Nations had had to deal with many situations resulting

[21] United Nations, *Treaty Series*, vol. 480.

from the adoption by colonial Powers of repressive measures which had endangered international peace and security.

113. It was also argued that the immediate elimination of colonialism was essential and any attempt to delay the granting of independence was unlawful. Article 2, paragraph 4, of the Charter prohibited the use of armed force not only against States, but also in "international relations", and thus applied to colonial Powers seeking to suppress communities fighting for their freedom and independence.

114. Other representatives found the provision unacceptable. They said it had nothing to do with the principle under consideration, since it had no relation to the international relations of States. Article 2, paragraph 4, of the Charter was concerned only with the use of force by one State against another State and was not in any way concerned with the abolition of colonialism. The provision seemed to be directed essentially at the relations between a State and the peoples of Non-Self-Governing Territories for the international relations of which that State was responsible. If discussed at all, it should be taken up in connexion with the principle of self-determination. In any event, formulations of the nature under discussion were unacceptable in any context, as they purported to limit, in an unreasonable manner, the right of administering Powers to maintain law and order in Non-Self-Governing Territories which were being administered in accordance with the provisions of Chapter XI of the Charter.

115. It was also argued that the proposed prohibition appeared to be closely linked to an alleged right to self-defence against colonial domination, involving the use of armed force by dependent peoples. Such an exception was not provided for in the Charter and there was no basis in the Charter or in international law for such a right of self-defence. Some representatives pointed out that the right of self-defence could not be extended to cases other than those prescribed in Article 51 of the Charter and then only on condition that the right was exercised in accordance with that Article.

(b) *Status of territories under colonial rule*

116. The proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia (see para. 26 above) contained a provision to the effect that nothing in the formulation of the prohibition of the threat or use of force should be construed to include peoples and territories under colonial rule as an integral part of a State.

117. Representatives speaking in favour of this provision said that it was intended to make it clear that no colonial Power could justifiably contend—as two or three Members of the United Nations had attempted to do—that conquered territories were an integral part of the metropolitan territory, and so deny independence to the people of those territories. One representative said that he would have preferred a clearer and more effective wording of the provision which would state that territories under colonial domination did not constitute an integral part of the territory of the colonial Power.

118. Another representative, who reserved his position regarding the inclusion of a provision of this nature, stated that the scope and intention of the provision was very obscure. He hoped that it might eventually prove possible to draw up a glossary defining such terms as "colonial rule" in a manner acceptable to all.

(c) *Compliance with Charter obligations with respect to the political development of dependent territories*

119. Paragraph 4 (*c*) in the proposal of Italy and the Netherlands (see para. 29 above) contained a provision to the effect that Members of the United Nations should comply fully and in good faith with the obligations in the Charter with respect to the political development of dependent territories and should do their utmost to ensure the peaceful exercise of self-determination by the inhabitants of dependent territories.

120. In explanation of this provision, it was said that it was based on the principle of self-determination. Nevertheless, it was relevant in the present context, since differences between administering Powers and governed populations or sections of governed populations had contributed in no small measure, within the life-time of the United Nations, to breaches of the peace. The Committee could not dispose of that source of conflict by inviting one of the parties to use violence; the Committee was competent, however, to point out to States Members of the United Nations that they must allow the inhabitants of dependent territories to exercise their right to self-determination in peace, with most importance being placed on the word "peace".

14. *Making the United Nations security system more effective*

121. Paragraph 4 (*b*) in the proposal of Italy and the Netherlands (see para. 29 above) provided that Members of the United Nations should endeavour to make the United Nations security system fully effective and should comply in good faith with the obligations placed upon them by the Charter with respect to the maintenance of international peace and security.

122. The above provision was not the subject of any extensive discussion. It was said to be a collateral objective, conducive to the effectiveness of the prohibition of the threat or use of force.

15. *Legal uses of force*

123. As had been the case in the 1964 Special Committee, all the proposals before the 1966 Special Committee contained provisions concerning the legal uses of force, which, in some instances, were once again discussed at length. For purposes of convenience, this discussion is summarized below under the same four sub-headings which appear in the report of the 1964 Special Committee.

(a) *Use of force on the decision of a competent organ of the United Nations*

124. Paragraph 7 in the proposal of Czechoslovakia (see para. 25 above) included, in legal uses, the use of force pursuant to a decision of the Security Council made in conformity with the Charter of the United Nations. Paragraph 6 in the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia; paragraph 3 in the proposal of Australia, Canada, the United Kingdom and the United States; and sub-paragraph (*h*) in the proposal of Chile (see respectively paras. 26-28 above) all referred to a legal use of force pursuant to a decision of a "competent

organ of the United Nations". Paragraph 3 in the proposal of Italy and the Netherlands (see para. 29 above), referred to the lawful use of force in conformity with the Charter, without any particular or general reference to the organs entitled to decide upon the use of force.

125. As in 1964, while some representatives considered that force could be legally used in certain circumstances pursuant to recommendations of the General Assembly, others were of the view that only the Security Council, acting under Chapter VII of the Charter, was entitled to authorize the use of force in any form.

126. Some of the representatives holding the first of the above views, preferred a formulation which would commence with the provision on this subject contained in Paper No. 1 prepared by the 1964 Drafting Committee and would then go on to refer to the use of force under the authority of a "competent organ of the United Nations". They said that such a formulation avoided the controversial question of specifying the organs concerned. Others preferred a formulation of the most general character, such as that contained in Paper No. 1 prepared by the 1964 Drafting Committee (which was identical with the text of the provision on this subject contained in paragraph 3 of the proposal of Italy and the Netherlands, reproduced in paragraph 29 above).

127. Representatives holding to the view that only the Security Council could authorize the use of force preferred this to be specified. In this connexion it was also said that, since the Security Council had primary responsibility for the maintenance of international peace and security, States were committed to allowing it to act on their behalf. No other interpretation of Article 24 of the Charter was possible.

(b) *Use of force on the decision of a regional agency*

128. Paragraph 3 in the proposal of Australia, Canada, the United Kingdom and the United States (see para. 27 above) contained a reference to lawful use of force when undertaken "by a regional agency acting in accordance with the Charter". Sub-paragraph (*h*) in the proposal of Chile (see para. 28 above) also referred to force used by regional agencies, when "acting with the express authorization of the Security Council".

129. A number of representatives supported mention of the use of force by regional agencies in any formulation to be adopted on the lawful uses of force. Others, however, stressed the view that such a use of force was only lawful when authorized by the Security Council, or when the Council used such agencies for enforcement action under its authority. One representative thought that any mention made of this subject should be qualified by express reference to Chapter VIII of Article 53 of the Charter. In reply, a representative expressed the opinion that such a reference might raise problems on which the Committee would be unable to reach agreement, and that a qualification in the nature of a general reference to the Charter would be sufficient. Another representative thought that the Committee would not be able to resolve disagreements concerning the use of force by regional agencies, and it should therefore refrain from any clarifications on the text of the relevant provision on the lawful uses of force contained in Paper No. 1 prepared by the 1964 Drafting Committee.

(c) *Use of force in the exercise of the right of individual or collective self-defence*

130. All the proposals before the Special Committee, except for the proposal by Italy and the Netherlands, made express reference to the legal use of force in the exercise of the right of individual or collective self-defence. In paragraph 7 of the proposal of Czechoslovakia; in paragraph 6 of the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia; and in sub-paragraph (*g*) of the proposal of Chile (see paragraphs 25, 26 and 28 above), these references were accompanied by the qualification that the right in question arose only if an "armed attack" occurs. In the case of the latter proposal, mention was also made of a right of States threatened with or subjected to a form of force other than armed attack to take reasonable measures for their security and the protection of their vital interests. The reference to the inherent right of individual or collective self-defence in paragraph 3 of the proposal of Australia, Canada, the United Kingdom and the United States (see para. 27 above) was not accompanied by any express mention of qualifications of the foregoing nature.

131. While it was generally agreed that the right of individual or collective self-defence constituted an exception to the prohibition on the use of force, certain of the formulations of that right before the Special Committee were the subject of differing views.

132. Some representatives stressed that no alleged or real violation of a State's rights, other than an armed attack, could justify the use of force in the exercise of the right of self-defence, and this qualification should therefore be expressed. Several representatives also supported mention of a right of States to take reasonable measures short of armed force in the event of a use of force against them other than armed force. Other representatives felt, however, that the insertion of express qualifications would focus attention on differences in the Committee. Furthermore, it was undesirable and impracticable to specify all the Charter provisions involved or related to the lawful uses of force.

133. An unqualified reference to the right of self-defence, was, however, criticized as introducing a disequilibrium between that right and the general prohibition of the threat or use of force. If various forms of illegal use of force were to be enumerated such as subversive activities, training of armed bands, etc., as was the case in one of the proposals before the Special Committee, these illegal uses would set in motion a corresponding and apparently unqualified right of self-defence. The way would thus be opened to justifying the use of force under the umbrella of self-defence in many situations, more particularly so if no provision was made for an appropriate system of verification to ascertain that an illegal use of force had in fact taken place and that the exercise of the right of self-defence was thereby justified.

134. In reply to the foregoing argument it was said that the specific enumerations of forms of illegal force were not ambiguous as they were based on United Nations practice for over twenty years. While it would be most useful if some body existed to inquire into the facts relating to indirect aggression, the absence of such a body did not preclude the listing of the activities concerned as illegal uses of force. Failure to list such activities would reduce the express prohibitions on the use of force.

135. As in the case of other lawful uses of force, several representatives were of the view that their express enumeration gave rise to difficulties which could only be avoided by adopting a general statement on the lawful uses of force "in conformity with the relevant provisions of the United Nations Charter".

(d) *Use of force in self-defence against colonial domination*

136. A right of self-defence of peoples against colonial domination was included in paragraph 7 of the proposals of Czechoslovakia; in paragraph 6 of the proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic and Yugoslavia; and in sub-paragraph (*b*) of the proposal of Chile (see paras. 25, 26 and 28 above). While certain members of the Special Committee considered that the inclusion of such a right was essential in any formulation to be adopted by the Committee, other members stated that it was completely unacceptable to their delegations.

137. Those members of the Special Committee who favoured the inclusion of a right of peoples to use force in self-defence against colonial domination, argued that colonial domination and oppression, no matter when it originated, was a clear case of aggression against such peoples. The principle of self-determination was a fundamental one, on the application of which there could be no statutory limitation. No attempt should be made to restrict the right of self-defence to certain peoples only and to deny that right to colonial peoples. Their exercise of self-defence in the struggle for their independence was a lawful act under current international law in the present "era of decolonization". Wars of liberation were cases of self-defence.

138. According to these representatives, the right of colonial peoples in the above respect had been recognized in various articles of the Charter and by the overwhelming majority of the Members of the United Nations, both inside and outside the Organization. For example, in its resolution 1514 (XV), of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, the General Assembly had expressly stated that the subjection of peoples to alien subjugation or domination was contrary to the Charter and, in operative paragraph 10 of its resolution 2105 (XX) of 20 December 1965, the Assembly had recognized the legitimacy of the struggle by peoples under colonial rule to exercise the right to self-determination and independence, and the international character of that struggle.

139. The legitimacy of the struggle by peoples under colonial rule to exercise their right of self-determination and independence had also been recognized in the Charter of the Organization of African Unity and in Declarations adopted outside the United Nations, such as the Bandung and the Cairo Declarations.

140. It was further argued that States were prohibited from the use of force, whether or not they were Members of the United Nations. They were equally prohibited from using force against countries under foreign domination, fictitiously regarded as integral parts of the national territory of the colonial Power. If the colonial Power persisted in its aggression, it was natural for the people under its domination to exercise their right to self-defence. The acceptance of such a right would be a demonstration of the sincerity of delegations in their adherence to the relevant principles of the Charter and the various United Nations resolutions condemning colonialism.

141. One representative said that there was a relationship in the Charter between the principle of self-determination and the principle of the prohibition of the threat or use of force. The two principles were equally binding. That meant that the use of force by peoples under colonial domination was not at variance with the principle set forth in Article 2, paragraph 4, of the Charter, if it was provoked by acts of force by colonial Powers aimed at preventing the fulfilment of the right to self-determination. Article 2, paragraph 4, of the Charter prohibited the use of force not only against the territorial integrity or the political independence of States, but also in any other manner inconsistent with the purposes of the United Nations. These purposes included the implementation of the right of peoples to self-determination, which was an international obligation incumbent upon all colonial Powers.

142. It was also argued that a right of self-defence of peoples under colonial domination was a reflection of the right of peoples to defend their national identity against acts of force or coercion, which left them no alternative and which the Special Committee could not fail to affirm. Such an affirmation could only enrich the content of Article 51 of the Charter, for the juridical personality of peoples under colonial domination was gaining recognition in contemporary international law.

143. In response to arguments of the nature set out in the preceding two paragraphs, it was said that the principle under discussion was the principle that States should refrain in their "international relations" from the threat or use of force. If this principle extended to relations between the peoples of Non-Self-Governing Territories and administering Powers, there was no reason why it should not also be applied to the use of force between an ethnic minority and the authorities of the State in which the minority lived. The obligation upon States to respect fundamental human rights could be said to be evidence of an increasing recognition of the juridical personality of groups whose rights were being systematically violated. However, that did not mean that the Special Committee should recognize the right to "self-defence" of peoples in the territory of a Member State who were being denied the exercise of fundamental human rights.

144. It was also argued, from the same point of view, that, while it was true that self-determination of peoples was mentioned in the Charter as a basis for the development of friendly relations among nations, this was quite a different matter from stating that force used in the exercise of self-determination was used in accordance with the purposes of the United Nations. The right of self-defence applied not to peoples but to States. Article 2, paragraph 4, of the Charter did not deal with insurrection or revolution, but by that omission it did not confer the right to engage in insurrection or revolution. It would be a distortion of the purposes of the Charter to transform the United Nations from an Organization designed to prevent the use of force except for common purposes into an Organization to promote insurrection. To contend, as certain representatives had, that peoples under colonial rule should be given a national identity was tantamount to stating that a people had the rights of a State in international law.

145. Representatives holding the opposite view said that the struggle of peoples under colonial domination was part of the "international relations" of colonial

States. The Charter referred, in its Preamble, to "We the peoples of the United Nations". Some peoples still remained under colonial domination, and international law should be based on justice rather than on power.

146. One representative said that, although the members of the Committee must naturally examine the proposals before it from the standpoint of jurists, any formulation proposed for official utterance by the General Assembly must also be read in the light of the rhetoric of world politics. Unfortunately, expressions such as "colonial domination" were frequently used in the political arena to justify the threat and actual use of force against sovereign and independent States.

147. Another representative asked whether peoples being administered under Chapter XI or Chapter XII of the Charter by Members of the United Nations were regarded as being under "colonial domination". Whatever the answer, his delegation would be inclined to dispute the legal correctness of a purported right to self-defence against colonial domination, but it would be helpful to know what cases the expression was intended to cover.

148. In response to the foregoing question, one representative said that, if peoples administered under Chapters XI and XII of the Charter were subject to colonial domination, no attempt should be made to restrict their right to reject that domination. His delegation was certainly not convinced that the relevant provisions of the Charter were being properly applied, for example, in South West Africa.

149. Another representative, however, thought that the question was somewhat unnecessary. The Trusteeship System in its present form derived from the Charter and the Administering Authorities of the Trust Territories were accountable to the United Nations. The system imposed obligations on the Administering Authorities, and if those obligations were fulfilled there was no reason to consider that Trust Territories were under colonial rule. However, it was a legal obligation of the Administering Authorities to prepare the Trust Territories rapidly for independence, in accordance with the right of peoples to self-determination. Agreeing with this view, one representative said that the provisions of Chapters XI and XII of the Charter were not directly related to the problem of self-defence of peoples fighting for their liberation. So far as concerned the Trust Territories, the United Nations was authorized to deal with all matters relating to the implementation of the Trusteeship Agreements under the provisions of Article 76 of the Charter; with respect to Non-Self-Governing Territories, it exercised an important right to supervision under the provisions of Chapter XI.

150. According to one representative, one of the central issues confronting the Committee was the question of the scope of the lawful use of force under the Charter. His delegation had been somewhat puzzled to hear the sponsor of one of the proposals before the Committee inveigh against supposed efforts to expand the scope of the right of self-defence in the Charter and, nevertheless, claim that the Charter contained a separate and distinct authorization to use force against States, notwithstanding Article 2, paragraph 4, which arose in some way from the Charter provisions concerning the principles of self-determination. His delegation could find no provision in the Charter affirming or implying such a separate and distinct right to use force against States. Furthermore, at least some members of the Committee apparently believed that the authorization of force in question applied without regard to the applicability of the provisions of Chapters XI and XII of the Charter, or whether the State concerned was complying with the solemn obligations set forth in those Chapters. The effect, if not the intent, of what certain delegations proposed, seemed to be to undermine the Charter plan for the maintenance of world order through the strict regulation of the use of force by creating an exception of virtually unlimited scope.

151. Sharing a similar view, one delegation stated that, while the Charter did impose upon administering Powers certain clearly defined obligations, those Powers could not assume the obligations imposed by Article 73 of the Charter, if a fraction of the population in the Territory concerned was authorized to resort to force and terrorism. The so-called right of self-defence against colonial domination had no basis whatsoever in the Charter or in international law, and would constitute a general licence for armed uprising. It would have the disastrous effect of authorizing the general and legal use of force to resolve the few remaining problems connected with the granting of independence to the peoples of Non-Self-Governing Territories. The so-called right of self-defence against colonial domination therefore had no legal foundation and amounted to amending the Charter by means other than those set out in Article 108 of the Charter itself.

152. In reply to the foregoing arguments, it was said that the Charter could, of course, only be amended through the procedure set forth in Article 108. An enunciation of a general principle of international law could not be characterized as an amendment of the Charter merely because it sought to expand on a general provision in order to reflect present-day realities more adequately. If the Committee were merely to repeat the exact words of the Charter, its discussions were entirely futile. Proposals to recognize a right of self-defence against colonial domination would not foment violence and bloodshed in colonial territories. Violence and bloodshed in such territories were a direct result of repression and denial of the inherent right of colonized peoples to freedom and independence. To deny this right would be to reject everything the United Nations had done in the field of decolonization. Either the right of colonized peoples to self-determination was recognized or they would be kept in a state of subordination and exploitation. Delegations denying this right wanted repressed peoples to embark on a long and uncertain process leading to liberation. On the African continent this process had proved disastrous for the colonized peoples. One of the realities of the contemporary world was the existence of liberation movements. Only the elimination of situations based on injustice and force would permit the logical evolution of international law, in which the lawful aspirations of all peoples should be protected.

153. One representative was of the view that the wisest course of action would be to adopt a general formulation of the legal uses of force, such as that contained in Paper No. 1 prepared by the Drafting Committee of the 1964 Special Committee, which could be understood to cover all existing disagreements, including those relating to a right of self-defence against colonial domination. While supporting the idea that peoples subject to colonial domination had a right to use whatever methods they considered appropriate to achieve independence and self-government, another

representative considered that the question should be dealt with under the principle of self-determination as the principle presently under consideration mentioned only "States". The terms "peoples" and "States" were different concepts in international law.

C. Decision of the Special Committee

1. *Statement by the Chairman of the Drafting Committee*

154. At the forty-ninth meeting of the Special Committee, on 21 April 1966, the Chairman of the Drafting Committee informed the Special Committee that the Drafting Committee had examined the principle of the prohibition of the threat or use of force at some length. Previous discussions on the principle had been very helpful and the Drafting Committee had been able to make much progress towards the achievement of a statement of the principle that would receive general agreement and recognition. Nevertheless, even though some aspects of the principle had attracted provisional agreement, the Drafting Committee considered that no recommendations relating to the elaboration of the principle could be made to the Special Committee at the present stage. The Chairman of the Drafting Committee said that he would not go into any detail on the areas of "provisional agreement" because he wished to avoid creating misconceptions concerning the achievement on that aspect of the Drafting Committee's work. It sufficed to say that those areas were of insufficient value to merit a formal recommendation to the Special Committee.

2. *Decision*

155. At its fifty-second meeting, on 25 April 1966, the Special Committee took note of a report by the Drafting Committee (see para. 567 below) that it had been unable to present an agreed formulation of the principle relating to the prohibition of the threat or use of force (see chapter IX below for the discussion of this report in the Special Committee).

3. *Systematic survey of proposals*

156. A systematic survey of the proposals on this principle which were referred to the Drafting Committee follows hereafter:

A. General prohibition of the use or threat of force

1. *Czechoslovakia* (A/AC.125/L.16, part I)

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

2. *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; such threat or use of force shall never be used as a means of settling international issues."

3. *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

4. *Chile* (A/AC.125/L.23)

"...

"(*a*) The formulation of this principle shall not be limited to a commentary on the Charter in the light of its existing provisions but shall take into account the practice followed by States and by the United Nations during the past twenty years;

"...

"(*c*) The expression 'threat of force' shall refer to any action, direct or indirect, whatever the form it may take, which tends to produce in the other State a justified fear that it or the regional community of which it is a part be exposed to serious and irreparable harm;

"...

"(*e*) The prohibition of the threat or use of force not only shall be established in the interests of the territorial integrity or political independence of all States but also shall be directed against any intention to resort to such threat or use of force in any aspect of international life; it shall constitute a standard of conduct or behaviour of States in their reciprocal relations and it shall apply to all the acts which they carry out, whether in their own interests or in the interests of others, whether or not in the interests of the international community, whether or not in compliance with a treaty or in response to a violation thereof and whether they are directed against a Member or a non-member of the United Nations".

5. *Italy, Netherlands* (A/AC.125/L.24)

"1. The prohibition of the threat or use of force, contained in Article 2, paragraph 4, of the United Nations Charter, must be considered as the expression of a universal legal conviction of the international community.

"2. Accordingly:

"(*a*) every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations".

B. Meaning of "force"

1. *Armed force*

(i) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"2. The term 'force' shall include:

"(*a*) The use by a State of its regular military, naval or air forces and of irregular or voluntary forces;".

(ii) *Chile* (A/AC.125/L.23)

"(*d*) The term 'force' shall be broadly understood to cover not only armed force, whether individual or collective, whether by means of regular or irregular forces and whether by means of armed bands or volunteers...".

(iii) *Italy, Netherlands* (A/AC.125/L.24)

"2. Accordingly,

"...

"(*d*) every State has the duty not only to refrain from the direct threat or use of regular armed forces...".

2. *Economic, political and other forms of pressure*

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"5. Every State has the duty to refrain from economic, political or any other form of pressure aimed against the political independence or territorial integrity of any State, and from undertaking acts of reprisal.

(ii) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"2. The term 'force' shall include:

"...

"(*b*) All forms of pressure, including those of a political and economic character, which have the effect of threatening the territorial integrity or political independence of any State".

(iii) *Chile* (A/AC.125/L.23)

"(*d*) The term 'force' shall be broadly understood to cover not only armed force... but also all forms of political, economic or other pressure".

C. CONSEQUENCES AND COROLLARIES OF THE PROHIBITION OF THE USE OR THREAT OF FORCE

1. *Wars of aggression, war propaganda*

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"2. Accordingly, the planning, preparation, initiation and waging of wars of aggression constitute international crimes against peace, giving rise to political and material responsibility of States and to penal liability of the perpetrators of those crimes. Any propaganda for war, incitement to or fomenting of war, and any propaganda for preventive war and for striking the first nuclear blow is prohibited".

(ii) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"3. Wars of aggression constitute international crimes against peace. Consequently any propaganda which encourages the threat or use of force against the territorial integrity and political independence of another State is prohibited".

(iii) *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

"(*a*) Wars of aggression constitute international crimes against peace".

(iv) *Chile* (A/AC.125/L.23)

"(*f*) The prohibition shall therefore include all types of wars of aggression,... and propaganda for war or for the use of force in any of its forms".

(v) *Italy, Netherlands* (A/AC.125/L.24)

"2. Accordingly:

"...

"(*b*) War of aggression constitutes a crime against peace;

"...

"4. In order to ensure the more effective application of the foregoing principle, the Members of the United Nations:

"...

"(*b*) should endeavour, to the extent compatible with their relevant constitutional provisions, to prevent the propaganda for aggressive war, or incitement thereto".

2. *Use of force in territorial disputes and boundary problems*

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"4. Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State".

(ii) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"5. No threat or use of force shall be permitted to violate the existing boundaries of a State and any situation brought about by such threat or use of force shall not be recognized by other States".

(iii) *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"2. In accordance with the foregoing fundamental principle and without limiting its generality:

"...

"(*d*) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State, or other international lines of demarcation or as a means of solving its international disputes, including territorial disputes, and problems concerning frontiers between States".

(iv) *Chile* (A/AC.125/L.23)

"(*f*) The prohibition shall therefore include..., the use of force in connexion with frontier problems...".

(v) *Italy, Netherlands* (A/AC.125/L.24)

"2. Accordingly:

"...

"(*c*) In particular, every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State or other international lines of demarcation".

3. *Acts of reprisal*

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"5. Every State has the duty to refrain... from undertaking acts of reprisal".

(ii) *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

"...

"(*b*) Every State has the duty... to refrain from acts of armed reprisal or attack".

(iii) *Chile* (A/AC.125/L.23)

"(*d*) The term 'force'... shall likewise cover reprisals, which are condemned by the Security Council's resolution of 9 April 1964 (S/5650) as incompatible with the purposes and principles of the United Nations".

(iv) *Italy, Netherlands* (A/AC.125/L.24):

"2. Accordingly:

"...

"(*e*) Every State has the duty to refrain from armed reprisals".

4. *Organization of armed bands*

(i) *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

"...

"(*b*) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursions into the territory of another State or across international lines of demarcation".

(ii) *Italy, Netherlands* (A/AC.125/L.24)

"2. Accordingly:

"...

"(*d*) Every State has the duty not only to refrain from the direct threat or use of regular armed forces, but also:

"(i) To refrain from organizing or encouraging the organization of irregular or volunteer armed forces or bands within its territory for incursions into the territory of another State...".

5. *Instigation of civil strife and terrorist acts*

(i) *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

"...

"(*c*) Every State has the duty to refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State or across international lines of demarcation, or from conniving at or acquiescing in organized activities directed towards such ends, when such acts involve a threat or use of force".

(ii) *Italy, Netherlands* (A/AC.125/L.24)

"2. Accordingly:

"...

"(*d*) Every State has the duty not only to refrain from the direct threat or use of regular armed forces, but also:

"...

"(ii) To refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State, or from conniving at, or acquiescing in, organized activities directed towards such ends, when such acts involve a threat or use of force ...".

6. *Military occupation and non-recognition of situations brought about by the illegal use or threat of force*

(i) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"4. The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized".

(ii) *Chile* (A/AC.125/L.23)

"(*i*) It shall be expressly declared that contemporary international law in no way recognizes the relevancy or validity of *de facto* situations brought about by the illegal threat or use of force ...".

7. *Armed force or repressive measures against colonial peoples, the position of territories under colonial rule, and the obligations of the Charter with respect to dependent territories*

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"3. Every State has the duty to refrain from all armed actions or repressive measures of any kind directed against peoples struggling against colonialism for their freedom and independence".

(ii) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"7. Nothing in the present chapter shall be construed to include peoples and territories under colonial rule as an integral part of a State".

(iii) *Chile* (A/AC.125/L.23)

"(*b*) The expression 'in their international relations' in the above-mentioned Article 2, paragraph 4, shall exclude from the prohibition the domestic activities of States, but the prohibition shall become applicable in the case of a community of human beings struggling for its freedom and independence. Thus the threat or use of force by a colonial Power against a group of human beings under its domination which is struggling for its freedom and self-determination shall be prohibited".

(iv) *Italy, Netherlands* (A/AC.125/L.24)

"4. In order to ensure the more effective application of the foregoing principle, the Members of the United Nations:

"...

"(*c*) shall comply fully and in good faith with the obligations set forth in the United Nations Charter with respect to the political development of dependent territories, and shall do their utmost, also in the light of General Assembly resolution 1514 (XV) and other relevant resolutions, to ensure the peaceful exercise of self-determination by the inhabitants of dependent territories".

8. *Agreement for general and complete disarmament under effective international control*

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"6. All States shall act in such a manner that an agreement for general and complete disarmament under effective international control will be reached as speedily as possible and will be strictly observed, in order to secure full effectiveness for the prohibition of the threat or use of force".

(ii) *Chile* (A/AC.125/L.23)

"(*j*) The practical means of giving effect to Article 2, paragraph 4, of the Charter is to work for general and complete disarmament, with the agreement of all the Powers of the world, without exception, under effective international control and with the prior and fundamental agreement that, even in the event of an armed conflict the use of all types of nuclear and thermonuclear weapons shall be prohibited as a crime against humanity".

(iii) *Italy, Netherlands* (A/AC.125/L.24)

"5. In order to promote the development of the role of law in the international community, all States should endeavour to secure the early conclusion of a universal treaty of general and complete disarmament, accompanied by the provisions necessary for the effective supervision and control of disarmament measures, for the maintenance of peace and security and for the peaceful settlement of international disputes, and in the meantime shall endeavour to carry out such agreed collateral arms control and disarmament measures as would be susceptible of reducing international tension and of ensuring progress towards general and complete disarmament".

9. *Making the United Nations security system more effective*

Italy, Netherlands (A/AC.125/L.24)

"4. In order to ensure the more effective application of the foregoing principle, the Members of the United Nations:

"(*a*) shall endeavour to make the United Nations security system fully effective and shall comply in good faith with the obligations placed upon them by the Charter with respect to the maintenance of international peace and security ...".

D. Legal uses of force

(i) *Czechoslovakia* (A/AC.125/L.16, part I)

"7. Nothing in the foregoing paragraphs affects the use of force either pursuant to a decision of the Security Council made in conformity with the Charter of the United Nations, or in the exercise of the right to individual or collective self-defence if an armed attack occurs, in accordance with Article 51 of the Charter of the United Nations, or in self-defence of peoples against colonial domination in the exercise of the right of self-determination".

(ii) *Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Madagascar, Nigeria, United Arab Republic, Yugoslavia* (A/AC.125/L.21)

"6. The prohibition of the use of force shall not affect either the use of force pursuant to a decision by a competent organ of the United Nations made in conformity with the Charter, or the right of States to take, in case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter, or the right of peoples to self-defence against colonial domination, in the exercise of their right to self-determination".

(iii) *Australia, Canada, United Kingdom, United States* (A/AC.125/L.22)

"3. Nothing in the foregoing paragraphs is intended to affect the provisions of the Charter concerning the lawful use of force, when undertaken by or under the authority of a competent United Nations organ or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence".

(iv) *Chile* (A/AC.125/L.23)

"(*g*) Whatever the scope and content of the expression 'threat or use of force' individual or collective self-defence as provided for in Article 51 of the Charter may be resorted to only if an armed attack occurs, without prejudice to the legitimate right of a State which has been threatened with

or subject to a form of force not constituting armed attack to take reasonable measures for its security and the defence of its vital interests and without prejudice to its obligation immediately to report to the competent international authority the threat or pressure to which it has been subjected and the measures taken;

"(*h*) An exception to the principle set forth in Article 2, paragraph 4, of the Charter shall also be made in cases of the use of force by order of a competent organ of the United Nations or under its authority, or by a regional agency acting with the express authorization of the Security Council (Article 53)".

(v) *Italy, Netherlands* (A/AC.125/L.24)

"3. Nothing in the foregoing paragraphs affects the lawful use of force in conformity with the relevant provisions of the United Nations Charter".

III. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered[22]

A. Written proposals

157. In regard to the above principle four written proposals were submitted: one by Czechoslovakia; one jointly by Dahomey, Italy, Japan, Madagascar and the Netherlands; one jointly by Chile; and one jointly by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia. The texts of the foregoing proposals are given below in the order in which they were submitted to the Special Committee.

158. Proposal by Czechoslovakia (A/AC.125/L.16, part II):

"1. Every State shall settle its international disputes solely by peaceful means so that international peace, security and justice are not endangered.

"2. Having regard to the circumstances and the nature of the dispute, the parties to any international dispute shall first seek its just settlement by negotiation, and shall use, whenever appropriate and by common agreement, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, in strict accord with the Charter of the United Nations, or other peaceful means.

"3. 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.

"..."

159. Joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands (A/AC.125/L.25 and Add.1):

"1. The principle of the peaceful settlement of international disputes set forth in Article 2, paragraph 3, of the United Nations Charter, is a corollary of the prohibition of the threat or use of force, and, as such, the expression of a universal legal conviction of the international community.

"2. Accordingly,

"(*a*) All States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;

"(*b*) The parties to any such dispute shall seek a solution by negotiation, inquiry, good offices or mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;

"(*c*) Failure to reach a solution by any of the above means does not absolve the parties from the duty of continuing to seek settlement of the dispute by peaceful means;

"(*d*) Recourse to or acceptance of a settlement procedure, including any obligation freely undertaken to submit existing or future disputes to any particular procedure, shall not be regarded as incompatible with sovereign equality.

"3. In order to ensure the more effective application of the foregoing principle:

"(*a*) Legal disputes should as a general rule be referred by the parties to the International Court of Justice, and in particular States should endeavour to accept the jurisdiction of the International Court of Justice pursuant to Article 36, paragraph 2, of the Statute of the Court.

"(*b*) General multilateral agreements, concluded under the auspices of the United Nations, should provide that disputes relating to the interpretation or application of the agreement, and which the parties have not been able to settle by negotiation, or any other peaceful means, may be referred on the application of any party to the International Court of Justice or to an arbitral tribunal, the members of which are appointed by the parties, or, failing such appointment, by an appropriate organ of the United Nations.

"(*c*) Members of the United Nations and United Nations organs should continue their efforts in the field of codification and progressive development of international law with a view to strengthening the legal basis of the judicial settlement of disputes.

"(*d*) The competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter in the field of peaceful settlement, with a view to ensuring that all disputes are settled by peaceful means in such a manner that not only international peace and security but also justice is preserved."

160. Draft resolution by Chile (A/AC.125/L.26):

"The Special Committee, bearing in mind:

"(*a*) That the Preamble of the Charter of the United Nations proclaims the need for States to practise tolerance and live together in peace with one another as good neighbours,

"(*b*) That Article 1, paragraph 2, of the Charter declares that one of the purposes of the United Nations is to develop friendly relations among nations,

"(*c*) That Article 2, paragraph 3, of the Charter declares that all Members of the United Nations shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

"*Declares*:

"1. That States are obliged to settle all their disputes whatsoever by such peaceful means as they deem appropriate, without prejudice to the provisions of the international agreements in force and of the generally recognized norms of international law;

"2. That, once a procedure for pacific settlement has been initiated, States have an obligation to refrain from changing the *de facto* situation which gave rise to the dispute and to take preventive measures against the creation or aggravation of any tension which might endanger peace;

"3. That any pacific settlement of an international dispute must be based on justice and must take into account the maintenance of international peace and security; and

"4. That, by virtue of Articles 52, paragraph 4, and 103 of the Charter of the United Nations, the right to have recourse to a regional agency in pursuit of a pacific settlement of a dispute does not preclude or diminish the right of any State to have recourse direct to the United Nations in defence of its rights."

161. Joint proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.27):

"1. Every State shall settle its disputes with other States by peaceful means, in such a manner that international peace and security, and justice, are not endangered;

"2. States shall accordingly seek early and just settlement

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[22] An account of the consideration of this principle by the 1964 Special Committee appears in chapter IV of its report (A/5746).