November 17, 1965

Text of Statement made in the 6th Committee Debate on Agenda Item 90, the Consideration of principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations, by the Canadian Delegate, Mr. Max Wershof, Q.C., on Wednesday, Nov. 17

Mr. Chairman:

This Committee has for the past three years been working at a very important task, that of considering the principles of international law concerning friendly relations and cooperation among states in accordance with the principles and purposes of that remarkable document, the Charter of the United Nations. Remarkable because of its resilience and flexibility of concept in our rapidly-changing era. Remarkable also for its strength and basic foundation in international law. And remarkable too for its performance. In spite of all the stresses and strains that the last 20 years have placed upon the Charter, it still survives as the most effective means whereby states may conduct and exercise the important business of exchanging ideas and airing differences.

2. .... It is no accident, Mr. Chairman, that the principles before this Committee, and given by this Committee to the Special Committee, are also found in the Charter, either expressly or by direct implication. Nor is it any accident that these Charter principles of international law are the only ones within the 6th Committee's terms of reference as defined in General Assembly Resolution 1815 (XVII). For, like the Charter, they are intended to embody generally-accepted rules of conduct between states in both international law and common decency. It is our task to elaborate them in more precise language as they have been interpreted and applied in practice by members of the United Nations. Their objective analysis will not necessarily ensure their complete and whole-hearted acceptance

by all states, but nevertheless such definitions by this Committee will represent a worth-while effort to clarify and simplify the complicated concepts behind them and will undoubtedly produce useful markers by which the future performance of states may be readily measured.

3. In undertaking to assist in this task, Canada has repeatedly stated its view on the need for the greater effectiveness of international law as strengthened and developed by the elaboration of these principles now before us. It will be recalled that at the 17th Session, the Canadian Delegation played, if I may say so, a major role in the drafting of the resolution which eventually was passed in this Committee with no negative votes and became Resolution 1815 (XVII). It was this resolution which furnishes the basis of our work, based on the UN Charter, of the seven principles concerning friendly relations and cooperation among states. To add our efforts to those of like-minded member countries, Canada readily accepted at the 18th Session to serve on the Special Committee as appointed by the General Assembly in its Resolutions 1966 and 1967 (XVIII). At Mexico, Canada, together with fellow Committee members, enjoyed that hospitality for which Mexico City and its inhabitants are justly famous. It would be remiss of me, Mr. Chairman, were I not to add my Delegation's sincere appreciation and thanks for this hospitality and for the efficient manner in which the Mexican Government supported and strengthened the work of the Special Committee through the provision of excellent facilities and a more than cordial and condusive atmosphere. That the deliberations of the Special Committee did not achieve a greater degree of consensus bears no reference to the splendid setting of our Mexican meeting place or to the hard work and continuing efforts of our Chairman, Mr. Garcia-Robles, our rapporteur, Dr. Blix, and the Legal Counsel, Mr. Stavropoulos, and his Secretariat staff.

4. No, Mr. Chairman, the work of the Special Committee as contained in the report (A/5746) now before us cannot be said to embody all we had hoped for in constituting this Committee. Perhaps we expected too much. Certainly the definition and resolution of these principles has proved to be a far more complex and difficult task than was originally envisaged. It is after all no easy matter to reconcile the respective positions of even those relatively few member states represented at Mexico. Some of us arrived with obviously different opinions on what should be contained in these principles, but, Mr. Chairman, most of us left Mexico with a greater appreciation of the significance of what we were attempting and with at least a

far clearer idea of what sort of compromises were necessary between us and what were the best methods of achieving and recording a consensus. The Mexico meeting for all its apparent shortcomings still represents in the opinion of my Delegation a very worth-while experience upon which future efforts to fix these principles should be based. Initially, a good deal of the Special Committee's time and effort was spent on arriving at the most effective method of recording majority decisions. The method under which the Drafting Committee operated was thoroughly thrashed out at Mexico and formally accepted as part of the Special Committee's report. As such it deserves to be retained for use in the future if only to avoid having to go over the same procedural grounds once again.

5. Bearing this form of methodology in mind, one should look at the manner in which it worked well in dealing with that fundamental principle--both in customary international law and as codified in Article 2 of the Charter--the sovereign equality of states. A considerable degree of unanimity was found to exist on what constitutes the main legal and moral elements of this principle. Admittedly not all present at Mexico and certainly not all present here today are completely satisfied with the compromise solution contained in part I on page 163 of the English version of the Report* before us, but most of those member states at Mexico and perhaps most of us present today are willing to accept it and to recognize it as probably the best compromise possible in the circumstances. As such it would seem to represent the first step towards an objective definition which would also be acceptable as being a consensus of the members of this Committee and later of the United Nations. For our part and in the spirit of necessary compromise, Canada accepts the Mexico formulation of this principle. After those members of this Committee--especially those not present at Mexico--have had an opportunity to discuss it, it is the suggestion of my Delegation that it be placed to one side to await the final approval, hopefully one year from now, of the 6th Committee in conjunction with a similar consensus on the remaining principles.

6. In descending order of the degree of consensus achieved, the next principle which came close to an agreed formulation was that on the threat or use of force, as defined in Article 2(4) of the Charter. To reach the relatively high state of agreement it did, absorbed considerable time and effort of the Special Committee, and it would be a great pity if, for the want of some small additional compromise, the whole principle had to once

* UN Document A/5764 of November 16, 1964.

again under-go full debate. Canada considers that the last-minute failure to reach a consensus on this principle is not perhaps as important as the valuable degree of ad idem on it achieved at Mexico. Canada stated at Mexico and restates now its desire for a general acceptance of peaceful methods of settling international disputes and for an examination of new ways of re-asserting and strengthening this Charter principle on the renunciation of the threat or use of force in international relations. By this we mean the threat or use of all force direct or indirect by overt means or by subversion, by open attack or infiltration, and by aggression including so-called "wars of liberation"; in fact the threat or use of force or physical coercion wherever or whenever it is not used by states in a manner consistent with the United Nations Charter. The USA Delegation this morning announced its willingness to accept Paper No. I; in other words a willingness to complete the consensus on this principle which was almost attained in Mexico. The Canadian Delegation appreciates and applauds this offer by the USA. As for the procedure to be followed now, in New York, to complete the consensus in a formal way, the USA Delegation has suggested one procedural plan which may commend itself to other members of the 6th Committee and especially to those countries which were members of the Special Committee. Whatever procedure may now be adopted, the important new fact is that a consensus of all the members of the Special Committee on this principle is now attainable. This fact should encourage us. If we can now belatedly have a consensus on the use of force principle, with all its complexities, surely it will not prove impossible later on to achieve consensus on the other five principles.

7. Of the two remaining principles discussed at Mexico and contained in the Report of the Special Committee, the one on the peaceful settlement of disputes achieved possibly the greatest measure of agreement. There were several points in common between the proposals of the United Kingdom and Czechoslovakia, though there were rigidly opposing opinions on exactly what a compromise formulation should include. This principle founded on Article 2, paragraph 3, and on Chapters VI and XIV of the Charter is closely linked with the concept of sovereign equality in its dependence on mutual respect among states founded on judicial equality. The Charter establishes the principle from two complementary avenues of application; by indicating the means and methods whereby settlements should be effected as between disputing parties directly, or through the intermediary of United Nations organs. Choice of these means and methods is governed by the imperative of keeping the peace and settling the dispute on the basis of judicial equality regardless of any political or economic inequality existing between the parties. At Mexico, Canada sought to emphasize the development and strengthening of the United Nations' role in peaceful settlement under Articles 14, 34 and 36 of the Charter by suggesting that the formulation of this principle should contain a direct reference to the powers and functions already vested by these articles in the General Assembly and Security Council in relation to the

the peaceful settlements of international disputes. In the opinion of my Delegation, what is necessary in defining this principle is a statement or series of statements which make it abundantly clear that settlements must be peaceful and that the solution of disputes by peaceful methods must be pursued actively. Canada is convinced that it would be valuable to continue concentrating on improving and making more readily available the various means provided in the Charter for the effective application of this principle. In this connection, we are awaiting with interest the discussion in the First Committee of the General Assembly on Item 99 calling for a general study and examination of methods for settling disputes peacefully.

8. The fourth principle, Mr. Chairman, on non-intervention by States is not directly referred to in the Charter but is nevertheless there by implication when Articles 2(4) and 2(7) are considered in relation to the preamble to Article 2 as a whole. For without a duty by one State not to intervene in the domestic affairs of another state the principle of sovereign equality would be less meaningful and the concept of juridical equality of little value. The embodiment of this principle in the Charter was recognized in General Assembly Resolution 1815 (XVII) and in the debates of the Sixth Committee in 1963. This principle in common with the others and indeed with the whole framework of international law must be accepted as a necessary limitation on national sovereignty. That it was not expressly stated in the Charter as a legally binding norm of international law caused considerable differences at Mexico which proved irreconcilable. A number of those present agreed however that it would be preferable to have this principle stated in the more general language of the Charter than attempting to draw up an exhaustive list of identifiable examples of intervention. It would not perhaps be productive for instance to list as intervention the sort of international activities normally the subject of diplomatic negotiation and by so doing stifle the use of discretion in every-day intercourse between states. In any event an enumeration of this principle would be worth while only if international machinery for the peaceful settlement of disputes, political or judicial, was also developed more fully...

9. These then are the four principles contained in the Report of the Special Committee. The question now is where do we go from here. It is the suggestion of my Delegation that after we have discussed these principles in the 6th Committee at the present session, in the light of the Report, and after discussing the three additional principles, we should consider renewing the mandate of the Special Committee and charging it with the responsibility of continuing to study those principles on which a consensus has not been reached including the three additional ones

with the purpose of formulating them on the basis of consensus. The principle of sovereign equality, on which consensus was achieved, should therefore not be referred back to the Special Committee. Similarly, if a delayed consensus on the use of force principle is achieved this month in New York as a result of the USA statement today, the Canadian Delegation's view would be that the use of force principle should then be put on one side and not re-opened in the Special Committee Sessions to be held in 1966. The idea would be to have the Special Committee continue its discussions where they were concluded at Mexico and carry on attempting formulations for all the remaining principles on the basis of consensus. In this connection, the Special Committee should also be instructed to bear in mind the proposal put forward by the distinguished representative of Madagascar and in particular to study the draft resolution incorporated in Document A/5757 in relation to these principles and to any recommendations the Special Committee may in due course make to the General Assembly.

10. Finally, Mr. Chairman, a brief word about fact-finding, a subject introduced to the Special Committee by Resolution 1967 (XVIII). Unfortunately there was not sufficient time in Mexico to discuss factfinding fully and in particular to consider adequately either the working paper produced by the Netherlands (A/AC119/L9) or the research paper (A/5694, Add. 1 and 2) compiled by the Secretariat. Canada was interested in such a study and co-sponsored the Netherlands' proposal at the 18th Session because we regarded it as aimed at strengthening the means of peaceful settlements of disputes and as relevant to peace-keeping operations. Since then, the subject of factfinding has tended to become a separate subject somewhat divorced from peacekeeping with the emphasis on establishing a new United Nations organ rather than strengthening existing fact-finding arrangements. My Delegation recognizes the importance for the international community in creating impartial methods of fact-finding, and that the use of such methods would be significant in the development of law in international relations. We think, however, that it is important to have a thorough assessment of present methods before taking any decision as to what new procedures, if any, would be desirable. There is, however, a good deal to be said in favour of developing more effective and efficient means of ascertaining what the true facts are in any given situation. . . .

11. With your permission, Mr. Chairman, I propose to make a separate statement, later in the debate on this item, regarding the additional three principles.