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FRIENDLY RELATIONS

Text of statement made in the Sixth Committee Debate on Agenda Item 87, 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. A.E. Gotlieb.

Mr. Chairman,

On several occasions, both in the Sixth Committee and in the Special Committee on Friendly Relations, Canada has stated the necessity of elaborating and strengthening the seven Charter principles of International Law concerning friendly relations and cooperation among States so that international law itself may be further developed and made more effective. There is, therefore, no requirement for my delegation to repeat the importance we attach to this task. Contemporary international life demonstrates all too forcefully the value of elaborating anew those generally already accepted rules of the Charter by which interstate relations should, indeed must, be governed in the interest of peaceful and friendly relations between States.

The slow pace of progress so far is due to the practical problem of clarifying the complicated concepts underlying these principles in a manner generally acceptable to member States of the U.N. Most of these principles, particularly those which continue to elude satisfactory and complete definition, not only raise important doctrinal differences but go to the very heart of the problem of regulating relations between States in a peaceful and orderly manner. Not surprisingly they reflect also fundamental differences in national policies. Relating as they do to some of the most fundamental and vital aspects of international relations about which States are acutely sensitive, it is understandable, therefore, that the results of

the Special Committee's work this year represent only a modest, if nonetheless worthwhile, advance towards our stated objective - that of a solemn United Nations declaration of universally accepted legal principles against which the future performance of States may be measured.

My delegation shares the opinion that the report of the 1967 Special Committee (A/6799) is a work of creditable achievement. As a member of the Special Committee, Canada is able to attest to the considerable efforts made at the meeting in Geneva. The Special Committee's Chairman, Mr. Paul Engo, displayed the tireless enthusiasm and unbound optimism for which he is justly renowned. It is in no small measure due to his active encouragement and firm guidance that the Special Committee made the progress it did. The favourable atmosphere he, as Chairman, helped personally to create at Geneva, was directly instrumental to the success of much of the negotiations. In this Mr. Engo, and indeed the whole Committee, were able to draw upon the well known wisdom and experience of Sir Kenneth Bailey to whom, as Drafting Committee Chairman, we owe a deep debt of gratitude. Sir Kenneth's scholarly advice and practical patience often made the difference between acceptance and rejection in the more difficult drafting discussions. Lastly, it is to the Special Committee's Rapporteur, Dr. Sahovic, and to members of the Secretariat that credit is due for the excellence of the report itself. As a faithful and clear record of the plenary debates and the results obtained at the drafting level, the report reflects Dr. Sahovic's constructive attitude and outstanding ability.

Mr. Chairman, despite the limits of its overall success, the 1967 Special Committee did register some substantial gains. Its drafting Committee succeeded in formulating generally agreed texts for the principles that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter and for the duty of States to cooperate with one another in accordance with the Charter. Both of these principles were nearly defined in 1966 at the New York meeting of the Special Committee and their formulation at Geneva proves again the value of continuing to consider each unresolved principle from one session of the Special Committee to the next.

The new formulation of the good faith principle is short and succinct. In essence, the principle is founded upon mutual trust - a trust which is at once vital and illusive as the complexity and diversity of international relations continues to increase. The formulation accurately stipulates the legal requirement of complying not only with the paramount obligations of the Charter, but also with those obligations that arise out of international agreements and of the generally recognized

principles and rules of international law. The text correctly places all these obligations in perspective by reiterating the overriding provisions of Article 103 of the Charter and by striking a satisfactory balance between the obligations of conventional and customary international law. As such it has clarified and elaborated the relevant provisions of the Charter. It is the view of the Canadian delegation that as it now stands this Drafting Committee formulation incorporates the notion of the supremacy of international legal obligations over conflicting national law. We are pleased to note, moreover, that since the International Law Commission itself postponed a detailed consideration of the problem of "unequal treaties" as being a matter more appropriate to its future work on the succession of States and because of the forthcoming Vienna Conference on the Law of Treaties, the Drafting Committee wisely omitted this controversial issue from its formulation.

Mr. Chairman, Canada is particularly gratified that the 1967 Drafting Committee succeeded in formulating a generally acceptable text on the duty of States to cooperate with one another in accordance with the Charter. The inter-dependence of States is a fact of international life and the Drafting Committee's text reflects this. It is the text nearly agreed to in 1966 to which some appropriately imperative language has been added, drawn mainly from Article 55 (c) of the Charter on the duty to cooperate in the sphere of human rights. Apart from the legal duties enumerated - to cooperate in the maintenance of international peace and security, in the observance of human rights and fundamental freedoms for all, and, in the case of members of the United Nations, to cooperate with the Organization itself - the Drafting Committee text calls upon States to cooperate in economic, social, cultural, scientific and educational fields so that economic growth throughout the world, especially in the developing countries, may be promoted. This latter provision makes the useful contribution of going beyond the creation of static legal duties to encourage States towards a desirable future goal.

It is one of the great disappointments of the Special Committee meeting that it again failed to reach general agreement on a formulation prohibiting the threat or use of force. Nor was the Special Committee successful in formulating the principles of self-determination and non-intervention. Canadian representatives in this Committee and in the Special Committee have commented upon each of these principles at some length and therefore I do not intend to repeat these detail statements. Nevertheless, my delegation would not wish to fail to express its appreciation for the commendable results obtained by the Drafting Committee in Geneva on the principle regarding the non use of force. Canada was among those who advocated the use of the 1964

near consensus text attained at Mexico City as offering the best chance of achieving a general agreement. Although this was not done, the report of the Drafting Committee does set out a very valuable outline of the points of agreement and disagreement from which with some additional concentrated effort, coupled with a willingness to compromise, it should be possible to formulate an acceptable text.

Mr. Chairman, concerning the principle of the equal rights and self-determination of peoples, the 1967 Drafting Committee reported that the areas of agreement were hardly sufficient to justify submitting them to the Special Committee. This is regretted as my delegation is certain that there is a considerable degree of agreement on this principle, particularly with regard to prohibiting the partial or total disruption of the territorial integrity of a State or country.

Another unfortunate result of the 1967 Special Committee meeting was the perpetuation of the stalemate on the principle of non-intervention in relation to General Assembly resolution 2131. The views of my delegation on this matter are well known to this Committee and require no restatement. We would hope that appeals to those who wish to place a very narrow interpretation on our mandate and to endorse this declaration without so much as a drafting change will cause them to reflect again upon the desirability of such a course. My delegation is in no doubt as to the wide area of agreement that already exists on this principle. It will be unfortunate, therefore, if we allow relatively secondary matters of expression and construction to continue to stand in the way of declaring the measure of this agreement.

Finally, Mr. Chairman, I should like to say a word about the future. The Canadian Delegation supports the United States proposal for reconstituting the Special Committee and instructing it to meet again, preferably late next year, to continue its work on a complete declaration of all seven principles and concentrating, if time is limited, on the principles of force, self-determination and non-intervention for which acceptable formulations have still to be found.

If, because of the heavy schedule of meetings for next year, this session will have to be for only three weeks or so, then my delegation considers that some informal and off-the-record preparatory work would be highly desirable. By that we mean that practical steps should be taken to hold consultative discussions, perhaps a week or so prior to the opening of the next session of the Special Committee. The various negotiating groups of the Drafting Committee and those representatives from other interested countries could review the work of the past on the principles to be considered by the Special Committee in their established order

of priority and could continue the effort at drafting and widening consensus formulations. Such informal working meetings should not be too difficult to organize if the Special Committee is to meet either in New York or Geneva and, in the opinion of my delegation, would be a desirable method not only of supplementing the limited time available to the Special Committee but hopefully of enabling that time to be used more effectively. At the conclusion of the 1967 Special Committee meeting, the Italian representative suggested a future method of work for the Special Committee which would utilize procedural techniques similar to the system of Special Rapporteurs employed by the International Law Commission. Accordingly, the Special Committee would be presented with specially prepared working papers, including draft formulations and related commentaries. It may well be that this idea should be tried and that the informal working groups which conducted the drafting negotiations at Geneva of the three principles not yet formulated could be requested to consider preparing such working papers in the period immediately preceding the commencement of the next Special Committee session. In any event my delegation believes that for a variety of reasons, not the least of which may be the shortage of time, we would be wise to undertake as much preparation for the next session of the Special Committee as possible.