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SPEECH BY SOUTH AFRICAN DELEGATION AT
CLOSING PLENARY SESSION

Mr. President:

The observations of the South African Delegation at this time will be very brief and will relate to a single Article of the Charter.

Article 92 of the Draft Charter lays down in clear and unequivocal language that:

"The Members also undertake, without prejudice to any other international agreement, that they will not have recourse to unilateral economic measures of any kind contrary to the provisions of this Charter".

This provision together with Article 2 paragraph 4 of the United Nations Charter which prohibits the use of force, and Article 41 which vests the invoking of economic sanctions in the Security Council constitute the essential framework of the rule of law as between States. This would have been a very satisfactory position, if it were not subject to qualifications. It would have meant that a large part of the world accepting these Charters had undertaken to guide their actions in relation to one another by the processes of consultation and acceptance of the peaceful intermediation of other States anxious to maintain peace and amity among nations, in preference to the primitive appeal to force, whether military or economic.

Unfortunately, Mr. President, there is a qualification to Article 92 in the Draft Charter. This qualification is contained in paragraph 3 of Article 86. That paragraph renders void, in certain circumstances, the salutary provisions of Article 92. It thus makes an important breach in the essential framework of the international rule of law. What is worse, the drafting of that Article 86 is without any question vague and embarrassing. Its interpretation is (MORE)

therefore almost bound in itself to lead to future disputes.

This is a matter of first-rate importance. The whole of our civilization may depend on our ability to substitute in international relations the powers of law and order for those of force. The matter will inevitably require consideration in connection with the recognition by the United Nations of the I.T.O. as a specialized agency. As I have already indicated, the wording of Article 86 paragraph 3 is such that an ultimate authoritative interpretation by the International Court of Justice will almost certainly be required. The view has been expressed in the Conference that although this Article does not prevent the application of unilateral sanctions by members of the ITO, it contains no commitment on the subject. Whether such a wide interpretation can be given to the Article in the form in which it was adopted by the Conference is a matter which will, in view of the involved wording, necessitate decision by the International Court of Justice at some early date.

In view of these circumstances, Mr. President, I have been instructed by my Government formally to reserve the future attitude of the Union of South Africa on this Article.

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