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New York

SUMMARY RECORD OF THE 29th MEETING

Chairman: Mr. CALLE Y CALLE (Peru)

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The meeting was called to order at 10.55 a.m.

AGENDA ITEM 122: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/36/33; A/C.6/36/2)

AGENDA ITEM 118: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/36/447, 116, 518 and 584; A/C.6/36/5)

1. Mr. BRUNO (Uruguay) said his Government believed that all Member States of the United Nations had an equal responsibility for the maintenance of international peace and security. The international community had to undertake a constant and comprehensive pursuit of peace by giving concrete shape to legal norms. Uruguay viewed peace not as a static condition, but as a dynamic process through which all peoples, regardless of culture, wealth or power, would fully enjoy all their rights. As Pope Paul VI had aptly stated, peace was not merely the absence of war.
2. The Uruguayan Minister for Foreign Affairs had recently reaffirmed the importance Uruguay attached to the strengthening of the role of the United Nations in maintaining international peace and security, to the development of co-operation among nations, to the promotion of international law in inter-State relations and to the work relating to the peaceful settlement of disputes. The foreign policy of Uruguay, as its President had recently stated, was founded on, inter alia, the principles of peace, friendship and international co-operation.
3. The Special Committee on the Charter had made substantial progress in its work on the maintenance of international peace and security. Its report (A/36/33) showed that it had complied with the mandate given in General Assembly resolution 35/164 and was clearly an improvement over its previous reports. The proposals contained in the latest report could more effectively contribute to the prevention of international crises, the establishment of a genuine collective security system and the strengthening of the role of the United Nations in maintaining peace. Special consideration should be given to the document prepared by the Chairman of the Special Committee (A/36/33, para. 268).
4. The question of peaceful settlement of disputes, though closely related to the maintenance of international peace and security, was broader in scope. Uruguay had always maintained that there was an urgent need for an international instrument that would codify and develop the mechanisms, procedures and means for the peaceful settlement of disputes; there were already specific provisions in its internal legislation stipulating that disputes to which Uruguay was a party had to be settled by arbitration or other peaceful means. There was an increasingly urgent need for the elaboration of such an international instrument in view of the many violations of the principle of peaceful settlement of disputes. That principle was a jus cogens principle of international law; and its violation gave rise to international responsibility.
5. Under the United Nations Charter, the parties to a dispute could avail themselves of any of the means of peaceful settlement referred to in Article 33. Once they had selected such means, the settlement was binding and had to be complied with in good

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(Mr. Bruno, Uruguay)

faith if international peace and security were to be safeguarded. His delegation was convinced that if States applied the terms of Article 33 with a genuine desire to settle conflicts by peaceful means, the desired results would undoubtedly be achieved. That conviction reflected Uruguay's faith in international law, the primary objective of which was to create stable conditions of peace, tranquility and justice. Only those who lacked confidence in their own cause feared the rule of law.

6. The Latin American countries had always sought to settle their disputes by peaceful means; in cases where that had not been possible, they had not seriously endangered international peace and security. Uruguay, together with the other Latin American countries, had consistently acceded to international legal instruments governing friendly relations, prohibiting the use of force and promoting the peaceful settlements of disputes. It was proud of the example given to the rest of the world by the fraternal countries of Latin America.

7. His delegation welcomed the work being done by the Sixth Committee's Working Group on the Peaceful Settlement of Disputes and supported the renewal of the Special Committee's mandate.

8. Mr. ZACHMANN (German Democratic Republic) said that the Special Committee on the Charter was of particular importance in the endeavour to identify ways and means of enhancing the effectiveness of the efforts of the United Nations to fulfil principal task, the maintenance of international peace and security. Experience has shown that the legal aspects of the United Nations Charter could not be divorced from its political implications, and the complexity of the issues involved meant that the Special Committee could not be expected to achieve substantive results in the short term. His delegation believed resolution 35/164 showed clearly that the intention of the General Assembly was that the Special Committee should forward to it only those recommendations on which consensus could be reached. In the case of the maintenance of international peace and security, that was still a distant goal. In the first place, the consideration of all 74 relevant preliminary proposals had not yet been concluded; and, secondly, the report of the Special Committee (A/36/33) showed that there was still a considerable divergence of views on matters of substance.

9. The proposals relating to the work of the Security Council in fulfilling its main task under Article 24 of the Charter merited particular attention. It would, however, be a one-sided approach inconsistent with the Special Committee's mandate to focus exclusively on proposals of that kind. A remarkable proportion of the proposals concentrated on the limitation, through modification of the Security Council's procedure, of the principle of concurring votes of the permanent members on certain issues. His delegation regarded such proposals as completely unacceptable in that they were aimed at limiting the flexibility of the Council. Given the existence of differing social systems in the world, the principle of concurring votes was the only possible procedure which would enable the United Nations to work towards generally acceptable solutions taking into account the interests of all parties concerned.

10. Another group of proposals dealt with questions relating to the peace-keeping operations of the United Nations. His delegation took the view that, in considering such proposals, the Special Committee was reversing positions it had itself adopted

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(Mr. Zachmann, German Democratic Republic)

earlier. It was evident that an attempt was being made in the Special Committee to consider "practical" questions before agreement was reached on basic issues relating to peace-keeping operations. It was also evident that serious divergences of opinion on the question of the maintenance of peace and security within the Special Committee had still to be resolved.

11. There was greater room for optimism when reviewing the progress achieved in preparing the draft declaration on the peaceful settlement of disputes. However, although a text had emerged, and many of the amendments which had been suggested were of a minor order, it could not be denied that some aspects of the draft raised questions of vital importance to a number of States. His country had repeatedly drawn attention to the need to confine the declaration to disputes which were likely to jeopardize the maintenance of international peace and security, an approach which would adequately reflect the content of the Charter. A further problem was that of balance. A thorough study of the entire text showed that the emphasis clearly lay on those means and methods of settlement of disputes which necessitated the involvement of a third party. On that account, his delegation considered it highly important to include in the draft the reference to the intervention of a third party contained in the last parenthesized sentence of section I, paragraph 5, and the call for direct negotiations in paragraph 11 bis of that section.

12. Reference had been made on various occasions to the role of the International Court of Justice, and his delegation's position on that matter was well known. His delegation would reject any attempts to extend the Court's competence beyond the framework set by the United Nations Charter and the Statute of the Court. His country did not, for example, admit the possibility of accepting the compulsory jurisdiction of the Court, a proposal which it regarded as incompatible with the sovereign equality of States in the process of peaceful settlement of disputes.

13. With regard to the question of including peoples living under colonial and racist domination in the framework of the relevant provisions of the draft declaration, a question which had been discussed extensively in both the Special Committee and its Working Group, his delegation supported the legitimate demands put forward by a number of States.

14. It was clear that the Special Committee had reached a stage in its work at which strict observance of its mandate was indispensable. The principle of consensus was the essential feature of that mandate, and his delegation regarded the principle as a basic prerequisite for achieving a result that would reflect the expectations of all who wished to see the United Nations carry out its work more efficiently.

15. Mr. de PAIVA (Brazil) said that while his delegation would not challenge the claim made by the Special Committee in paragraph 19 of its report (A/36/33) that "substantial progress had been made towards fulfilment of the tasks extended to it", it was evident that the areas of agreement within the Special Committee were very narrow indeed, and that a consensus had not been reached on any of the main items under consideration. Even so simple a question as the admission of observers had caused severe disagreement at the 1981 session and had not been completely settled, despite the extensive informal consultations carried out by the Special Committee's Chairman.

(Mr. de Paiva, Brazil)

16. None the less it could not be said that the Special Committee had done no real work. Informal consultations on the second revised version of the draft Manila declaration on the peaceful settlement of disputes had been held over a period of several weeks and had resulted in a new text of the draft declaration, still full of brackets but at least acceptable to all as a basis for future work. Moreover, the Special Committee had devoted some attention to the question of the rationalization of existing procedures and the Repertory of Practice of United Nations Organs.

17. Although General Assembly resolution 35/164 had stated that priority should be accorded to the maintenance of international peace and security, the debate at the most recent session had been, in essence, a repetition of those held from 1976 to 1980, when all the proposals of the compilation had been presented for the first time. His delegation understood from the text of the resolution that the Special Committee should, on the basis of its past discussions, try to draw up a list of proposals to assist the Organization in discharging its tasks more effectively. In that context, the proposals relating to the functioning of the Security Council would naturally be prominent, for the simple reason that the Council was the body primarily responsible for the maintenance of international peace and security. It was also understood that the compilation could not be regarded as an end in itself, but rather as a point of departure for the formulation of practical recommendations. However, at its 1981 session, the Special Committee had not chosen to follow those guidelines, and appeared to have lost sight of the fact that what was envisaged in resolution 35/164 was the idea of assembling all the proposals in a rational and organized way. The texts dealing with the essential features of the work of the Security Council had been rejected out of hand by a small group of delegations.

18. At only two points did the Special Committee's report deal with the substance of the task entrusted to it in respect of the maintenance of international peace and security, i.e. the document prepared by the Chairman, reproduced in paragraph 268, and the draft recommendation presented by Egypt on behalf of the non-aligned countries in the Special Committee, reproduced in paragraph 269. The main purpose of the Chairman's document, which had been prepared in response to the request in paragraph 2 of the General Assembly resolution 35/164, was to group the proposals in different categories and, on the basis of that grouping, to lead the Special Committee to more substantive work. While agreeing with the Chairman's basic approach, his delegation felt that the fact that some proposals did not currently meet with general agreement did not mean that they should simply be set aside in order to avoid offending those who regarded the Charter as sacrosanct. Secondly, the priority to be accorded to each proposal should be in proportion to the likelihood that it would enhance the effectiveness of the Organization in maintaining international peace and security. Thirdly, proposals referring to the work of the same organ of the United Nations should be examined simultaneously and, if possible, amalgamated. In general, however his delegation considered the Chairman's document to be a valuable basis for future work.

19. The draft recommendation presented by Egypt deserved the Sixth Committee's support. The approach of the sponsors was by and large a reasonable one, and the language used was very cautious. The recommendation did not call for immediate changes in the working methods of the Security Council, but highlighted the need for an examination of the application of the unanimity rule. His delegation could not see why the Special Committee could not take such a modest step.

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(Mr. de Paiva, Brazil)

20. On the question of the peaceful settlement of disputes, his delegation shared the deep concern expressed by a number of delegations at the slow pace of the Special Committee's work. The text of the draft declaration currently under consideration did not present any insurmountable difficulties, and the sponsors had made it clear that they did not intend to go beyond the provisions of the United Nations Charter. They had shown an admirable spirit of conciliation, yet progress lagged far behind the expectations of a number of delegations, including his own, and the debates had sometimes been tortuous. No one could deny the importance of the Declaration as a complementary instrument to the application of the provisions of Chapter VI of the Charter, and that was precisely why his delegation hoped that the draft declaration would be finalized in the very near future.

21. In conclusion, he said that his delegation subscribed to the view, which seemed to be unanimously held, that the Repertory of Practice of United Nations Organs should be updated.

22. Mr. SÁNDIGA (Peru) said the Minister for Foreign Affairs of the Philippines had aptly stated that the United Nations was no exception to the rule that all institutions, however good or bad, must be examined and improved from time to time; that the United Nations played a marginal role in maintaining international peace and security, the basic purpose for which it had been established; and that since no other system had been established to maintain international peace and security, there was currently a void instead of a collective and functional world security system. No one could seriously question the moral authority, sincerity, judgement or experience behind those remarks.

23. Peru believed that it was necessary to develop the Charter principles and strengthen the United Nations. The Charter had failed to fulfil the functions for which it had been originally designed. Under Article 1, the purposes of the United Nations were to maintain international peace and security, to develop friendly relations among nations and to achieve international co-operation in solving international problems. The Organization seemed to be moving further and further away from those goals.

24. A reading of the 74 proposals reproduced in the Special Committee's 1980 report (A/35/33, para. 152) suggested some explanations for the Organization's current state of virtual paralysis. His delegation believed that agreement was possible on some of those proposals, such as those contained in section I, subsection A, of the document prepared by the Chairman of the Special Committee (A/36/33, para. 268). More than half of the proposals in that subsection were intended to make the Security Council more functional and therefore more effective. It was right that the Special Committee should focus on the functioning of the Security Council and on its decision-making machinery; the Council was clearly the most important United Nations organ, and the emphasis placed on it reflected an awareness of the need to improve its functioning. All Member States should try to understand and appreciate the situation as it stood. By its attitude, the Special Committee had refuted those who were sceptical about attempts to develop the Charter principles and those who believed the Charter to be an untouchable international instrument.

(Mr. Sándiga, Peru)

25. Serious and imaginative consideration should be given to ways of developing and thereby improving the Charter principles. Time had shown only too well that some of the mechanisms of the United Nations urgently needed adjustment. All States enjoying a special status in the United Nations should seriously and fearlessly seek to rescue the Organization from its current paralysis. Prepared as it was to co-operate in that endeavour, his delegation had participated as an observer in the work of the Special Committee. Nothing would be more heartening to the third world and genuinely non-aligned countries such as Peru than to see the permanent members of the Security Council agree to consider the devising of mechanisms that would develop the Charter principles and strengthen the role of the Organization.

26. Ms. OLIVEROS (Argentina) paid a tribute to the Chairman of the Special Committee for his excellent presentation of the report (A/36/33). Argentina was pleased with the direction taken by the Special Committee's work since 1980, when a new and constructive stage of its work had begun at the session in Manila.

27. Argentina also wished to thank the Romanian delegation for its proposal to take the question of the peaceful settlement of disputes out of the controversial atmosphere of the General Assembly and entrust it to the Special Committee (see A/C.6/35/SR.33, para. 21), which undoubtedly facilitated more rapid progress in dealing with that question. One of the main aims in strengthening the United Nations must be to establish the right conditions to enable Member States to make better use of the various means of peaceful settlement of disputes through effective dialogue.

28. The Special Committee's work on the maintenance of international peace and security had been greatly facilitated by the compilation made by the Chairman (A/36/33, para. 268). The varied ideas it included reflected the concern of Member States to improve the Organization and ensure that it remained a dynamic institution. Institutions had to be reformed in order to keep them up to date, otherwise, they were likely to disappear. The need to leave the door open for change must be heeded by all. The number of proposals put forward meant that progress in considering them must necessarily be slow, and her delegation accordingly did not agree with some of the expressions of frustration uttered both in the Sixth Committee and in the Special Committee.

29. More progress had been made with regard to the peaceful settlement of disputes, even though the draft text of the Manila declaration was still full of square brackets. It was to be hoped that at future sessions the misgivings of States about the text in brackets could be allayed, so that once the text had been agreed upon it could be adopted quickly. However, the Special Committee must not be asked to complete the drafting of a text within a given period, since a text had to be prepared carefully if it was to stand the test of time. Her delegation was glad to note that the Special Committee had devoted some attention to the problem of the rationalization of existing procedures of the United Nations, and supported the proposals to study the methods and procedures for dealing with legal and drafting questions adopted in General Assembly resolution 684 (VII), which were part of the rules of procedure of the General Assembly. It was a useful suggestion to ask the Secretary-General to prepare a report on the practice of the General Assembly and its Main Committees with respect to the recommendations in resolution 684 (VII) (A/36/33, para. 312).

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(Ms. Oliveros, Argentina)

30. Lastly, she wished to emphasize the need to strengthen the Office of Legal Affairs so that it could bring up to date as soon as possible the publication in various languages of the Repertory of Practice of United Nations Organs, a document which was most useful in gathering information about the functioning of the Organization and was essential to a correct analysis of the problems of rationalization. She thanked the Secretary-General for the report contained in document A/C.6/36/2, and hoped that Supplement No. 4 to the Repertory would appear very soon and that rapid progress would be made with Supplement No. 5.

31. In conclusion, she reaffirmed her delegation's confidence in the Special Committee, whose terms of reference should be renewed, with sufficient latitude to enable it to work without undue pressure.

AGENDA ITEM 116: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued)

32. Mr. ESONO NDONG (Equatorial Guinea) said that had he been present during the voting at the 27th meeting, he would have voted in favour of draft resolution A/C.6/36/L.3/Rev.1.

The meeting rose at 12.10 p.m.