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SUMMARY RECORD OF THE 13th MEETING

Chairman:

Mr. MIKULKA

(Czechoslovakia)

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The meeting was called to order at 10.25 a.m.

STATEMENT BY *THE* PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

1. The CHAIRMAN welcomed the President of the International Court of Justice, Judge José María Ruda, Judge Stephen Schwebel, and the Registrar of the Court, Mr. Eduardo Valencia-Ospina. Their presence was particularly welcome since the Committee was considering two issues closely related to the activities of the Court: the peaceful settlement of disputes and the United Nations Decade of International Law. The section of the Secretary-General's report on the Decade concerning increased recourse to the Court demonstrated the importance which Governments attached to strengthening the role and effectiveness of that institution. The increasing tendency of States to accept the compulsory jurisdiction of the Court was a major signal of the importance which States attached to the principles of international justice and peace. If that tendency continued, the Court would be able more fully to play its role as the principal judicial organ of the United Nations. He also noted the Court's major contribution to the progressive strengthening and development of international law.

2. Judge RUDA (President of the International Court of Justice) observed that the Court now had before it a total of eight cases, including, for the first time, one from each continent.

3. He welcomed the suggestion by the Secretary-General in his report on the work of the Organisation (A/45/1) that authority to request advisory opinions from the Court should be extended to the Secretary-General. That would give the Court a valuable opportunity to rule on applicable international law in many situations. The Court also welcomed the launching of the Trust Fund to Assist States in the Settlement of Disputes through the Court, which would enable States that could not afford to do so on their own to bring disputes before the Court. The Court looked forward to the United Nations Decade of International Law, which he hoped would enhance its role in the future.

4. The CHAIRMAN asked the President of the Court to convey the Committee's deep respect and admiration the highly commendable manner in which it was carrying out its noble mission in the service of peace.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/45/436 and Add.1, A/45/522-5/21795, A/45/527-S/21801; A/C.6/45/L.1)

5. Mr. MIRZAEI-YENGEJEH (Islamic Republic of Iran) noted that, while the end of the cold war prompted hopes for more favourable conditions for peace and understanding among nations, recent developments had aroused concern that co-operation among developed, industrialised, prosperous and powerful States might

**(Mr. Mirzaee-Yengejeh, Islamic
Republic of Iran)**

take place at the expense of the interests and needs of the developing world. The Special Committee on the Charter should assist the United Nations in discharging its responsibilities in the light of changed world circumstances. The Special Committee should continue to explore ways and means of strengthening the role of the Organization with respect to the peaceful settlement of disputes and the maintenance of international peace and security, in a manner which ensured wide participation by the Members of the United Nations.

6. The recent aggression in the Persian Gulf, the second invasion by one State in the past 10 years, indicated that the danger that regional conflicts might erupt into a world-wide disaster still existed. The concerted reaction of the international community in the face of the recent aggression, and the pivotal role of the Security Council, were encouraging. The Security Council, which bore the primary responsibility under the Charter for the maintenance of international peace and security, must take the necessary precautionary measures to retain the initiative and must not allow itself to be bypassed by members acting unilaterally. He emphasized that measures taken outside the United Nations machinery were not consistent with the trend towards strengthening the role of the Organization.

7. After welcoming the progress made in the consideration of fact-finding activities, he said that fact-finding was a preventive measure aimed at peacefully resolving disputes at an early stage. That should be stated clearly at the very beginning of the future instrument on the subject, in the definition of "fact-finding activities". His delegation agreed that the prior consent of the receiving State was essential for the dispatch of any kind of fact-finding mission, would guarantee the co-operation of the receiving State and would facilitate the mission's work. Consent should be expressed explicitly; it could not be presumed by silence. If a sovereign State refused to receive a fact-finding mission, it should not be pressured to supply its reasons. The inclusion in the future instrument of a provision for unilateral declaration of acceptance of fact-finding missions raised serious political, legal and practical problems, and was totally unacceptable to his delegation.

8. Experience in recent years had demonstrated that the Secretary-General was in a better position to carry out fact-finding activities, and he should be authorised to initiate such activities.

9. It was important to recognise the difference between utilising the information-gathering capabilities of the United Nations and having recourse to fact-finding, which was an exceptional procedure. Fact-finding activities could be carried out in certain circumstances in which information-gathering might not yield objective and verifiable information. In exceptional cases, United Nations officials in a receiving State might be asked to undertake fact-finding activities. Even in such cases, all the requirements for such activities must be met.

(Mr. Mirzaee-Yengejeh, Islamic
Republic of Iran)

10. His delegation endorsed the proposal to entrust the Special Committee with the task of studying ways and means of implementing the principles of international law enshrined in the Charter. It was regrettable that the Security Council had failed on various occasions to act decisively and promptly to deal with breaches of the peace and acts of aggression. However, the Council had taken decisive action in the recent case of aggression, and his delegation endorsed the proposal of the Soviet Union to the effect that the permanent members of the Council should pledge to refrain from the threat or use of force in international relations. The proposal should be carefully studied in good faith by the other members of the Council. The inclusion of the subject in the agenda of the Special Committee would represent a contribution by that Committee to the activities of the United Nations Decade of International Law.

11. With respect to the Soviet proposal concerning ways of expanding co-operation between the United Nations and regional organisations, he said that the Charter provisions in that respect were clear. Article 52, paragraph 2, obliged the parties to regional arrangements to "make every effort to achieve pacific settlement of local disputes through such . . . arrangements . . . before referring them to the Security Council", and Article 52, paragraph 3, made it a duty of the Security Council to encourage such settlement measures. Those provisions did not exclude the possibility that a local dispute could be considered by the Council at the request of one party. In cases of a breach of the peace or act of aggression, the Council clearly had the primary responsibility.

12. Experience in recent years had shown that the Secretary-General could play a significant role in bringing about the peaceful settlement of international disputes. His delegation therefore supported the elaboration of an instrument which would contribute to the enhancement of the Secretary-General's role in maintaining international peace and security.

13. Lastly, he welcomed the progress made on the draft handbook on the peaceful settlement of disputes between States. It should be circulated to the members of the Sixth Committee for study and written comments.

14. Mr. PATRONAS (Greece) welcomed the compromise document which had emerged from the Special Committee on the subject of strengthening the fact-finding capabilities of the United Nations in the field of the maintenance of international peace and security (A/AC.162/L.66). The future document should specifically mention the preventive nature of fact-finding and should also state that fact-finding was crucial for the settlement of disputes.

15. His delegation welcomed the emphasis on strengthening the role of the Secretary-General in undertaking fact-finding missions or using United Nations fact-finding capabilities. The prior consent of the State to which a fact-finding mission was to be sent was essential. In order to strengthen the provisions in the compromise document regarding recourse to fact-finding by the Security Council and the General Assembly (A/C.182/L.66, paras. 32 and 33), the word "should" should be replaced by the word "shall", and the words "wherever appropriate" should be deleted.

(Mr. Patronas, Greece)

16. Although the Special Committee had not considered any specific proposals regarding the peaceful settlement of international disputes, the subject remained of prime importance, and the suggestion that a mechanism should be established for the prevention and settlement of international disputes on the environment merited thorough consideration. Greece welcomed the announcement that the draft handbook on the peaceful settlement of disputes between States would be completed before the next session of the Special Committee.

17. With respect to the rationalisation of existing United Nations procedures, his delegation hoped that the document contained in paragraph 86 of the Special Committee's report (A/45/33) would be adopted by consensus.

18. Given the current international climate, the Special Committee could play a major role in promoting the rule of international law by taking up the question of enhancing the system of collective security envisaged in the Charter. It was also essential to deal squarely with situations in which decision of the United Nations in the field of international peace and security were deliberately flouted, as had occurred in the case of decisions regarding Cyprus. Lastly, his delegation supported the renewal of the mandate of the Special Committee.

19. Mr. SHANNON (Australia) said that the synthesis of the two working papers on fact-finding was a positive step forward in the Special Committee's consideration of that item. The issue of consent still appeared to be a matter of contention; his delegation only wished to note that paragraphs 13 and 14 of the unified document did not appear to conflict with each other. Australia strongly supported the general principle of fact-finding in the context of the maintenance of international peace and security, and could support an even wider use of such mechanisms, particularly calling upon the Secretary-General, in pursuing the peaceful settlement of disputes. The Secretary-General himself, in his report on the work of the Organisation (A/45/1), had emphasised that the means at his disposal for gathering the timely, accurate and unbiased information that was necessary for averting violent conflicts were inadequate. His delegation hoped that at its next session, the Special Committee would be able to produce a final text which would give the Secretary-General some of the tools he was looking for.

20. The second important area of progress made by the Special Committee concerned the finalisation of the draft document on the rationalisation of existing United Nations procedures. His delegation supported the consensus text produced by the Special Committee, and recommended the procedures set out therein. His delegation also noted with satisfaction the assurances of the Legal Counsel that the draft handbook on the peaceful settlement of disputes between States would be completed before the next session of the Special Committee. The handbook would have value for diplomats and policy-makers who might otherwise be prevented by lack of resources from being fully aware of the various ways in which the United Nations system could contribute to the peaceful settlement of international disputes.

21. The Special Committee's general exchange of views on the peaceful settlement of disputes between States adequately underscored the key functional issues in that

(Mr. Shannon, Australia)

area. It seemed that members of the Special Committee were tailoring their remarks under that broad theme more and more to the work which the Special Committee did best, namely, examining and making recommendations about the law of the United Nations. The time had come to remove peaceful settlement of disputes as a separate item from the Sixth Committee's agenda. The subject was so broad and complex that to pretend it had a unique importance to the Sixth Committee was anomalous. Treated thematically, peaceful settlement must remain a vital focus of the work of the Special Committee.

22. The International Court of Justice was integral to the operation of the Charter and a proper subject within the Special Committee's purview. His government had been a long-standing champion of the ideals on which the Court had been founded, and its support had not diminished now that Australia was involved in a case before the Court as a result of its unqualified declaration accepting the jurisdiction of the Court under Article 36, paragraph 2, of its Statute. More States should make the optional declaration under Article 36, and more treaties should make provision for resorting to the Court in the settlement of disputes. It was most encouraging to see the number of States that had recently withdrawn reservations to their acceptance of the Court's jurisdiction in dispute settlement. His Government knew from practical experience that international litigation was an expensive undertaking, and it therefore supported the Secretary-General's initiative to establish a trust fund to assist those States which had taken the honourable step to resolve otherwise intractable disputes in the Court.

23. With regard to the future work of the Special Committee, his delegation expected that it would have an important role to play in implementing initiatives taken in the context of the Decade of International Law. In the working out of the programme for the Decade, the Special Committee's expertise in the law of the United Nations would no doubt be employed to good effect, without duplicating the work of other bodies. In its future work, the Special Committee would serve itself and the international community best by focusing on particular issues pertaining to the Charter where international lawyers were perhaps better placed than others to help solve problems and further the cause of peace.

24. Mr. SOLOLOVSKIY (Byelorussian Soviet Socialist Republic) said that an increasingly independent world needed a mechanism capable of finding mutually acceptable solutions to common problems. The United Nations had been intended as such a mechanism from its foundation, but only now, after a great breakthrough in international relations, could it act as the unifier of peoples. His country needed such a mechanism just as much as the rest of the international community, for it had undertaken a reorganization of all its structures: its Declaration on Sovereignty had opened the way to full participation in international life.

25. The question of neutrality was most significant, for the Byelorussian SSR stood at the crossroads of Europe and had always been an arena for military activities. It therefore had a vital interest in international efforts to help it acquire the status of a non-nuclear zone and neutral State. There were many

(Mr. Sokolovskiy, Byelorussian SSR)

obstacles to the attainment of that goal, including the dilemma of becoming a non-nuclear part of a nuclear whole. The Byelorussian people had endured horrors under enemy invasion and had suffered as a result of the Chernobyl accident. It therefore saw in the creation of a common European home the guarantee of a secure future.

26. It was against that background that his delegation assessed the latest session of the Special Committee on the Charter, in which it had taken part as an observer. It noted with satisfaction that the propagandistic and declarative statements typical of previous sessions had passed into history, and that the Special Committee had become much more business-like; in that connection, a tribute should be paid to its Chairman, who had indicated, *inter alia*, that the new climate in international relations had enhanced the productiveness of the session.

27. The preparation of a unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/45/33, para. 68) was an important achievement which would lead to an extension of the United Nations fact-finding role. The new document's concern with prevention was commendable, as was the fact that its recommendations were based on the Charter and on observance of the principle of free choice of the means of peaceful settlement of disputes. It was particularly important that the Special Committee had agreed on the need for the prior consent of a State before a fact-finding mission was sent to its territory. The fundamental changes in international relations might enable the United Nations to extend its fact-finding activities to such areas as the defusing of potential crises, promotion of the peaceful settlement of disputes, monitoring of the implementation of international treaties, and observance of electoral processes. The discussion in the Special Committee had also held the promise of the establishment of a dispute-settlement or fact-finding mechanism with regard to the environment. There was every reason to expect that it would complete the preparation of the fact-finding document at its next session.

28. When completed, the draft handbook on the peaceful settlement of disputes between States would help States to settle disagreement peacefully, and would provide valuable assistance in the preparation of a future document on the peaceful settlement of disputes within the framework of the Decade of International Law. His delegation endorsed what was said in paragraph 77 of the report (A/45/33) about the need to rationalise the work in that area. It also believed that the establishment of the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice would play a useful role. His delegation urged the United Nations to bring its whole dispute-settlement machinery to bear on the conflict in the Middle East in order to prevent an escalation of the hostilities.

29. At its latest session, the Special Committee had completed a draft document on the rationalisation of existing procedures of the United Nations (A/45/33, para. 86), which contained proposals for improvement of the work of the General Assembly. The gradual establishment of the principle of adopting "agreed texts",

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recommended in paragraph 1 of the document, was the most effective means of achieving generally acceptable decisions, and would facilitate the Organisation's work.

30. As to the future work of the Special Committee, its mandate must be based on the premise that legal means must prevail in the settlement of all contentious issues. Its programme of work might therefore include such questions as expansion of co-operation between the United Nations and regional organisations, broadening the Secretary-General's peace-keeping efforts, and participation in the preparation of a draft general instrument on peaceful settlement of disputes. It might be useful for the Special Committee to consider ways and means of fully implementing the Charter, the norms of international law and related enforcement actions vis-à-vis a State that had breached the peace or failed to comply with Security Council decisions.

31. Mr. YU Mengjia (China) said it was gratifying to note the achievements that had been made by the United Nations and the parties concerned in several areas of international affairs, including the completion of the independence process in Namibia and the search for a Political settlement of regional conflicts such as those in Cambodia, Central America, Western Sahara and Afghanistan. Regrettably, however, many regional conflicts had not subsided, and instances of the use of force in settling international disputes were still occurring. China attached great importance to the role of various organs of the United Nations, particularly the Security Council, in the Peaceful settlement of international disputes. It had faithfully discharged the responsibilities entrusted to it under the Charter by joining the United Nations in its efforts to resolve regional conflicts and mediate international disputes. Both historical conflicts and new disputes between States or regions could be properly settled by peaceful means and without resort to force, so long as the countries concerned had a sincere desire to settle them and to conduct amicable consultations for that purpose.

32. His Government was of the view that the peaceful settlement of international disputes should be based on a number of principles of peaceful coexistence. All countries of the world, regardless of size, strength or wealth, were independent sovereign States and, therefore, should be equal. Their sovereignty and territorial integrity should be respected. It was not permissible for any country to encroach upon the territory of another or to carry out aggression and expansion under any pretext. The internal affairs of each and every country, including the choice of path of development and social system, should be decided upon only by its own people. No foreign Power had the right to interfere in such affairs, to impose its will on others, or to practise power politics and hegemonism. All countries should respect one another, co-operate to their mutual benefit and live in harmony. It was on the basis of those principles that China had smoothly settled with some countries, through peaceful negotiations and amicable consultations, boundary questions and other issues left over from the past. The Sino-British accord on the question of Hong Kong and the Sino-Portuguese accord on the question of Macao were both cases in point. His delegation therefore remained ready to join fellow delegations in working for the preparation of legal documents promoting the peaceful settlement of international disputes.

33. **Mr. RAZMI** (Afghanistan) noted with satisfaction that the unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security (A/45/33, para. 68) generally presented a balanced version of the two working papers originally considered by the Special Committee on the Charter. However, some aspects of that highly important topic had yet to be elaborated. For example, paragraph 9 of the unified document, which encouraged States to bring any situation that was likely to threaten the maintenance of international peace and security, and where the facts were in dispute, to the attention of a competent organ of the United Nations, lessened States' obligations under Articles 35 and 37 of the Charter. The paragraph should clearly indicate the obligations of States under the Charter when international peace and security were threatened.

34. The crucial issue of the prior consent of States had raised concerns about the protection of State sovereignty. The matter of the acceptance by Member States of United Nations fact-finding missions gave rise to a question with regard to situations where facts were disputed and where the offending party refused to accept in its territory such a mission. The question was whether or not paragraph 13 of the unified document, by referring to Article 25 of the Charter, implied that such a refusal would be a violation of Article 25, under which Members of the United Nations agreed to accept and carry out the decisions of the Security Council in accordance with the Charter. The question was whether or not that Article applied to a decision by the Security Council on sending fact-finding missions to a given State.

35. Moreover, Article 34 of the Charter authorised the Security Council to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation was likely to endanger the maintenance of international peace and security. If a situation arose where foreign intervention was involved and the offender State did not accept a fact-finding mission, which could provide a direct and credible source for the Council's investigation, the competence of the Council would again be called in question. In the view of his delegation, in matters relating to the maintenance of international peace and security, the authority of the United Nations and the Security Council should be maximised in accordance with the Charter.

36. Turning to the question of the peaceful settlement of disputes, he said that the views of his Government were expressed in specific terms in its letter addressed to the Secretary-General, contained in document A/45/436/Add.1.

37. **Ms. DOWSETT** (New Zealand) said it was gratifying to see that the work of the Special Committee on the Charter in 1990 had taken place against a background of greatly improved international co-operation. Since the Special Committee's meeting in February, the United Nations membership had faced, in what had happened in Kuwait, one of the greatest challenges to the very principles on which the United Nations Charter was based. The response had been resolute, giving new life to Article 6 that had been little used before. There were now new possibilities for giving effect to the security framework of the Charter envisaged by the drafters

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in 1945. The two items currently under discussion were accordingly regarded by her delegation as amongst the most important on the Sixth Committee's agenda. For the same reason, her delegation would like to see the promotion of the principle of peaceful settlement of disputes clearly established as a major objective of the programme for the Decade of International Law.

38. Effective action by the United Nations was basic to the maintenance of peace and security, and to that end, full use should be made of the Organisation's fact-finding capabilities. The unified document on that question represented a concrete step forward, and it was to be hoped that a final text could be adopted within the next year for submission to the General Assembly at its forty-sixth session.

39. Now Zealand welcomed the progress made by the Special Committee in completing the draft document on the rationalisation of existing United Nations procedures. In particular, it welcomed those proposals aimed at minimising the duplication of effort.

40. Although the working paper entitled "New issues for consideration in the Special Committee" had not been considered during the 1990 session of the Special Committee, her delegation welcomed the intention of its sponsor to generate thinking on topics that might be appropriate for discussion at a later stage of the Committee's work. The work of the Special Committee should, of course, be aimed at enhancing the effectiveness of the Charter and of the Organisation. Careful consideration must, accordingly, be given to whether codification was, in a particular case, an appropriate exercise of the Special Committee's functions. Care would need to be taken to ensure that proposed work did not needlessly duplicate the provisions of the Charter or existing treaty instruments.

41. At its 1990 session, the Special Committee had also had before it the progress report of the Secretary-General on the preparation of the draft handbook on the peaceful settlement of disputes between States. Her delegation hoped that the handbook, when completed, would provide valuable reference material, helping countries to overcome practical problems involved in the peaceful settlement of disputes. The handbook illustrated the wide range of machinery that was available for the settlement of disputes. New Zealand remained strongly committed to the Peaceful settlement of disputes, and to the use of appropriate Procedures available for that purpose. Her Government's own commitment had been demonstrated by its submission to binding dispute settlement twice in recent years.

42. The International Court of Justice remained central to third-party dispute settlement. New Zealand had, for many years, urged all countries to accept the compulsory jurisdiction of the Court. It welcomed the very recent acceptance by Poland of compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court. As the Court was the principal judicial organ of the United Nations, it was important that lack of funds or legal expertise should in no way prejudice access to it by individual Members where the political will to settle a dispute by that means was shared by the parties to a dispute. The Secretary-General's

(Ms. Dowsett, New Zealand)

initiative to establish the Truett Fund to Assist States in the Settlement of Disputes through the Court was, for that reason, to be welcomed, and her Government was pleased to have been able to make a substantial contribution to the Fund earlier in 1990.

43. Mr. BERG (Germany) said that a look at the agenda of the Special Committee on the Charter prompted reflection on its basic mandate and on its future agenda. The work on the draft on the rationalisation of existing United Nations procedures had been concluded. Although on a number of points, the version now before the General Assembly fell short of his delegation's goals, he noted that all in all it contained useful and necessary rules and clarification⁶ which would help improve existing United Nations procedures. The handbook on the peaceful settlement of disputes between States would probably be completed during the 1991 session of the Special Committee. That Committee's main interest had been focused on the working paper on fact-finding, which was also likely to be adopted at the 1991 session.

44. His delegation considered that the Special Committee fulfilled a necessary and useful function in the United Nations system; it followed logically that the Special Committee should also play a part in the Decade of International Law. Preliminary discussions on the programme for the Decade had shown that there was particular interest in dealing with aspects of the peaceful settlement of disputes. Since that was an extremely important issue before the Special Committee, it would only seem natural that the Special Committee, within the framework of the Decade, should deal with specific matters in that area. Since aspects of the peaceful settlement of disputes would thus be dealt with both within the Decade and within the Special Committee, there was no rational need for peaceful settlement to be a separate item on the agenda of the Sixth Committee.

45. In deciding on new items, it was important to avoid diluting the Special Committee's mandate with irrelevant questions and overloading its agenda with unrealistically ambitious projects. Equal attention should be paid to avoiding duplication and overlapping. It was important to avoid subjects that were, a priori, doomed to failure because of their complexity or because they would jeopardise the consensus in the Special Committee.

46. The proposal presented by the Soviet Union during the general debate, as well as in the working paper entitled "New issues for consideration in the Special Committee", were a valuable contribution to the discussion on the future work of the Committee. In particular, his delegation welcomed the ideas on promoting preventive measures by the United Nations. His delegation was particularly grateful that the issue of election monitoring had been addressed, even though, in its view, it did not fall under the category of fact-finding. The election-monitoring missions carried out by the United Nations were part of conflict prevention, and constituted an instrument whose expansion should be considered in the future. That would be more than a contribution to the implementation of fundamental human rights; it would also help to ease internal political and social tensions, and thus to avoid endangering the international situation.

(Mr. Berg, Germany)

47. The concept of conflict prevention was extremely important in the work of the Special Committee. There was still ample room for the United Nations to expand its role in that area, and the Secretary-General had an essential role to play in that regard. Even during a period in which the ability of the United Nations to act under Chapter VII of the Charter was being put to the test, sufficient room must remain for the concept of prevention. The Secretary-General shared that view when, in section III of his report on the work of the Organisation (A/45/1), he termed action under Chapter VII a measure of last resort. In his report, the Secretary-General also grappled with the question of the role of the Secretary-General and presented several proposals concerning preventive diplomacy, among them more informal reports by him to the Security Council, outside the scope of Article 99 of the Charter, and improved fact-finding arrangements to strengthen the Council's role in dealing with incipient disputes. His delegation welcomed those proposals and took it that the initiative of the Special Committee concerning fact-finding would represent a needed contribution in that regard.

48. The Secretary-General had stated in his report that the means at present at his disposal for gathering the timely, accurate and unbiased information that was necessary for averting violent conflict were inadequate. He had gone on to say that the Organisation's mediatory or investigative capacity should not be kept in reserve until it was too late to avert hostilities. There again, the initiative of the Special Committee would help remedy the situation, so that the United Nations would be able to fulfil its function in the prevention of conflicts and the maintenance of international peace and security.

49. The relevance of fact-finding had been thrown into relief, *inter alia*, by the example of Cambodia. In connection with the resolution of that complex conflict, during the preparatory stage of a comprehensive peace-keeping operation, the Secretary-General had sent a total of five missions to Cambodia to explore primarily the logistic and administrative prerequisites for the operation. No doubt their activities represented a contribution to the implementation of the settlement plan.

50. The progress made by the Special Committee on the issue of fact-finding was demonstrated in the unified document (A/45/33, para. 68) produced before the end of the 1990 session. The Special Committee would be able to embark on concrete text negotiations at its 1991 session. Two issues which had been discussed at length by the Special Committee would probably need further consideration, namely, the question of the receiving State's prior consent to a fact-finding mission, and the enhancement of the general information-gathering capabilities of the Secretary-General. The opinion voiced in the Special Committee that the existing capabilities were sufficient was debatable, in view of the Secretary-General's candid statement on that question. If fundamental misgivings against the proposed rules persisted, they should be re-examined in the light of the Secretary-General's renewed appeal.

51. The question of consent to a fact-finding mission touched upon fundamental issues that were also addressed in the Charter. In that context, the experience of

(Mr. Berg, Germany)

the unified document had repeatedly pointed out that their initiative represented policy suggestions, not a restating of law. One of those suggestions was contained in paragraph 14 of the draft, according to which States should be encouraged to follow a policy of admitting United Nations fact-finding missions to their territory. To rule out any doubt, however, paragraph 13 stated unambiguously that the prior consent of the receiving State was required before a fact-finding mission could be sent. That structure made it clear that the aim of the paper - a higher level of co-operation of States with the United Nations - was fully consistent with the principle of sovereignty.

52. In conclusion, he wished to draw attention to the remarks made by the Secretary-General in section I of his report on the work of the Organization, in which he had stressed that the Charter gained richer meaning as political evolution progressively enlarged and classified the scope of its principles. His delegation fully shared that evaluation, and considered that the importance of the Special Committee lay in its task of helping to keep the Charter as living law, thereby further strengthening the United Nations. His delegation would continue to support those endeavours in the future.

The meeting rose at 11.45 a.m.