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SUMMARY RECORD OF THE 39th MEETING

Chairman: Mr. ZEHENTNER (Federal Republic of Germany)

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The meeting was called to order at 10.30 a.m.

AGENDA ITEM 108: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-FIRST SESSION (continued) (A/34/10, A/34/194; A/C.6/34/L.2; A/C.6/34/CRP.1)

1. Mr. RIPHAGEN (Netherlands) said that the report of the International Law Commission on the work of its thirty-first session (A/34/10) showed that considerable progress had been made in the treatment of topics which had been on the Commission's agenda for many years. Unless the General Assembly requested more detailed treatment, the first reading of the draft articles on succession of States in respect of matters other than treaties had been completed. Furthermore, the first reading of the draft articles on treaties concluded between States and international organizations or between international organizations had almost been completed. Finally, the first reading of part 1 of the draft articles on State responsibility had also almost been completed.

2. His Government did not see the need for the Commission to return to the topic of State succession in respect of matters other than treaties at its next or any subsequent session. Although the succession of States raised a number of other problems, the draft articles dealt only with the effect of State succession on State property, State debts and State archives. His Government thought, however, that it would be difficult to draft general rules of international law for those other matters in view of the wide variety of State practice in that respect.

3. The modifications adopted by the Commission at its thirty-first session had in general improved the draft as a whole. In particular, the new wording of the general provisions on State debts (arts. 15 and 18) had clarified that complex issue. It would seem, however, that the commentary had not been fully adapted to that new wording. Thus, it was stated in paragraph 10 of the commentary on article 18 that the word "creditors" in paragraph 1 of that article "should be interpreted to mean third creditors, thus excluding successor States or, when appropriate, natural or juridical persons under the jurisdiction of the predecessor or successor States". Besides the discrepancy between that interpretation and the wording of the text itself, why should a succession of States as such legally affect the rights and obligations of creditors which were natural or juridical persons under the jurisdiction of the predecessor or successor States? In another part of the commentary, the Commission had demonstrated that the creditor-debtor relationship as such should fall outside the scope of the rules of international law relating to State succession. Indeed, that relationship was normally regulated by municipal law or, where appropriate, by rules of conflict of laws indicating the municipal law to be applied. If the creditor and debtor were States, their relationship might be governed by a treaty, but then the present draft articles would not apply, the effects of State succession on treaties being the subject-matter of the Vienna Convention adopted on 23 August 1978. Quite a different

(Mr. Riphagen, Netherlands)

matter was the relationship between, on the one hand, the predecessor and successor States and, on the other hand, a third State asserting a claim under international law on behalf of itself or its nationals, when the predecessor or successor State or both failed to meet its or their financial obligations under municipal law. Whether or not such a claim was admissible under the rules of international law and, if so, under what conditions and to what extent, were questions outside the scope of the draft articles. They fell within the scope of other rules of international law, namely those relating to diplomatic protection and State responsibility. But to the extent that those other rules allowed a State - or another subject of international law - to assert a claim, a preliminary question might arise in connexion with a situation of State succession, namely whether an agreement between the predecessor and the successor State, being an instrument governed by international law, concerning the passage of State debts from the one to the other could be invoked against a third State. That question was dealt with in the present wording of article 18, paragraph 2. Now it was clear that in the situation contemplated in that paragraph, the creditor, being a national of the third, claimant State might fall under the jurisdiction of the predecessor or successor State. That, indeed, was why the third State could not normally assert the claim unless the creditor himself had exhausted the effective local remedies available to him (see art. 22 of the draft articles on State responsibility). There was therefore no reason whatsoever to exclude creditors under the jurisdiction of the predecessor or successor State from the scope of article 18.

4. Indeed, the scope of that article was determined by article 16 as it now read. State debt was there defined as covering any financial obligation chargeable to a State, without exception, and had been deliberately so drafted by the Commission in order to cover State debts whose creditors were not subjects of international law. Although some members of the Commission were of the opinion that article 16 (b) should not be applied when the creditor was a national of the debtor predecessor State, that was not the view which had prevailed. Moreover, it was difficult to see how the provisions requiring that an equitable proportion of the State debt of the predecessor State should pass to the successor State (art. 19, para. 2; art. 22, para. 1; art. 23) could be applied. It would be equally difficult to apply those provisions requiring that an agreement between a predecessor State and a newly independent successor State should not "endanger the fundamental economic equilibria of the newly independent State" (art. 20, para. 2), if the State debts the creditors of which were nationals of the predecessor State were left out of account.

5. Turning to the question of State archives, he noted that, contrary to the system followed in respect of State property and State debts, the Commission had not proposed general provisions and provisions relating to each type of succession of States. Apart from a definition of the archives, the Commission had proposed only one article relating to one type of State succession, namely, the type where the successor State was a newly independent State. His delegation was in agreement with that approach. State archives were normally State property in the sense of article 5 and were covered by the relevant provisions on movable State property, although they were a particular type of State property and of particular importance for newly independent States. Nevertheless, the treatment of State archives in other types of State succession might also require attention, and his

(Mr. Riphagen, Netherlands)

delegation appreciated that the General Assembly might request the Commission to study that matter further. It would, however, prefer to leave the matter as it now stood.

6. His delegation was in general agreement with the new articles presented by ILC on the topic of State responsibility. It gave full approval to article 28, paragraph 3; an internationally wrongful act committed by a State should indeed entail the international responsibility of that State, even if the act had been committed under the influence of another State. That the other State also bore international responsibility was justified by the act: coercion to secure the commission of the wrongful act or failure to exercise its power of direction or control in order to prevent the wrongful act. It might also be that the circumstances of the situation warranted that the State having committed the wrongful act should not bear the full consequences of its responsibility, but that was a question to be dealt with in another context still to be discussed. The situations described in article 28, paragraphs 1 and 2, were exceptional. Nevertheless, paragraph 1 did apply in at least one situation which was certainly not unlawful, namely the situation of a federal State in which the component States had retained, to a certain extent, the status of subjects of international law. In that respect, it solved a question left open by the wording of article 7 of the draft.

7. With regard to chapter V of the draft articles entitled "Circumstances precluding wrongfulness", his delegation wondered whether, given the differences between the situations described in articles 29 and 30, on the one hand, and in articles 31 and 32, on the other, it was wise to put the four articles together in one chapter. Articles 29 and 30 both involved the legal relationship between two States A and B, State A having committed an act not in conformity with its obligations towards State B, and State B having either given its consent to the commission of the act (art. 29) or having committed an internationally wrongful act to justify a countermeasure by State A. It would seem to be clear a priori that in both cases the wrongfulness of State A's act could be precluded only as regards State B, the same act still remaining wrongful in its relation to a third State C. Neither State B's consent nor its internationally wrongful act could affect the obligations of State A towards State C. That was clearly spelt out in article 29, paragraph 1. On the other hand, the wording of article 30 was somewhat less clear. That was perhaps because article 30 referred to other rules of international law, which might even be the rules appearing in part II of the draft articles, since the right to take countermeasures was one of the consequences of international responsibility. In any case, the position of third States was determined by those other rules. It might be that under particular circumstances, still to be decided, a countermeasure legitimately applied by State A against State B also justified the breach of an international obligation of State A towards a third State, for example where the countermeasure was ordered by the Security Council and could not otherwise be applied. Such a rule would be the counterpoint to article 29, paragraph 2, which provided, in the relationship between State A and State B, that consent given by State B to an act of State A did not preclude the wrongfulness of that act if the obligation with which it failed to comply derived from a peremptory norm of general international law.

(Mr. Riphagen, Netherlands)

8. In the case of articles 31 and 32, the circumstances precluding wrongfulness (force majeure, fortuitous event, distress) were beyond the control both of State A, which was failing to comply with its international obligation, and of State B, which was the victim, as underlined by paragraph 2 of both articles. In paragraphs 39 and 42 of its commentary on article 31 and in paragraph 14 of its commentary on article 32, ILC had recognized that State A might have to pay total or partial compensation for the damage suffered by State B but had considered that that was a matter to be dealt with in another context, either in part II of the draft articles on State responsibility or in the draft articles on liability arising out of acts not prohibited by international law. In the opinion of his delegation, it was in part II of the draft articles on State responsibility that that problem should be considered and articles 31 and 32, and possibly other articles of chapter V still to be drafted, should include a reference to the rules to be set forth in part II of the draft articles. The current wording of articles 31 and 32 gave the impression that force majeure, fortuitous event and distress, by precluding wrongfulness of the act, liberated the State committing that act from all legal consequences normally attached to wrongful acts; that was certainly not the intention of ILC. Furthermore, if not all legal consequences normally attached to wrongful acts disappeared, it was obviously necessary to stipulate which disappeared and which remained, a subject-matter which would fit naturally into part II of the draft articles. Obviously, wrongful acts committed under conditions of force majeure, fortuitous event or distress could not be equated with hazardous acts not prohibited by international law, even if their legal consequences might be partly the same in respect of compensation for damages. Nevertheless, the problem with articles 31 and 32 was not simply a matter of compensation for damages. The question might arise, for instance, as to whether or not an act of State A, which was not in conformity with its obligation towards State B, although committed in circumstances of force majeure, fortuitous event or distress, might entitle State B to take countermeasures.

9. His delegation was also in general agreement with the 22 new articles concerning treaties concluded between States and international organizations, which ILC had provisionally adopted at its thirty-first session. Article 46, paragraphs 3 and 4 and article 45, paragraphs 2 and 3, had been adopted only after considerable debate within ILC. Given the structural difference between States and international organizations in the matter of treaty-making, a simple transposition of articles 46 and 45 of the Vienna Convention on the Law of Treaties, with full assimilation of international organizations to States in that respect, would not suffice. Nevertheless, the concept of security of legal relations underlying articles 46 and 45 of the Vienna Convention was equally essential for treaties concluded by international organizations. ILC had struck the right balance between those two considerations. On the one hand, it had recognized the structural difference between States and international organizations by treating all rules of the international organization regarding competence to conclude treaties as having the same fundamental importance. On the other hand, it had taken due account of the need to ensure the security of legal relations by requiring that the violation of those rules of the international organization had been or ought to have been within the cognizance of the other parties, and by providing for the loss of the right of the international organization to invoke the violation in

(Mr. Riphagen, Netherlands)

circumstances implying renunciation of that right. In that connexion, it should be recalled that article 2, paragraph 1 (j), defined the term "rules of the organization" as meaning, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the organization. That definition left scope for the presumption that, when the international organization had expressed its consent to be bound by a treaty, it had done so in accordance with its internal rules, and it could hardly be expected that a non-member State or another organization could determine whether that had indeed been the case. In any case, even if there had been some irregularity on the part of the international organization, and if the other party ought to have known it, it was very unlikely that any organ or member State of the international organization would be unaware of the existence of the treaty. In other words, the organs and member States of the organization would very soon have had an opportunity to react to the situation. At that time article 45 became applicable.

10. In regard to some of the new topics which ILC had begun to discuss in substance, his delegation was happy to note that the Commission had made a promising start on the topic of the law of the non-navigational uses of international watercourses, on the basis on the very substantial first report prepared by the Special Rapporteur. It considered that the approach advocated by the Special Rapporteur - to draft a universal "framework convention" to be supplemented by "user agreements" - was an interesting one. It consisted in supplementing the general rules relating to questions common to various uses of all international watercourses with specific provisions corresponding to the special characteristics and particular uses of any given international watercourse. It would seem that such an approach implied a broad definition of the term "international watercourse" for the purposes of the framework convention, while leaving the user agreements for each particular international watercourse to specify the scope of the various rights and obligations determined therein by indicating the waters in respect of which each of those rights and obligations applied.

11. His delegation considered that an equally promising start had been made by ILC in its discussion of the topic of jurisdictional immunities of States and their property, owing in the first place to the quality of the preliminary report of the Special Rapporteur. His delegation agreed in general with the preliminary observations recorded in the ILC report and recognized in particular that, as stated in paragraph 182 of the report, the widening functions of the State had enhanced the complexities of the problem. The problem was not, however, as paragraph 182 seemed to suggest, a problem of distinguishing between "normal" and "other" activities of the State. Each State always had to decide the extent to which it would engage in activities previously undertaken by the private sector, such as trade and finance. The question was, rather, whether or not a State could invoke immunity before a foreign court in respect of its activities within a foreign territory. The problem arose because of the connecting factor between an activity of one State and the legal order of another State, and it was clear that the rules of international law must deal with that question.

(Mr. Riphagen, Netherlands)

12. On the question of the review of the multilateral treaty-making process, his delegation wished to thank the secretariat of ILC for its excellent paper entitled "The role of the United Nations International Law Commission in the multilateral treaty-making process". It agreed fully with the views expressed in paragraphs 193 to 195 of the report under consideration and with the conclusion that the techniques and procedures provided for in the statute of the Commission were well suited to the tasks entrusted to it by the General Assembly. It was particularly noteworthy that those techniques and procedures embraced the regular scrutiny of ILC work, including draft articles discussed or adopted, either directly by Governments or by their representatives in the Sixth Committee. Such close co-operation had enabled ILC to remain in constant touch with the development of the opinions within and the needs of the international community.

13. He had pleasure in announcing that his Government, as in previous years, was willing to contribute 10,000 florins to the programme of fellowships which would enable advanced students or junior governmental officials from developing countries to participate in the next international law seminar to be held during the summer of 1980.

AGENDA ITEM 114: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/34/33, A/34/409, A/34/357, A/34/389 and Corr.1; A/C.6/34/L.8 and L.10)

14. Mr. ANOMA (Ivory Coast) said that, owing to an oversight, his delegation had been omitted from the list of sponsors of the draft resolution in document A/C.6/34/L.10.

15. Mr. FOURNIER (Costa Rica) said that the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had made it clear that diametrically opposed approaches had existed within the United Nations since its foundation. During the elaboration of the Charter, the victorious Powers of the Second World War had won acceptance for the first of those approaches, which was rigid and conservative, and had permanently arrogated to themselves privileges ensuring that no change could be made in any fundamental aspect of the Organization without the unanimous agreement of those Powers. According to the second approach, which was logical, humane and progressive, the Organization should, on the contrary, adapt itself to the changing relations between peoples. At San Francisco, all the representations made by the Latin American countries to the great Powers had led only to vague promises that the Yalta formula would be reviewed at future conferences on the Organization. While the fact had to be faced that conditions conducive to the introduction of the fundamental changes in the Charter which had been suggested in 1945 did not yet exist, it should not be believed that such changes could not come to pass in the near future, bearing in mind the inevitable evolution of the Organization and the pressure from the countries of the third world.

16. In regard to the proposals before the Special Committee concerning the peaceful settlement of disputes, his delegation supported the proposals of Mexico which were designed to strengthen the action of the Organization in that field. It supported the various measures which had been proposed for that purpose and, in particular, those which would limit the right of veto, which in its

(Mr. Fournier, Costa Rica)

current form was an obstacle in the search for peaceful and just solutions in disputes between Member States.

17. His delegation welcomed the fact that China, one of the Powers with the right of veto, had accepted the principle of Charter revision. Such an attitude suggested that the view that the structures and functions of the Organizations should be adapted to the evolution of history, sociology and law would prevail sooner or later.

18. Mr. GAWLEY (Ireland) said that his delegation had been extremely interested in the proposals on the peaceful settlement of international disputes listed on pages 5 to 8 of the report under consideration. His delegation found the proposal that the General Assembly should adopt a declaration on the subject interesting, but did not approve the idea that such a declaration should lead to the preparation of a treaty; it was doubtful whether the latter proposal would find widespread support among Member States. It supported the proposal that a list should be prepared of authorities of competence, probity and impartiality, who, in conformity with the agreement with all parties to a dispute, would be willing to appoint arbitrators or chairmen of arbitral tribunals envisaged by the international agreement between the parties concerned and also the proposal that Member States should be encouraged to conclude bilateral agreements with a view to the settlement of any disputes which might arise in certain fields and that provisions for a system of peaceful settlement of disputes should be included in bilateral and multilateral conventions. Another proposal which his delegation found of particular interest was the proposal for the preparation of a handbook on the peaceful settlement of disputes, describing all existing mechanisms and facilities for that purpose within the United Nations system.

19. With regard to the question of the rationalization of the procedures of the United Nations, the Special Committee had also had various proposals before it. One of the more far-reaching proposals was that the general debate in the General Assembly should be replaced by a long document setting forth the positions of States. His delegation could not support that proposal, since it attributed great importance to the general debate, which, in its present form, allowed Member States to express, at the highest level, their views on the international situation. Nor could it support the proposal that the duration of statements in the general debate in the General Assembly should be limited to 30 minutes. The proposal calling for representative bodies to be at the highest level seemed impractical. On the other hand, his delegation supported the proposal in document A/AC.182/WG/15 that topics should be combined so as to rationalize their consideration and reduce the possibility of duplication. It also supported the proposal to limit the number of subsidiary bodies, although it did not feel that numerical limits were desirable. It also supported the proposal to eliminate from the provisional agenda of the General Assembly items which were carried over from year to year, without prejudice, however, to the right of any Member State to seek to have items reinscribed on the provisional agenda. With regard to the proposals on the role of the Secretariat, his delegation attached particular importance to those relating to methods of recruitment of staff and considered that special emphasis should be placed on the qualifications of staff members, while having due regard to the principle of equitable geographical distribution. It was gratifying to see how many of the proposals relating to the rationalization of the procedures of the Organization had already been implemented.

(Mr. Gawley, Ireland)

20. The Special Committee had also had before it various proposals on the maintenance of international peace and security. Along the more general proposals made was one for the preparation and adoption of a universal code of conduct covering the fundamental rights and duties of States of a legally binding nature, as a supplement to and clarification of the principles of the Charter. His delegation was of the view that the rights and duties of States pursuant to the Charter were already quite clear and unambiguous and that the adoption of such a legally binding instrument might lead to confusion between obligations under the Charter and those deriving from the new instrument; it might also have serious implications for the validity of the Charter obligations. Article 2, paragraph 4, of the Charter was, moreover, quite clear and did not require further clarification. For the same reason, his delegation could not support the proposal to make additions to Article 2 of the Charter.

21. He stressed that the report under consideration (A/34/33) had seemed easier to read and consult than that of the preceding year, although he felt that the Special Committee should, in the future, try to reduce its length still further.

22. Mr. de LACHARRIERE (France) said that, in any realistic attempt to determine whether the rules of the Charter and the activities of the United Nations were adequately adapted to international relations, emphasis must be placed on the considerable increase in the number of Members. That increase illustrated the strength of the concept of national sovereignty. The place which that concept had assumed was reflected in the extension of the jurisdiction deriving from such sovereignty, for example, over natural resources and on the economic level. The reform of the law of the sea consisted of the extension to the sea of exclusive sovereign rights, which, in traditional law, had been exercised over only a very narrow portion of the marine area. But State sovereignty implied a State's consent to its obligation. Consequently, the Special Committee should constantly ask itself whether the proposals submitted to it took due account of that principle of State consent.

23. With regard to the peaceful settlement of disputes, a principle to which all States Members of the United Nations had subscribed by their acceptance of the Charter, what was required was an endeavour to enhance the practical fulfilment of that general commitment, while respecting the principle of State consent. One might, for example, try to arrive at a more progressive means of settlement whereby all international disputes, with a very few exceptions, would be submitted to the binding decision of a third party (a judge or arbitrator). Unfortunately, States had shown that they considered such a solution politically unacceptable. An attempt might also be made to obtain State consent in advance to a specific means of settlement for more or less broad categories of disputes. States had already at their disposal a very ample choice of possibilities, such as specific clauses included in conventions, bilateral or regional agreements, acceptance of the compulsory jurisdiction of the International Court of Justice (ICJ) or accession to the Revised General Act for the Pacific Settlement of International Disputes. One could not fail to notice that that solution had not had the anticipated result, as was shown by what had happened in the case of the Revised General Act and by the small number of States which had accepted the compulsory jurisdiction of ICJ and the major reservations they had made. Regional instruments, such as the European

(Mr. de Lacharriere, France)

Convention for the peaceful settlement of disputes seemed to have been no more successful. On the other hand, States seem more willing to agree to give their consent in advance to specific means of settlement when such consent applied only to specific categories of disputes and could then be varied according to those categories. Moreover, the inclusion of clauses on arbitral or judicial settlement in conventions was a widely used mechanism. Adapting the means of settlement according to the specific dispute also assisted in the selection of the third party, according to the specific task to be entrusted to that third party; that was very apparent from the renewed popularity of arbitration in judicial settlement and in the possibilities which ICJ made available to litigants. It therefore seemed that only through a pragmatic approach adapted to the specific characteristics of concrete cases requiring settlement could State consent be utilized to advantage and its expression facilitated.

24. A number of proposals had been submitted for the purpose of obtaining such consent of States; the French proposal that a practical handbook should be prepared had awakened special interest. His delegation was therefore ready to submit to the Special Committee a detailed preliminary draft outline of such a handbook.

25. The Special Committee had given priority to the question of the peaceful settlement of disputes and it was essential that such priority should be reflected in the agenda for its next session. Much substantive work needed to be done in the meantime; in particular, a study based on experience in connexion with the peaceful settlement of disputes in a regional context could be compiled, with the region viewed geographically, politically, economically, culturally or otherwise. An effort should be made to determine the advantages of regional compared with global mechanisms. In procedural terms, any pause in the Special Committee's work would give the impression that it was ready to allow the problem to be discussed in another forum where discussion would proliferate and inevitably become repetitive, whereas the Special Committee could make progress on the basis of its earlier work.

26. Consideration of the question of rationalizing the procedures of the United Nations should be based on reality and on respect for the consent of States, always provided that such consent was genuine and was not limited to mere verbal concurrence. In that connexion, his delegation proposed that a limit should be placed on the number of resolutions through the application of a process of synthesis when they dealt with the same subject; that consensus should be included in the rules of procedure of the General Assembly; that rule 86 of the rules of procedure should be amended to take account of abstentions in the voting so as to prevent the adoption of resolutions supported only by a minority of Member States. It was also desirable that the Secretariat should bring the Repertory of Practice of United Nations Organs fully up to date. Before consideration was given to changing practices it was clear that existing practices should be known to all.

27. On the question of peace-keeping and international security, some 60 years of attempts to implement effective systems of collective security had emphasized the wisdom of those provisions of the Charter which stipulated that measures taken by the Organization should be taken in the name of the whole international community.

(Mr. de Lacharriere, France)

Those provisions of the Charter had prevented Security Council resolutions from being rendered ineffective, as had been the case with resolutions adopted by a majority in other organs, or from leading to war. It was the view of his delegation that the Charter should be implemented and not reformed. It was impossible to lay too much stress on the danger which would result from an undermining of the balance of powers laid down in the Charter in the field of peace and security. He had noted that a number of proposals would make it easier for the Security Council to adopt resolutions by making it easier to obtain the required majority. Such proposals flew in the face of experience both in the United Nations and in the regional organizations. Many United Nations bodies and regional organizations were certainly aware that the majority system had its drawbacks. Experience had shown that majority decisions would be effective only if the majority offered the qualitative characteristics which were enshrined in the Charter. The same considerations applied to decisions of the Sixth Committee. Any proposal for which there was not a consensus had little chance of adoption, still less of being implemented. That was of special importance when a decision related to a convention or to its amendment. He reminded the Committee that the Vienna Convention on the Law of Treaties, adopted almost unanimously in 1969, had not yet entered into force as the required thirty-fifth ratification or accession had not yet been obtained.

28. His delegation was therefore categorically opposed to draft resolution A/C.6/34/L.8, the thrust of which was counter to the Special Committee's mandate and to the spirit in which that body should conduct its work. He hoped that the Special Committee, if its mandate was renewed, would continue to apply the principle of consensus in its work.

29. Mr. KUMI (Ghana) said that, in order to strengthen the commitment of States to the United Nations, the capacity of the Organization to resolve the growing problems of the international community as well as its role in international life must be strengthened. In a sense, the inclusion of the item in the agenda of the General Assembly signified that the Organization was ready to reply to its numerous critics and to improve its performance.

30. He considered that the Special Committee should first consider one by one those proposals on the peaceful settlement of disputes which had awakened special interest. If agreement on one issue could be achieved, it would act as a spur to the Special Committee when it considered other proposals. His delegation favoured the idea of preparing a General Assembly declaration on the peaceful settlement of disputes as a first step towards its eventual conversion into a treaty. States would show a genuine commitment to the idea of allowing their conflicts and problems to be solved through the mechanisms of the United Nations. It would further indicate that the United Nations was genuinely interested in securing peace through rational processes. If a treaty was not drawn up on the matter, it was very likely that the proposal, like so many others, would eventually be forgotten. Closely related to that proposal were others calling for the establishment of a permanent commission of the General Assembly to fulfil functions of mediation, good offices and conciliation, and a standing body of the Security Council on fact-finding, conciliation and mediation. The membership of that body

(Mr. Kumi, Ghana)

should comprise eminent jurists who, by definition, would be trained to collate and assess facts and denude them of emotional traits. His delegation was particularly interested in the proposal to send out a questionnaire with a view to studying the reasons why States failed to make greater use of existing mechanisms for the settlement of disputes. Such an inquest would uncover the reasons why States conducted themselves in an entirely different fashion from the tenor of their pronouncements. In fact, the Special Committee should seek to get Member States to commit themselves to the Principles of the Charter so as to enhance the usefulness of that instrument. The problem was very likely of a psychological rather than a legal character, but some of the proposals might succeed in getting States to pay greater attention to the decisions of the Organization.

31. On the question of peace-keeping and international security, he fully supported the Mexican proposal that over-all machinery should be set up to supervise the implementation of resolutions and decisions adopted by United Nations bodies. Such a device would be particularly useful in the case of the General Assembly - whose resolutions were often ignored because, unlike those of the Security Council, they were not mandatory - because the General Assembly came closer than any other body to representing the collective will of mankind.

32. The provision of Article 99 of the Charter had been rarely used by the Secretary-General. Nevertheless, under the Charter, he was uniquely placed to direct the attention of the United Nations to areas of conflict and potential strife: the numerous studies prepared by the Secretariat made the Secretary-General well suited to make intelligent assessments of those situations which were likely to cause problems for the international community. His delegation appealed to the major Powers to rededicate themselves to upholding the Principles of the Charter and to place less reliance on their military might.

33. His delegation would recommend that the mandate of the Special Committee should be renewed so that it could complete the task still ahead of it.

34. Mr. ASTHANA (India) considered that a number of the proposals regarding the peaceful settlement of disputes on the Special Committee's list did no more than reaffirm the principles and procedures already enshrined in the Charter. That instrument offered Member States a choice between different methods of settling disputes peacefully, from direct negotiations between the parties concerned to procedures of a compulsory character. The choice thus left to Member States was consistent with political realities, because a State would never accept a peaceful settlement of a dispute that was imposed by a third party. It was the view of his delegation that failures or limited progress in settling disputes through the United Nations had been due to the absence on the part of the interested parties of the political will to settle their disputes and not by any short-comings in existing mechanisms. The strengthening or multiplication of such mechanisms could not replace political will. His delegation did not, however, oppose the adoption of procedures which would strengthen existing mechanisms, on the clear understanding that it was the sovereign right of every country to decide which method of peaceful settlement it would accept. It supported the proposal to prepare a handbook on the peaceful settlement of disputes describing all existing methods for that purpose.

(Mr. Asthana, India)

35. It would be premature to attempt a codification and development of the law of the settlement of disputes either by a declaration or by a draft convention. The United Nations Charter, the Statutes of the International Court of Justice, and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations had already set forth the principle of the peaceful settlement of disputes. Attempts to establish a mandatory procedure concerning the peaceful settlement of disputes had always met with strong opposition, as had been shown at the United Nations Conference on the Law of Treaties, or more recently, at the United Nations Conference on the Law of the Sea. Compulsory arbitration or adjudication must be based upon the express consent of States.

36. His delegation considered it unnecessary to establish a General Assembly commission to fulfil functions of mediation, good offices and conciliation, particularly if they were to be used to oblige States which were party to a dispute to accept a compulsory settlement procedure. The Indian Government was not against a third-party settlement procedure, but was convinced that resort to such a procedure should be with the consent of all the parties to the dispute and not at the initiative of only one party. Moreover, experience had shown that when one party to a dispute unilaterally initiated such a procedure, the other party invariably raised objections to the jurisdiction of the forum, which made the proceedings considerably more protracted. On the other hand, when parties agreed to submit their disputes to a forum, such objections were avoided and the forum could deliberate on the matter and reach a judgement which would be respected. There was thus no need to amend the Statute of the International Court of Justice or to strengthen the machinery for arbitration or for the regional settlement of disputes. The reticence of States to refer differences to the Court required a separate examination, and would not be removed by further strengthening the Court's procedures. His delegation was not against the continuance of the Special Committee's work on the matter, provided that duplication was avoided.

37. Many of the Special Committee's suggestions on the rationalization of United Nations procedures could improve the efficiency of the Organization, and particularly of the General Assembly. His delegation accepted fully the principle of setting time-limits for statements, provided that the limits were realistic and that presiding officers were given discretion to waive them in exceptional situations. It also supported the proposal that all items relating to the same subject should be grouped together, and that all aspects of a topic should be considered by one Committee. His delegation supported the proposal that the Sixth Committee should be consulted on the legal aspects of questions considered by other Committees, and that items involving treaty drafting should be allocated to the Sixth Committee. The proposal that draft conventions prepared by the International Law Commission should be considered and adopted by the Sixth Committee, instead of at special plenipotentiary conferences, appeared possible only when the draft convention was uncontroversial.

38. India was in favour of periodic consultations between the President of the General Assembly and the Chairmen of the Main Committees, to review the progress of work in each Committee in accordance with rule 42 of the rules of procedure of the General Assembly. India also supported proposals requiring all the Committees to

(Mr. Asthana, India)

organize their work in such a way that items with financial implications were dealt with without delay, and that additional meetings should be held when work fell behind schedule. His delegation was gratified to note that some of those ideas had already been put into practice during the current session of the General Assembly. The proposal to hold a single general debate on all the agenda items of a Committee would defeat the very purpose of Committee debates, which was to focus attention on one item at a time. Nevertheless, the Presiding Officer should be given discretion to dispense with the general debate on certain items.

39. The idea of electing the General Committee at the end of the previous session seemed hardly realistic. Yet it would be desirable to hold informal consultations among the regional groups or between the Secretary-General and the regional groups well in advance of each session, with a view to reaching an agreement on the composition of the General Committee as early as possible. The provisions on the functions of the General Committee contained in the rules of procedure of the General Assembly were quite adequate. They merely had to be applied. The suggestion to limit arbitrarily the number of subsidiary bodies was fraught with danger, since it took no account of the value of the work of those bodies. Since those bodies had been appointed by the Main Committees, it was for the latter, and not for the General Committee, to consider whether the subsidiary bodies should be abolished.

40. His delegation felt that each principal organ should examine the implementation of United Nations resolutions. The proposal to disperse the headquarters of certain United Nations bodies on a wider geographical basis should be kept in mind for the future. With regard to the holding of conferences away from Headquarters, it was appropriate, given the heavy financial burden which that involved for developing countries, to provide assistance or relax the rules in such cases in the interests of promoting United Nations activities in different regions. The proposal to set aside a three-week annual ministerial consultation period had some merit, though it was impracticable, in so far as the Head of State or Minister for Foreign Affairs of each Member State would be unable to spare three weeks of his time. It was hardly appropriate to lay down a rule or make a recommendation in that regard. Perhaps a practice might be developed whereby Ministers for Foreign Affairs would endeavour to be present at General Assembly sessions for one or two weeks during the general debate. His delegation was generally in favour of consensus, but did not consider that that method could be prescribed as a rule. Regarding the recruitment of staff, India attached the highest importance to strict adherence to the principles of efficiency, competence and integrity set out in Article 101, paragraph 3, of the Charter. Those principles did not conflict in any way with that of equitable geographical distribution: the application of all those principles should ensure the maintenance of the international character of the Secretariat.

41. The maintenance of international peace and security constituted one of the purposes for which the United Nations had been founded. There was no doubt that the United Nations Charter needed to evolve to take account of changes in the world situation since its adoption. While the United Nations had undoubtedly defused a number of crises, it had to be acknowledged that the danger to peace had not disappeared, as was indicated by the continuance of localized armed conflicts. The

arms race, which posed by far the most potent threat to peace, continued unabated. One of the essential lessons of the period since the signing of the Charter was that the assumption that primary responsibility for the maintenance of peace rested upon the permanent members of the Security Council was without foundation. Indeed, great-Power rivalry was directly responsible for many of the breaches of the peace which had taken place. His delegation was therefore willing to consider the various proposals on the maintenance of international peace and security in a realistic manner, with a view to finding the areas where general agreement might be possible. It did not appear desirable for the Special Committee to consider disarmament or the new international economic order, since they were already being dealt with by other bodies. Finally, his delegation would support the renewal of the mandate of the Special Committee to enable it to complete its work.

42. Mr. BIN SAHL (Democratic Yemen) said that his delegation had carefully studied the Special Committee's report, since it attached great importance to the questions considered therein. The United Nations nourished the dream of the peoples of the world that peace would come to a world which had always been torn by armed conflicts. While the Organization had brought several conflicts to an end, it had also suffered bitter defeats, and its achievements fell short of the aims of the Charter and the aspirations of mankind. His delegation considered that the reasons for that situation lay not in possible shortcomings in the Charter, but in the lack of respect of certain imperialist and racist countries for the principles of the Charter and for the legal and moral obligations which flowed from it, and in the abuse of certain privileges granted to them under that instrument. Thus, revision of the Charter was not called for, but its principles should be made more widely known to public opinion so that violations of those principles could be denounced.

43. The principles underlying the Charter needed to be strengthened so as to bring it into line with today's world. His delegation supported the Special Committee's proposals on the peaceful settlement of disputes, and favoured the idea that the General Assembly should draft and adopt a declaration on that subject. He was not convinced of the need to establish new organs and machinery: the most important question before the Special Committee, was the maintenance of international peace and security, which was closely linked with the peaceful settlement of disputes. His delegation advocated the drafting and adoption of an international code of conduct to strengthen the Charter, and the conclusion of a treaty on the non-use of force.

44. His delegation attached particular importance to the rationalization of the existing procedures of the United Nations, whose resources were squandered by duplication of work and excessive bureaucracy. His delegation therefore supported the proposal of some delegations to entrust consideration of that matter to a permanent organ.

45. Democratic Yemen was in favour of the Special Committee's mandate being renewed, on condition that its tasks were defined more precisely.

46. Mr. SIMANI (Kenya) thought that the Special Committee, of which Kenya was a member, had discharged its mandate in respect of the peaceful settlement of disputes and the rationalization of the existing procedures of the United Nations. Despite having reservations about the Committee's mandate, Kenya had not hampered its work on those two questions. It believed that the Special Committee should make specific recommendations to the General Assembly on those two questions, a task which could be accomplished within a few meetings.

47. On the question of the maintenance of international peace and security, the representatives of Romania and El Salvador had undertaken a useful compilation of proposals. That compilation should serve as a framework within which the Special Committee should consider the other proposals. He thought that the General Assembly should request the Special Committee to undertake further work on the question of the maintenance of international peace and security, with a view to making specific proposals to the Assembly. To that end his delegation would support the possibility of renewing the Committee's mandate, provided it was worded more precisely. His delegation, having already made known its views on the various proposals before the Special Committee, simply wished to stress the difficulty of the Committee's task: it constituted an area in which diametrically opposed concepts clashed. A substantial minority was hostile to any amendments of the Charter, whilst a significant number of Member States favoured its amendment. Kenya, hoping that the Special Committee would achieve its objective, had displayed all the goodwill in the world and trusted that its gesture would be reciprocated.

48. The CHAIRMAN said that Brazil had joined the list of sponsors of draft resolution A/C.6/34/L.10.

The meeting rose at 1.10 p.m.