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SUMMARY RECORD OF THE 11th MEETING

Chairman:

Mr. MIKULKA

(Czechoslovakia)

CONTENTS

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)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)

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

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-S/21795, A/45/527-S/21801; A/C.6/45/L.1)

1. Mr. TCHIVOUNDA (Gabon) said that his delegation welcomed the working paper submitted by the Union of Soviet Socialist Republics on new issues for consideration in the Special Committee (A/AC.182/L.65). Establishing a peaceful climate in international relations called for the promotion of the rule of law, which could be guaranteed only through more effective United Nations involvement. Although a world war was no longer likely, the need to eliminate regional hotbeds of conflict remained a matter of great concern. Enhanced co-operation between regional organizations and the United Nations was therefore essential. However, the current situation in fact revealed the limits of the very concept of a regional conflict, as compared with the concept of a world war, while also revealing the limited ability of the United Nations, acting alone, to settle a "crisis" - a new concept very different from the concepts of conflict and war, which presupposed a state of belligerency. In any event, the current situation revealed the indifference of the United Nations towards some crises, even though they represented the same sort of challenge to the conscience of the world as the crisis upon which attention was currently focused. There was no reason why different approaches should be taken to the fate of the Kuwaiti, Palestinian, Lebanese or Liberian peoples. The Organization must work on behalf of all the "peoples of the United Nations", as stated in the Charter.

2. Law was indivisible by its very nature, but its indivisibility was derived chiefly from its application. The issue of the implementation of legal norms formed the core of the proposal that the Secretary-General's peace-making efforts should be broadened. That approach was fundamentally normative. His delegation believed in that connection that Article 99 of the Charter contained a key provision.

3. In considering document A/AC.182/L.65, the Special Committee should take care to avoid repetition and any possibility of interfering with the work of other subsidiary bodies of the General Assembly. For example, it was quite clear that, if anything, the proposal concerning the elaboration of a draft general instrument on peaceful settlement of disputes represented a step backwards, unless the aim was to call into question rules already laid down either in the Charter itself or in other specific instruments.

4. It was equally clear that the proposal that the Special Committee should consider the question of ways and means of implementing international law as well as related enforcement actions vis-à-vis a State that had violated international law fell within the sphere of State responsibility, and was thus more in the

(Mr. Tchivounda, Gabon)

province of the International Law Commission. Until the draft articles already adopted or under preparation acquired the force of law and were being implemented, it would be premature to identify limits and to consider to what extent such limits had been exceeded. It would, however, be appropriate for the Special Committee to consider such topics as the preventive functions of the United Nations and the collective security régime provided for in the Charter.

5. Gabon welcomed the outcome of the Special Committee's consideration of the question of the maintenance of international peace and security, as reflected in document A/AC.182/L.66 (A/45/33, para. 68). On the whole, that document took account of the concerns voiced and recommendations made in the Sixth Committee at the forty-fourth session of the General Assembly. He wished merely to stress that the institutionalisation of fact-finding in the context of the United Nations would be worth while only if strictly in keeping with the spirit and the purpose of the instrument in question. International fact-finding should have as its sole purpose the conduct of an investigation. It must be a way of exploring actual situations, not a deterrent or a means of resolving rival claims. It must not become a form of decision-making machinery.

6. He wished to suggest a number of ways in which both the form and the substance of the document might be improved. Where form was concerned, the text of paragraphs 9 and 10, currently in section II, should be inserted at the end of section I, after paragraph 4. Paragraphs 5 to 8 would remain the same, and should simply be renumbered. That structural change would emphasize the principle of complementarity that should govern the conduct of both States and the United Nations in fulfilling their obligation to maintain international peace and security.

7. He also wished to suggest a number of drafting changes. Paragraph 2 should be reworded to read:

"2. For the purpose of the present paper, fact-finding means any activity which involves the investigation of facts resulting in a situation constituting a threat to peace, a breach of the peace or aggression, and which is designed to enable the competent United Nations organs to exercise effectively their functions in the field of the maintenance of international peace and security."

In current paragraph 6, which would become paragraph 8 if Gabon's amendment was accepted, the word "responsibilities" should be replaced by the words "areas of competence".

Moreover, current paragraph 7, which would become paragraph 9, should be redrafted to read:

"9. In deciding to which organ to entrust the conduct of a fact-finding mission, the Security Council and the General Assembly should give preference to the Secretary-General, who may designate a special representative or a

(Mr. Tchivounda, Gabon)

group of experts for that purpose. Resort to an ad hoc subsidiary body which the Security Council or the General Assembly would establish may also be considered".

8. Where the substance of the document was concerned, his delegation had reservations about giving States the option of making a prior unilateral declaration to the effect that they intended to admit a fact-finding mission to their territory. It had misgivings about turning an obligation into an option. Difficulties would inevitably arise if paragraphs 18 and 19 could be considered as having been included in the text in order to counterbalance the principle of the receiving State's prior consent, which was set out in paragraph 13.

9. Mr. TREVES (Italy) said that the points made by the Secretary-General in his report on the work of the Organization (A/45/1) concerning the legal and institutional aspects of the maintenance of international peace and security deserved consideration by the Sixth Committee. He drew attention to the twelfth paragraph of section III of the report, in which the Secretary-General challenged the conventional view that diplomatic initiatives conducted within a regional framework were preferable to efforts made to settle disputes under the auspices of the United Nations. The importance of the role of States and of regional organizations compared with that of the United Nations had been amply discussed, in particular during the period leading up to the adoption of General Assembly resolution 43/51 concerning the prevention and removal of disputes and situations which might threaten international peace and security and the role of the United Nations in that field. In the light of the recent successes of the United Nations in maintaining international peace and security, and the less successful record of other mechanisms, he suggested that the question might suitably be considered within the framework of the United Nations Decade of International Law. It should also be borne in mind that the regional approach had made an important contribution to the prevention of disputes, especially in Europe. For example, the Conference on Security and Co-operation in Europe had played an important role in overcoming East-West tensions.

10. Drawing attention to the nineteenth paragraph of section III of document A/45/1, concerning action under Chapter VII of the Charter, he agreed with the Secretary-General that such action was "a measure of last resort". His country firmly believed in the importance of preventive diplomacy, as shown by its support for the adoption of General Assembly resolution 43/51 and its sponsorship of the proposal on fact-finding which the Special Committee on the Charter had been discussing since 1989. In that connection, he shared the view expressed in the sixteenth paragraph of section III of document A/45/1 concerning the inadequacy of the means currently at the disposal of the Secretary-General for gathering the timely, accurate and unbiased information that was necessary for averting violent conflicts. That point had been addressed in the proposal on fact-finding. Although the proposal had been well received in general, the paragraphs dealing with information-gathering by the Secretary-General had raised some concerns. In the light of the Secretary-General's report, it might be useful to re-examine the question with a view to developing more imaginative solutions.

(Mr. Treves, Italy)

11. He drew attention to paragraph 68 of the report of the Special Committee (A/45/33), containing the text of a proposal on the maintenance of international peace and security which had been issued as document A/AC.18?/L.66. Although the submission of that document had marked a turning-point in the Special Committee's consideration of the item, further discussion was necessary, particularly with regard to the question of the access of fact-finding missions to the territories of Member States. The document made it clear, however, that such missions required the consent of the State to whose territory they were sent. Hence, the suggestion in paragraph 14 that States should be encouraged to follow a policy of admitting United Nations fact-finding missions to their territory should be viewed merely as a policy suggestion.

12. Turning to chapter IV of document A/45/33, dealing with the peaceful settlement of disputes, he noted the promising signs of evolution in that area, including the unprecedented number of cases under consideration by the International Court of Justice, and the growing acceptance of the Court's jurisdiction. The creation of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice also reflected a new and more realistic approach to the problems of international justice.

13. He also drew attention to the recommendation made in the last paragraph of section III of document A/45/1, that the Secretary-General should be given the authority to request an advisory opinion from the Court. He wondered whether the Secretary-General was proposing that an amendment should be made to Article 96, paragraph 1, of the Charter which authorized the General Assembly and the Security Council to request such an opinion from the Court, or that the Secretary-General should be so authorized by the General Assembly, as provided for in paragraph 2 of that Article. In that connection, he noted that the General Assembly had refrained from authorizing organs which were not composed of States to request advisory opinions from the Court, despite the fact that such opinions had been requested by the General Assembly concerning various items originally placed on its agenda by the Secretary-General. However, the time had come to take a fresh approach to the subject, in view of the complementary relationship between the Security Council and the Secretary-General, and the latter's involvement in almost all situations bearing upon international peace and security.

14. The items under consideration by the Special Committee were currently at the centre of attention. The question remained of how to co-ordinate its work with that relating to the United Nations Decade of International Law. Although the Special Committee might have a role to play with regard to the Decade, it had a specific function to perform with regard to the law of the United Nations, as expressed in the Charter and the practice which had developed within the framework of the that instrument. The Special Committee should remain the main forum for United Nations activity in matters concerning the legal and institutional aspects of the maintenance of international peace and security.

(Mr. Treves, Italy)

15. As the peaceful settlement of disputes was certain to be a central focus of the Decade of International Law, he believed that, in the interest of rationalizing the Organization's work on that topic, it did not require a separate agenda item.

16. Mr. BELLO-FADILE (Nigeria) said that the maintenance of international peace and security was the major role that the United Nations was called upon to play. National interests could no longer be separated from global interests, because of the increasing economic and political interdependence of States. Moreover, the recent international co-operation in solving global problems showed that States needed only to display the necessary political will in order to resolve most of the thorny issues facing the world.

17. When a potentially dangerous situation developed, the United Nations should consider sending an impartial fact-finding mission, subject to the consent of the parties to the conflict. For their part, States should encourage and support such missions.

18. With regard to the peaceful settlement of disputes, he regretted that some delegations had so far been unable to support General Assembly resolution 43/51 concerning the prevention and removal of disputes and situations which might threaten international peace and security and the role of the United Nations in that field, and hoped that unanimity on that question would soon be forthcoming. Nigeria supported efforts to strengthen co-operation between the United Nations and regional organizations. Voluntary efforts by regional organizations should not pose a threat to the sovereignty of feuding States, but should rather be in their interest. The explosive nature of the civil war in Liberia had required the intervention of the Economic Community of West African States, in an effort to arrange a cease-fire and establish a transitional government.

19. With regard to the rationalization of existing United Nations procedures, developments within the international community called for some adjustments to be made to the Organization's principal decision-making bodies in order to ensure wider participation by the various regions not currently represented. That approach would lead to firmer commitments and a deeper involvement on the part of Member States, and would make for a more balanced expression of views. The situation was particularly urgent with regard to the composition of the Security Council, where the principle of universality should be fully respected.

The meeting rose at 11.25 a.m.