



SUMMARY RECORD OF THE 16th MEETING

Chairman: Mr. FRANCIS (Jamaica)

CONTENTS

AGENDA ITEM 132: 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 124: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)

ORGANIZATION OF WORK

*This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2 750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

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

AGENDA ITEM 132: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/41/33, 183, A/41/189-E/1986/54, A/41/213-E/1986/56, A/41/337-E/1986/87, A/41/343-E/1986/91, A/41/398-S/18131)

AGENDA ITEM 124: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)
(A/41/57-S/17690, A/41/64-S/17697, A/41/70-S/17708, A/41/76-S/17716, A/41/78-S/17721, A/41/79-S/17722, A/41/89-S/17737, A/41/90-S/17738, A/41/95-S/17751, A/41/122-S/17771, A/41/133-S/17786, A/41/134-S/17789, A/41/160-S/17820, A/41/162-S/17825, A/41/165-S/17832, A/41/166-S/17842, A/41/171-S/17844 and Corr.1, A/41/176, A/41/182-S/17868, A/41/205-S/17905, A/41/206-S/17909, A/41/211-S/17912, A/41/214-S/17915, A/41/217-S/17920, A/41/221-S/17924, A/41/225-S/17927, A/41/227-S/17933, A/41/239-S/17953, A/41/253-S/17956, A/41/258-S/17962, A/41/263-S/17970, A/41/265-S/17971, A/41/267-S/17973, A/41/281-S/17988, A/41/284-S/17995, A/41/294-S/18010, A/41/298-S/18014, A/41/300-S/18017, A/41/307-S/18027, A/41/309-S/18029, A/41/311-S/18034, A/41/312-S/18038, A/41/313-S/18039, A/41/321-S/18045 and Corr.1, A/41/331-S/18054, A/41/336-S/18059, A/41/347-S/18068, A/41/354, A/41/357-S/18078, A/41/387-S/18119, A/41/390-S/18125, A/41/400-S/18137, A/41/418-S/18167, A/41/419-S/18169, A/41/429-S/18183, A/41/436-S/18186, A/41/442-S/18200, A/41/446-S/18207, A/41/451-S/18213, A/41/487-S/18242, A/41/488-S/18245 and Corr.1, A/41/489-S/18247, A/41/497-S/18255, A/41/524-S/18286, A/41/533-S/18291, A/41/539-S/18293, A/41/540-S/18294, A/41/557-S/18304, A/41/574-S/18310, A/41/575-S/18311, A/41/576-S/18312, A/41/587-S/18328, A/41/589-S/18329, A/41/590-S/18330, A/41/597-S/18336, A/41/604-S/18339, A/41/625-S/18351, A/41/634, A/41/651-S/18365, A/41/657-S/18367, A/41/659-S/18369, A/41/684-S/18385)

1. Mr. TREVES (Italy) said that his delegation recognized the importance of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which, besides having elaborated the Manila Declaration on the Peaceful Settlement of International Disputes, had been one of the main forums for serious debate on the legal aspects of United Nations activities. He felt that the Special Committee continued to be an appropriate forum, but he also expressed some disappointment at the possibility that precious resources and energies were not being used in the best way.

2. With regard to the peaceful settlement of disputes, his delegation failed to understand why a separate resolution on that item, which repeated, as was inevitable, the paragraphs on peaceful settlement of disputes contained in the resolution on the Special Committee's report, continued to be submitted for approval. The Special Committee was not using its time as efficiently as it should, in view of the importance of the item. The proposal on resort to a commission of good offices, mediation or conciliation within the United Nations had been seriously discussed for at least two sessions without having raised particular interest in any of the main groups of States. On the contrary, various delegations belonging to the most diverse groupings had voiced their firm objections.

3. The preparation of the draft handbook on the peaceful settlement of disputes between States, for its part, seemed to be languishing because of lack of resources.

(Mr. Treves, Italy)

4. The Special Committee should consider new and more promising topics. Recent practice indicated that compulsory recourse to conciliation was frequently used in dispute-settlement clauses of treaties. The settlement of the dispute between France and New Zealand in the Rainbow Warrior case seemed to indicate that the involvement of the Secretary-General of the United Nations in the settlement of legal disputes, or disputes including legal aspects, was interesting and worth considering in the Special Committee.
5. With regard to the rationalization of existing United Nations procedures, he noted that the Special Committee had devoted very little of its time to that question, perhaps because the Special Committee had somehow lost its role as the main forum for discussing it. The work of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations had become more important in that respect. His delegation felt that the Special Committee could and should become a forum for reflection on the legal implications, and especially on the effects on the Charter and on the practice based on the Charter, of the reforms being undertaken or discussed under the impulse of financial necessity.
6. As to the maintenance of international peace and security, the most delicate and controversial item on the Special Committee's agenda, the subject had been very difficult to study, as it raised points on which the positions of Member States were so divergent that its very discussion could jeopardize the functioning and even the existence of that Committee. He recalled in that regard that Member States had been unable to agree on the Special Committee's mandate and had had to adopt it by vote. He also noted the considerable support received by certain draft resolutions concerning extremely controversial subjects, although all the members of the Sixth Committee were fully aware of the negative implications their adoption would have.
7. When the idea had surfaced in 1983 of a step-by-step examination of that most controversial subject, stressing the importance of the prevention and removal of situations which might lead to international friction or give rise to a dispute, the possibility had arisen of elaborating, within a reasonable time, a document of some practical utility. That idea had found expression in document A/AC.182/L.38, submitted by Italy and other countries after extensive consultations with many other delegations of various groups. The document had been revised and discussed again in 1985 and 1986, and its sponsors had incorporated many proposals in the successive drafts. However, a group of delegations had prevented the document from being finalized, arguing specifically that some of the proposals diverged from the provisions of the Charter. The sponsors had modified the draft in order to meet those objections, but not so far as to accept the idea that any evolution of United Nations practice was tantamount to a violation of the Charter just because it was not described in the letter of the Charter.
8. A general argument had also been raised that document A/AC.182/L.38 was too narrow in scope, as it referred only to the preventive activities of United Nations organs and not to the obligations of States. That attitude was to a certain extent contradictory; although it claimed that the document was too narrow, it then tried to restrict it further by objecting strongly to most of the proposals concerning

/...

(Mr. Treves, Italy)

the Secretary-General and the Security Council. Moreover, the sponsors had deliberately limited the scope of the proposal, in the belief that that was the only way in which constructive discussions could be held and results obtained within a reasonable time.

9. In 1986 the countries of the group which had been opposed to the proposal had submitted document A/AC.182/L.48, in which they expressed their idea as to what a "comprehensive document" should be. His delegation felt that it was too controversial to serve as a basis for fruitful discussion and had expressed its disappointment in that regard in the Special Committee, for the reasons set forth in the final pages of the Special Committee's report (A/41/33).

10. His delegation felt that the Sixth Committee should confer a clear mandate on the Special Committee in that regard. The formulation in paragraph 3 (a) of General Assembly resolution 40/78 of 11 December 1985, which was cumbersome and somewhat contradictory, permitted long interventions on its interpretation and covered a consensus that seemed no longer to exist. It would be useful to take a step forward by indicating clearly that the work on document A/AC.182/L.38 should be finalized promptly.

11. Mr. BERNAL (Mexico), referring to the rationalization of the procedures of the United Nations, pointed out that since the issue was being addressed by the Fifth Committee and the plenary Assembly, it no longer had to be considered by the Special Committee. His delegation would support further work on that issue if the Committee were to consider methods and proposals for the rationalization of the procedures not only of the General Assembly, but of other United Nations organs as well, with special reference to the system of voting in the Security Council, and appearances before the International Court of Justice and the acceptance and carrying out of its orders and judgments.

12. Some of the proposals contained in document A/AC.182/L.43/Rev.1 had not, at previous sessions, received the unanimous support required for their adoption. Moreover, many of the proposals appearing in it were contained in annexes V, VI and VII to the rules of procedure of the General Assembly.

13. Mexico was in favour of the active participation of all delegations. However, it believed that the search for what was termed "consensus" either had resulted in deadlock and stalemate in the negotiations, or had robbed certain resolutions of their substance, purpose and original meaning. The clearest example had been resolution 40/78, which, after being unanimously adopted, had given rise to different interpretations, impeding substantive progress in negotiations. The search for consensus was not a question of procedure; nor was consensus a kind of voting. It was merely the result of discussion and constructive negotiation. By its very nature, consensus was not something to be incorporated in the rules of procedure of the General Assembly. However, that did not mean that the utmost must not be done to reach generally acceptable conclusions and solutions. Moreover, his delegation was of the view that the current problem confronting the system of multilateral diplomacy was not that of procedural shortcomings, but rather that of efficacy and political will.

(Mr. Bernal, Mexico)

14. The idea of consensus was vague and lacking in legal precision. He recalled the numerous reasons given during the General Assembly debate on the procedures of the Third United Nations Conference on the Law of the Sea for not including the concept of consensus among the methods of work and, above all, for not incorporating the concept in the decision-making process. As one delegation had mentioned, the application of the so-called principle of consensus amounted to a veto. For those reasons, his delegation had difficulty in accepting the first proposal in document A/AC.182/L.43/Rev.1.

15. His delegation supported the Romanian proposal on resort to a commission of good offices, mediation or conciliation within the United Nations, since it clarified the original documents, making it clear that a procedure was being established to facilitate the settlement of disputes. Although the document still required some finishing touches, it would undoubtedly strengthen the methods for settling disputes, while respecting the competences of other United Nations organs.

16. With regard to the maintenance of international peace and security, his delegation supported document A/AC.182/L.38/Rev.2, and believed that it could be finalized at the next session of the Special Committee. Although a few items could be added to the document in order to consolidate it, an attempt to add such a wide range of measures as contained in document A/AC.182/L.48 would complicate the issue. Furthermore, it would probably take years to achieve positive and concrete results, since many of the subjects addressed went beyond the competence of the Special Committee.

17. He was of the view that the future work of the Special Committee should be focused on completing the drafting of document A/AC.182/L.38/Rev.2, and on continuing consideration of the question of resort to a commission of good offices, mediation or conciliation within the United Nations. A few meetings could be devoted to the subject of the rationalization of established United Nations procedures which were not being considered in other United Nations forums. That would allow a reduction in the number of meetings held by the Special Committee.

18. His delegation supported the continuation of the work of the Special Committee and would not object if some future meetings were held as informal consultations. However, it would not like the Special Committee's progress to be affected by or subject to the advances or obstacles in other committees.

19. For the duration of the financial crisis and pending the total fulfilment by Member States of their financial obligations, Mexico accepted the temporary reduction in the number of meetings of the Special Committee. However, it believed that administrative reforms must be accompanied by a genuine effort to avoid unproductive procedural discussions, which would adversely affect the system of democracy and multilateral diplomacy.

20. As the President of Mexico had stated during the general debate at the forty-first session of the General Assembly, the United Nations must play an essential role in building more just and democratic international relations.

(Mr. Bernal, Mexico)

Likewise, the Organization must guarantee peaceful and rational coexistence, and promote co-operation and solidarity among peoples. It had to improve itself if necessary and to the extent necessary. However, as long as it existed, one had to recognize that it was perhaps the sole and noblest guarantor of security, peace and civilization.

21. Mr. VAN WULFFTEN PALTHE (Netherlands) recalled that, in conformity with Article 1, paragraph 1, of the Charter of the United Nations, one of the purposes of the Organization was to maintain international peace and security, and to that end, bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. Under Article 2, paragraph 3, of the Charter, Member States pledged, in pursuit of the purposes contained in Article 1, to settle their international disputes by peaceful means, in such a manner that international peace, security and justice were not endangered. If States, in their relations with other States, acted in conformity with the provisions of the Charter, there would be no need for mechanisms to settle disputes. Nevertheless, keeping reality in mind, the international community had created various institutions for the purpose of settling disputes in a peaceful manner, none of which was used by States to its full extent. In that regard, his delegation wished to draw attention to the increasing number of parties participating in the activities of the Permanent Court of Arbitration in The Hague, an institution established in 1899 and reorganized in 1907. In 1962, the rules of the Court had been modified to permit it to deal with cases in which only one party was a State. It would be appropriate to consider measures to promote the use of the Court or other such institutions. In that regard, his delegation also wished to highlight the very interesting colloquium on the role of the International Court of Justice, recently organized by the Asian-African Legal Consultative Committee, and to emphasize the usefulness of that kind of initiative.

22. The peaceful settlement of disputes was one of the three main issues entrusted to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. That Committee provided an ideal forum for investigating measures to encourage States to use the existing institutions. In fact, a comprehensive study of the ways and means of encouraging States to do so would be a more significant contribution to the question under consideration than the creation of a new institution for the peaceful settlement of disputes. Consequently, his delegation would support a proposal that the Special Committee should continue to deal with the peaceful settlement of disputes, thereby abolishing the separate agenda item, in line with the need to further rationalize the work of the United Nations and to reduce its expenses.

23. Mr. VERCELES (Philippines) pointed out that conflicts were escalating in various parts of the world and the United Nations Charter was being violated repeatedly. In international relations, mistrust and the struggle for supremacy rather than for parity were dangerously increasing the probability of another confrontation. Some doubted whether the United Nations was capable of discharging the enormous responsibilities entrusted to it. The Philippines, as a relatively small developing country, considered that there was no better alternative than the United Nations system for the preservation of international peace and security.

(Mr. Verceles, Philippines)

The Philippines had been one of the signatories to the Charter and had an unshakeable faith in the United Nations, the only forum in which representatives of Member States could gather to consider problems and take remedial measures. However, those measures could be effective only if they were strictly enforced by the States concerned.

24. His delegation acknowledged once again the significance of the mandate of the Special Committee on the Charter of the United Nation and on the Strengthening of the Role of the Organization. With respect to the deliberations held during its 1986 session, his delegation was grateful to the Secretary-General for his report on the progress of work on the draft handbook on the peaceful settlement of disputes between States, and was confident that the continuing efforts of the Consultative Group and the Secretariat would permit the completion of the handbook.

25. His delegation considered that the proposal submitted by Romania on resort to a commission of good offices, mediation or conciliation within the United Nations (A/AC.182/L.47) was worthy of serious consideration and was an improvement over the previous versions. The proposal was consistent with the provisions of the Charter - contributing to it rather than contradicting it - and with the Manila Declaration on the Peaceful Settlement of International Disputes. Although it had been said that the proposal would alter the balance between the powers assigned to United Nations organs under the Charter, his delegation did not agree with that view and considered that the intention of the proposal was not to establish a new organ within the United Nations structure, but to provide an optional procedure that would be fully integrated into existing mechanisms. That would not be an infringement of the principle of free choice of means of settlement of disputes, since consent to use it was required from States parties to a dispute.

26. Turning to the maintenance of international peace and security, he noted with satisfaction the manner in which the Special Committee had dealt with the proposals, examining in detail document A/AC.182/L.38/Rev.2 and the relevant provisions of document A/AC.182/L.48 in order to identify points of agreement. The Philippines had consistently supported the proposal submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain. He noted that the revised version (A/AC.182/L.38/Rev.2) was substantially the same as those submitted at previous sessions. A notable feature was the maintenance of the balance established by the Charter between the main organs of the Organization. As several delegations had correctly observed, the structural and drafting changes had clarified some of the provisions. His delegation looked forward to the early approval of that document.

27. Document A/AC.182/L.48 was a valuable contribution to the work of the Special Committee. His delegation acknowledged the issues contained in that document, including the more controversial ones, such as the threat of nuclear war. The Philippines had always joined in the collective call for the reduction and eventual elimination of nuclear weapons. Nevertheless, it considered that the sensitive nature of some of the issues might impede the work already begun.

28. The Special Committee was in a melancholy state. It had met for 11 sessions without having achieved the substantive results expected of it. His delegation was

/...

(Mr. Verceles, Philippines)

deeply disappointed and considered that it was time that tangible results were obtained. It therefore associated itself with those delegations which believed that the Special Committee should work more expeditiously on the document referred to in paragraph 3 (a) of General Assembly resolution 40/78 and in accordance with the agreement reached at the 1983 session, in order to draft and submit to the General Assembly a document containing specific recommendations on the preventive role of United Nations organs.

29. With the world plunged in terror, there was no time for discouragement or despair. The attainment of the objectives of the Special Committee would contribute in some measure to establishing a better, safer world, as envisioned in the United Nations Charter. In that light, the success of the Committee's work was crucial for the survival of mankind.

30. Mr. HOPPE (German Democratic Republic) recalled that the United Nations General Assembly in its resolution 40/3 of 24 October 1985 had proclaimed 1986 the International Year of Peace, thereby expressing its concern for the maintenance of international peace and security, and its hope that tangible progress would be achieved, especially in the field of arms limitation and disarmament. The activities of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization should be considered in that context, since its overriding objective was to promote even more effective use of the Organization's capacity to fulfil its main task, namely, the maintenance of international peace and security through collective efforts. His delegation considered that the Special Committee had made headway towards achieving that goal at its eleventh session, which had been marked by a constructive atmosphere, in spite of the differences that naturally existed on questions of substance.

31. Since its ninth session the Special Committee had been working on the basis of the mandate given to it by the General Assembly, which was to accord priority, by devoting more time to it, to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations, particularly that of the Security Council, and to enable the United Nations to discharge fully its responsibilities under the Charter in the field in question. In accordance with that part of its mandate, at its ninth and tenth sessions the Special Committee had considered document A/AC.182/L.38, which had been submitted by six Western States, the second revised version of which was now before the Sixth Committee (A/AC.182/L.38/Rev.2). In the course of the consideration of document A/AC.182/L.38, a number of States had repeatedly pointed out the paper's shortcomings and emphasized that it dealt only with a limited aspect of the question of the maintenance of international peace and security, which represented a complex problem that should be considered in a broad context. For the purpose of gradually broadening the Special Committee's working base, Czechoslovakia, Poland and the German Democratic Republic had submitted working paper A/AC.182/L.48, entitled "Role of States Members of the United Nations and of the United Nations Organization in the maintenance of international peace and security including, inter alia, the prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute".

(Mr. Hoppe, German Democratic Republic)

32. The working paper to which he had just referred reflected the inseparable connection between the strengthening of the Organization's role and the manner in which States fulfilled their obligations under the Charter of the United Nations. In that context, the paper's sponsors had taken account of a concept that had been reaffirmed throughout the Organization's history. The working paper referred to the crucial role of the basic principles of international law in bilateral and multilateral relations. It placed emphasis on the duty of States to support the efforts of the United Nations to implement the provisions of the Charter. States were called upon, whenever international peace and security were in danger, to adopt effective collective measures in full conformity with the Security Council's rights and responsibilities. The working paper underlined the vital role of disarmament in safeguarding peace, singling out the most urgent steps in the field in question. Funds released by disarmament should be used for the social and economic development of all mankind.

33. Document A/AC.182/L.48 also stressed the need for full implementation of the right of all peoples to self-determination and for the restructuring of international economic relations on a democratic basis in order to guarantee economic security for all States. It also called upon all States to redouble their endeavours to strengthen the role of international law in the field under consideration. In the sponsors' view, such measures should be complemented by appropriate steps in the fields of education, information and domestic legislation.

34. An essential aspect of the working paper was the enhancement of the Security Council's role in the maintenance of international peace and security. The Council should play a greater part in the prevention of conflicts, the peaceful settlement of disputes and the removal of threats to peace. States were therefore called upon, in accordance with their obligations under the Charter, to respect and implement the decisions adopted by the Security Council, and the relevant provisions of the Charter were reaffirmed in that connection.

35. His delegation was confident that, through discussion of the questions to which he had just referred and through the preparation of proposals on the strengthening of the Organization's role, the Special Committee could make a valuable contribution in the field in question. To that end, in future the German Democratic Republic would participate in the discussions on all proposals submitted to the Special Committee, in accordance with the Charter of the United Nations, for the purpose of strengthening the Organization's role. It was willing to consider the arguments put forward during the discussion of working paper A/AC.182/L.48 and subsequently to submit a revised version of the paper. It assumed that the representatives of the other States members of the Special Committee would be guided by the same principles.

36. The Special Committee's mandate for its twelfth session should be based on the mandate given to it in previous years and take due account of the fact that there were now two working papers on the maintenance of international peace and security before the Special Committee.

(Mr. Hoppe, German Democratic Republic)

37. With regard to the question of the peaceful settlement of disputes, the members of the Special Committee had major substantive reservations about the concepts set forth in document A/AC.182/L.47. His delegation shared those reservations, since it believed that the United Nations did not need new procedures or organs for the peaceful settlement of disputes but, rather, a greater willingness on the part of States to make use of the available procedures, means and methods in an effective manner. On the other hand, the German Democratic Republic welcomed the progress made in preparing a draft handbook on the peaceful settlement of disputes.

38. The question of the rationalization of existing United Nations procedures should be included in the Special Committee's mandate. However, any substantive proposals on the question should be in accordance with the Charter and must organize the political activities of the various United Nations organs more effectively and concentrate the Organization's activities on its main tasks.

39. Lastly, so far the Special Committee had in general accomplished an important task and would be able to make a major contribution in the future to the attainment of the Organization's objectives.

ORGANIZATION OF WORK

40. The CHAIRMAN said that in a letter dated 29 September addressed to the chairmen of the Main Committees the President of the General Assembly had emphasized the financial situation of the United Nations and suggested that the Main Committees should consider the possibility of completing their work by 28 November.

41. The Bureau of the Committee had held a meeting at which the view had been expressed that the Committee would be able to complete its work by 28 November and the chairmen of the regional groups in the Committee had been requested to endeavour to bring about the necessary consensus. In view of the fact that 27 November was a public holiday in the United States, if he heard no objection, he would take it that the Committee wished to decide that its work should be completed by 28 November, on the understanding that an endeavour would be made to finish its work on 26 November and that all agenda items would be given due consideration.

42. It was so decided.

The meeting rose at 11.50 a.m.