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GENERAL ASSEMBLY

PROVISIONAL VERBATIM RECORD OF THE FIFTY-THIRD MEETING

Held at Headquarters, New York,
on Monday, 3 November 1986, at 10 a.m.

President:	Mr. CHOUDHURY	(Bangladesh)
later:	Mr. MATTURI (Vice-President)	(Sierra Leone)
later:	Mr. CHOUDHURY (President)	(Bangladesh)
later:	Mr. TURKMEN (Vice-President)	(Turkey)

- Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations: note by the Secretary-General [7]

- Report of the Secretary-General on the work of the Organization [10]

- Question of the Comorian Island of Mayotte [31]

  (a) Report of the Secretary-General
  (b) Draft resolution

- Programme of work

- Report of the International Court of Justice [13]

- Judgment of the International Court of Justice of 27 June 1986 concerning military and paramilitary activities in and against Nicaragua: need for immediate compliance: draft resolution [146]

86-64370/A 2574V (E)

The meeting was called to order at 10.20 a.m.

AGENDA ITEM 7

NOTIFICATION BY THE SECRETARY-GENERAL UNDER ARTICLE 12, PARAGRAPH 2, OF THE CHARTER OF THE UNITED NATIONS: NOTE BY THE SECRETARY-GENERAL (A/41/613)

The PRESIDENT: The General Assembly has before it a note by the Secretary-General contained in document A/41/613.

May I take it that the General Assembly takes note of that document?

It was so decided.

The PRESIDENT: We have concluded our consideration of agenda item 7.

AGENDA ITEM 10

REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION (A/41/1)

The PRESIDENT: In previous years the Assembly has taken note of the annual report of the Secretary-General. This document has been referred to with great interest on several occasions in the course of this session. If I hear no objection, may I consider that the Assembly wishes to take note of the report of the Secretary-General?

It was so decided.

The PRESIDENT: That concludes our consideration of agenda item 10.

AGENDA ITEM 31

QUESTION OF THE COMORIAN ISLAND OF MAYOTTE

(a) REPORT OF THE SECRETARY-GENERAL (A/41/765)

(b) DRAFT RESOLUTION (A/41/L.23)

The PRESIDENT: I call on the representative of the Comoros, who wishes to introduce draft resolution A/41/L.23.

Mr. KAFE (Comoros) (interpretation from French): One year ago my country, the Islamic Federal Republic of Comoros, celebrated the tenth anniversary of its accession to international sovereignty. That welcome occurrence, which was the outcome of ten years of effort to achieve development by the people and Government of Comoros, would undoubtedly have become a symbol of the national unity of our country had it not been for the problem which for 10 years in succession has been the subject of our consideration in the Assembly. I refer, of course, to the question of the Comorian Island of Mayotte.

As the Assembly knows, this problem, which is of the greatest concern not only to the people and Government of Comoros but also to the international community as a whole, arose out of an injustice and a flagrant violation of public international law and French internal law. Every time we have had occasion to consider this matter, whether within the Assembly or in other international or regional organizations, we have explained that this is a trumped-up problem carefully invented to destroy the unity of a country whose homogeneous people share the same language, culture and religion.

It will be recalled that France, during more than a century's presence in the Comoros, never questioned the unity of the Comoros Archipelago made up of the islands of Anjouan, Grand Comore, Mayotte and Moheli - quite the contrary.

(Mr. Kafé, Comoros)

Successive French Governments based themselves on the history of the situation and frequently stressed the need to respect the territorial unity of our country.

That was why, when France was led to recognize the desire of the Comoros for independence, a referendum on self-determination was organized, on 22 December 1974, under a French law. The provisions of that law indicated that the result of the vote would be counted overall, as a whole, not on an island-by-island basis, so as to emphasize and preserve the undeniable unity of our archipelago.

Accordingly, the Secretary of State for Overseas Departments and Territories stated, on 26 August 1974, in the French National Assembly, referring to our self-determination referendum, that the choice of the French Government was an overall referendum, for three reasons. He went on to say the following:

"The first is a legal reason because, under the rules of international law, a territory preserves the borders that it had as a colony. The second reason is that one cannot conceive of different statuses for the different islands of the archipelago. Lastly, it is not the desire of France to pit Comorians one against the other."

Mr. Olivier Stirn then said:

"France refuses to split up the Comoros, which have the same people, the same Islamic religion and the same economic interests."

What was said then was confirmed two months later by the then President of the French Republic, Mr. Valery Giscard d'Estaing, at a press conference on 24 October 1974, when he said:

"It is an archipelago that makes up a whole. It is a people that is homogeneous and in which there are no, or very few, people of French origin. Is it reasonable to imagine that a part of the archipelago should become independent and one island, whatever sympathy one might feel for its

(Mr. Kafé, Comoros)

inhabitants, should have a different status? I believe we have to accept the realities of our time. The Comoros are one and have always been one. It is natural that they should have a common future, even though some of them might have wished for a different solution. It is not for us, when the territory becomes independent, to suggest that we destroy the unity of what has always been the single Comoro Archipelago."

In view of these statements, it will be understood why, on 22 December 1974, the people of Comoros went peacefully and calmly to the ballot box to determine their future. The question we had to answer was, "Do you wish the Comoros to become independent?" It was not, "Do you wish the island of Moheli to become independent? Do you wish the island of Mayotte to become independent? Do you wish the island of the Grand Comore to become independent? Do you wish the island of Anjouan to become independent?" Those are the names of the four islands. No island in our archipelago was called upon to determine its future separately on 22 December 1974.

The answer to the question was clear and unequivocal, for 95 per cent of Comorians voted in favour of independence for their country. There was nothing for the Government and Parliament of France to do but draw the logical, obvious conclusions from the outcome of the referendum. Unfortunately, instead of respecting the commitments entered into and the clearly and freely expressed wishes of the people, the French Government passed a law which balkanized our archipelago.

(Mr. Kafé, Comoros)

The law admittedly recognizes the independence of the Comorian State but without the island of Mayotte, part of its national territory, separated on the basis that part of the population of Mayotte had come out against independence.

This illegal, unjust and arbitrary action was immediately and unanimously condemned by the international community on the ground that it was a violation not only of French internal law but also of international public law. Indeed, it was a violation of the sacrosanct law of the indivisibility of overseas territories and colonial entities which, nevertheless, is held in high regard in the French Constitution. It was also a violation of the sacred principle of the inviolability of the borders inherited from colonization, as provided for in General Assembly resolution 1514 (XV) on the Declaration of the Granting of Independence to Colonial Countries and Peoples and General Assembly resolution 2621 (XXV), which relates to the implementation of that Declaration.

It was by virtue of that right that my country, the Islamic Federal Republic of the Comoros, was admitted to membership of the United Nations as a sovereign State consisting of four islands, including Mayotte, by General Assembly resolution 3365 (XXX), which was adopted unanimously by the General Assembly on 12 November 1975.

The French Government, faced with general condemnation, and in order to give a legal tinge to its act of force, decided to organize, on 8 February and 11 April 1976, two other referendums in Mayotte, invoking article 53, paragraph 3 of the French Constitution, which states:

> "No cession, exchange or adjunction of territory is valid without the consent of the populations concerned."

The argument put forward was that they wished to give the inhabitants of Mayotte an opportunity to determine their future, but nobody can ignore the fact

(Mr. Kafé, Comoros)

that it was not a cession, exchange or adjunction of territory that was involved, but rather the secession of a single territory - from the Comoro archipelago - for which the procedure and modalities had proceeded in good and due form on 22 December 1974.

I would recall that the United Nations responded strongly to this abusive interpretation of the right of secession. In General Assembly resolution 31/4 of 21 October 1976, it states that the occupation by France of the Comorian island of Mayotte:

"... constitutes a flagrant encroachment on the national unity of the Comorian State ..."

Following the lead of the United Nations, all the major international and regional organizations unanimously expressed their condemnation of this incident, thus reflecting the position and awareness of the international community.

These are the actual irrefutable facts that make up this distressing problem now before us. When one is familiar with the homogeneity of the Comorian population, the ties of blood that from the very beginning have brought together the inhabitants of the various islands in our archipelago, it is easier to understand the pain that we feel as a people who have shared a very closely knit common social life. Separating Mayotte from the other sister islands is a harsh blow to our young State, but it is also a blow to entire families who suddenly, overnight, found themselves arbitrarily split up and separated one from the other. The negative effects of this separation are not only of a social and human nature but have also had serious repercussions on the economy of the archipelago. Because the four islands of the Comoros complement one another, in that they have common interests and have always had an economy which developed in perfect symbiosis as a result of the specific production and activities of each of them, it is

(Mr. Kafé, Comoros)

inconceivable to separate the fate of Mayotte from that of the other sister islands. To separate Mayotte is seriously to jeopardize the harmonious development of our archipelago, and accordingly the future of all the inhabitants. This is why the people and Government of the Comoros, while retaining their composure, are nevertheless, seriously concerned over this continuing problem.

The Assembly will agree with me that it is no different from other problems in various parts of the world which keep entire regions in a state of tension, thereby engendering an atmosphere of violence and anarchy.

As for the people and Government of the Comoros, under the enlightened leadership of Mr. Ahmed Abdallah Abderemane, President of the Islamic Federal Republic of the Comoros, they have so far chosen negotiations as a way of resolving this problem, rejecting any recourse to violence. By acting in this way, they are respecting the principles of peace and harmony enshrined in the Charter of our Organization. This approach, dictated by wisdom, must not be taken as weakness and our people must not be allowed to become victims of their desire to be conciliatory. We have always deplored the fact that all steps taken with a view to resolving this problem have always come up against a lack of understanding.

Thus we cannot fail to welcome the fact that for the first time this year real action has been taken at the international and bilateral levels to restore dialogue with the French authorities. Indeed, following the steps taken by the President of the Republic of Senegal, Mr. Abdou Diouf, then Chairman of the Organization of African Unity (OAU), the French Prime Minister, Mr. Jacques Chirac, received a delegation from the OAU in Paris. At that meeting, the delegation of the OAU, consisting of Foreign Ministers and the Secretary-General, reaffirmed Africa's position on this question clearly and firmly to the French Government. The delegation called upon France to respect the unity and territorial integrity of the

(Mr. Kafé, Comoros)

Islamic Federal Republic of the Comoros, in accordance with the sacred principle of the inviolability of borders inherited from colonialization and with the commitments entered into by France on the eve of the referendum on self-determination for the Comoros. The French Prime Minister, who listened carefully to the position of OAU, expressed a wish to continue this dialogue with OAU.

On the bilateral level, we would emphasize the fact that the Comorian Government has not remained idle. It has on several occasions established contacts with the French authorities, some at of the highest State level, in order to advance the Comorian cause.

(Mr. Kafé, Comoros)

In the last few months, Mr. Ahmed Abdallah Abderemane, President of the Islamic Federal Republic of the Comoros, has discussed this matter on several occasions with the French Prime Minister, Mr. Jacques Chirac, in a very frank and open atmosphere. Following one such talk, the French Prime Minister made the following statement to the press:

"The President of the Comoros has informed us of his position on the problem of Mayotte and that position is now well known. It is clear and not subject to change. I have naturally taken careful note of that position. As everyone is aware and understands, there is a problem. I hope that a reasonable solution that is acceptable to all can be found."

More recently, to enable him to become familiar with the facts about our archipelago, the President of the Islamic Federal Republic of the Comoros invited the Prime Minister of France, Mr. Jacques Chirac, to visit Moroni, our capital, after visiting the island of Mayotte. We felt that this invitation was a demonstration of our good faith in the use of dialogue and in efforts to reach agreement. We are firmly convinced that during his visit to our country our distinguished guest was able to appreciate the natural identity and complementary nature of the four islands that make up the Comoro Archipelago.

We believe that it is time for France, whose historical influence has always resulted from the unity of its great people, to show imagination in seeking with the United Nations a just and lasting solution to this problem so as to preserve the unity of our country. Indeed, no matter what arguments may be put forward, the just settlement of this problem must necessarily respect the unity and territorial integrity of the Islamic Federal Republic of the Comoros.

(Mr. Kafé, Comoros)

We believe that France, by restoring law and justice to our country, would emerge with greater prestige from a difficult situation that is not in keeping with its traditions or with the image of itself that it had at the time of the decolonization of other former African Territories.

The people and Government of the Comoros, conscious of the rightness of their cause and the justice of their claim, are determined to continue their efforts until their just cause triumphs.

The international community, faithful to the sacred principles enshrined in the Charter of our Organization, owes it to itself to redouble its vigilance and show even greater firmness in supporting our people and Government.

The draft resolution now before the Assembly emphasizes the need to establish a frank and serious dialogue which would make it possible to arrive without delay at a just and lasting settlement of this question. I sincerely hope that we shall be able to adopt it unanimously.

Mr. AL-MIDELWI (Oman) (interpretation from Arabic): The question of the Comorian island of Mayotte remains on our agenda. Once again we are discussing this question and the need to find a just solution, through negotiations between the two parties to the conflict, that would restore sovereignty to the Islamic Federal Republic of the Comoros. It is regrettable that there has been no progress on this question in spite of all the resolutions adopted by the General Assembly, the most recent of which was General Assembly resolution 40/62, of 9 December 1985, as well as the resolutions of other international organizations, such as the Movement of Non-Aligned Countries, the Organization of the Islamic Conference and the Organization of African Unity, all of which called for a just solution.

(Mr. Al-Midelwi, Oman)

The Sultanate of Oman, based on its friendly relations with the two parties to the conflict and in line with its approach based on respect for the independence, unity, national sovereignty and territorial integrity of all States and the inadmissibility of interference in the internal affairs of States, appeals to the responsible party to respond to the calls of the international community for it to return the island of Mayotte to the rest of the Comoros under the sovereignty of the Islamic Federal Republic of the Comoros.

This is the eleventh year that the General Assembly has considered this question, but to no avail, despite the fact that the United Nations Charter states that constructive dialogue and mutual understanding among States should be encouraged. The resolutions of this Organization which affirm the sovereignty of the Comoros over the island of Mayotte and call upon the friendly French Government to respect the pledges made on the eve of the referendum of 22 December 1974 to determine the future of the archipelago and to respect the territorial integrity of those islands have, regrettably, not been followed up by this Organization. It is therefore imperative for all the parties concerned to demonstrate the political will to implement those resolutions.

The positive developments on this question about which we have been told must prompt us to encourage the parties to the dispute to engage in intensive dialogue to bring about understanding between those two friendly countries and restore this island to the ranks of the other Comorian islands. We are encouraged by the sincere desire shown by the Islamic Federal Republic of the Comoros to engage in dialogue to reach a prompt solution to the problem, thereby bringing national unity to all four islands and eliminating the problems that might stand in the way of the social and economic development of the islands. Such a settlement would also help to restore political stability to that area.

(Mr. Al-Midelwi, Oman)

The position of my country on this question is very clear. We fully support the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte, which has been affirmed in several General Assembly resolutions. The Sultanate of Oman supports constructive dialogue between the parties to the dispute and mutual understanding between those two friendly countries. In the light of our relations of friendship and respect with both countries, we call upon France to extend a helping hand and initiate constructive negotiations in order to settle the problem, and upon the United Nations to reactivate and support negotiations towards a permanent, just solution to this matter.

In view of all this, Oman has sponsored the draft resolution before the General Assembly on the question of the Comorian island of Mayotte, as it has similar draft resolutions in past years. We hope that a prompt settlement of this question, based upon the recommendations in the report of the Secretary-General (A/41/765), will be possible. We welcome that report, and particularly the positive developments relating to the French Government's decision not to conduct a referendum in the island.

(Mr. Al-Midelwi, Oman)

Finally, we should like to pay tribute to the efforts made through the good offices of all parties, while we affirm at the same time the importance of the efforts of the United Nations to conduct negotiations and encourage dialogue between the parties to the conflict so that those efforts might lead to deletion of this item from the agenda of the General Assembly.

Mr. OYOUE (Gabon) (interpretation from French): Only a few days ago Africa lost one of its worthy sons, President Samora Moises Machel of the Republic of Mozambique. Following this tragic event may I be allowed on behalf of the Head of State, Government and the people of Gabon to express the sincere condolences of my delegation to the Government and fraternal people of Mozambique.

Mr. President, your important election to the presidency of the forty-first session of the General Assembly has reflected honour on my delegation. With your permission we should like to take this opportunity to extend to you, Sir, our warmest congratulations on your election. The delegation of Gabon to this session, which it is my heavy responsibility to lead, is convinced that your long experience known to everyone and your diplomatic talents will make it possible for this General Assembly to conclude its work successfully on many of its agenda items.

Over the years the question of Mayotte has become increasingly a source of concern for the international community. Therefore the General Assembly finds itself confronted with this problem year after year at this time of the year. The Islamic Federal Republic of the Comoros has a special characteristic, namely its unity. This unity is not artificial, as some would claim; rather it is based on the origin and the common history of the sister islands which constitute the Federal Republic, namely, the islands of Anjouan, Mayotte, Mohéli and Grande-Comore. In this context it would be right to say that the Comoros is one of the few countries in the world with a homogeneous people sharing the same language, culture and religion.

(Mr. Oyoue, Gabon)

The Islamic Federal Republic of the Comoros has been independent since 1975. It was admitted to the United Nations in December of that same year. Unfortunately, however, its territorial integrity has not yet been guaranteed. In this connection it should be pointed out that the occupation of Mayotte is a violation of the sacrosanct principle of the inviolability of borders inherited from colonialism; that is an important principle upheld by the Organization of African Unity (OAU). The separation of Mayotte from the other islands of the Comoros has been a blow to that young country. That separation has had a negative effect not only of a humanitarian but also of an economic nature. Separating Mayotte from the Comoros as a whole deprives the archipelago of an important part of its great economic potential.

From the standpoint of recent and past history, we must say that neither Mayotte's being part of the Comoros as a whole nor restitution by France to the Islamic Federal Republic should pose a problem. The Comoro Archipelago was colonized by France for more than a century as a single colonial unit. Therefore the results of the referendum on self-determination of 22 December 1974, in which 95 per cent of the population voted in favour of their country's independence had to be counted as a whole and not on an island-by-island basis.

The impasse regarding Mayotte has lasted too long. The time has come for a solution. Gabon, a peace- and freedom-loving country for which dialogue, nationally and internationally, represents an unshakeable force, believes today more than ever that any solution to the problem of Mayotte must be based on negotiations. Violent means would only make the situation more complex than it already is. Such action would undermine the principles of peace and co-operation as set forth in the Charter of our international Organization.

(Mr. Oyoue, Gabon)

The people and Government of the Comoros, who are convinced that just causes always triumph ultimately, continue to believe in the soundness and the effectiveness of the approach just outlined. That is why President Ahmed Abdallah Abderamane of the Republic of the Comoros has in recent months once again tried to establish many contacts at the highest level with French authorities. He has met with President Francois Mitterand and with Prime Minister Jacques Chirac.

Similar action was taken by the OAU Ad Hoc Committee of Seven on the question of Mayotte. On 21 May 1986 there was a meeting of the Committee at Libreville in Gabon. Later they met with the Prime Minister of France on 8 July 1986. The purpose of that meeting, as explained during the interview with the French authorities by the Chairman of the Ad Hoc Committee, the Minister for Foreign Affairs and Co-operation of the Republic of Gabon, Mr. Martin Bongo, was twofold: to call upon France to respect the unity and territorial integrity of the Comoro archipelago in conformity with the pledge made by France on the eve of the referendum for self-determination and in line with Africa's stand on the inviolability of borders inherited from colonialism and secondly to invite France to define, as soon as possible, practical modalities for the return of the island of Mayotte to the Comoros. All these contacts and talks which I have just outlined were not conclusive. But it should rightly be pointed out that in this situation, which had become more complex and confused, there was one ray of hope: the French Government decided recently to abandon its efforts to organize a referendum on self-determination in Mayotte. That decision, which my delegation believes is wise and encouraging, shows that France is beginning to be willing to accept a negotiated settlement to the dispute.

My country, Gabon, having been the Chairman of the OAU Ad Hoc Committee of Seven on the Comorian island of Mayotte for the past 10 years, and based on the experience that we have acquired over this decade, is absolutely convinced that

(Mr. Oyoue, Gabon)

the determination shown by France and the Comoros to reconcile their positions by resuming a dialogue on the dispute, together with the efforts of the Ad Hoc Committee of the OAU might well prove decisive but will not be sufficient to settle this question in a just, lasting and rapid manner.

(Mr. Oyoue, Gabon)

All Member States, and the international community as a whole, must take parallel action and must encourage France to give the negotiations with the Islamic Federal Republic of the Comoros fresh momentum, in order to accelerate the return of the island of Mayotte to its place within the Comoros. Moreover, such action is in keeping with the spirit and the letter of resolution CM/RES.1051 (XLIV), on the question of the Comorian island of Mayotte, adopted by the Council of Ministers of the Organization of African Unity at its forty-fourth regular session, held in Addis Ababa, Ethiopia, from 21 to 26 July 1986.

Mr. RASHID AHMED (Pakistan): For several years now the question of the Comorian island of Mayotte has been on the agenda of the General Assembly, which has adopted several resolutions reaffirming the sovereignty of the Government of Comoros over the island of Mayotte. Similarly resolutions and decisions adopted in other international forums, including the Movement of the Non-Aligned countries, the Organization of the Islamic Conference and the Organization of African Unity, have reaffirmed the unity and territorial integrity of the Comoros and called for early negotiations between France and the Comoros with a view to achieving an honourable and just settlement.

Pakistan has a special interest in the speedy settlement of the question of Mayotte, as it enjoys close and friendly relations with both France and the Islamic Republic of the Comoros. Furthermore, the issue concerns the territorial integrity of a sister Islamic and non-aligned country, the justness of whose cause has been repeatedly upheld by the international community. The continued separation of Mayotte from other islands of the Comorian archipelago is also affecting the economy of the Islamic Federal Republic of the Comoros and that of the archipelago as a whole.

(Mr. Rashid Ahmed, Pakistan)

In seeking a speedy and just solution of the question of the Comorian island of Mayotte, we cannot disregard General Assembly resolution 3291 (XXIX), of 13 December 1974, which affirms the unity and territorial integrity of the Comoros and emphasizes that the archipelago comprises the islands of Anjouan, Grande-Comore, Mayotte and Moheli. General Assembly resolution 1514 (XVI), of 14 December 1960, on the granting of independence to colonial countries and peoples clearly maintains that the principle of self-determination applies to a colonial entity as a whole, which should have been the case in regard to the Comoros archipelago.*

The need for early negotiations and dialogue between the two parties has been one of the central elements in all the resolutions adopted on this subject by the General Assembly, the Non-Aligned Movement, the Organization of the Islamic Conference and the Organization of African Unity. Therefore Pakistan sincerely welcomes the resumption of dialogue between the French authorities and the Organization of African Unity Ad Hoc Committee of Seven in July this year in Paris. There have also been several contacts at the highest level between the two Governments, which have unanimously expressed their sincere desire to continue the dialogue with a view to reaching a just solution of the problem that would be acceptable to all parties. The recent decision by the Government of France not to hold a referendum in the Comorian island of Mayotte, as reported in the Secretary-General's report contained in document A/41/765, is an important development which sets the pace for future negotiations between the two countries.

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*Mr. Matturi (Sierra Leone), Vice-President, took the Chair.

(Mr. Rashid Ahmed, Pakistan)

We are confident that the sincere intentions and efforts of both the parties will be translated into concrete results in the near future, results which will preserve the unity and territorial integrity of the Comoros by restoring its sovereignty over the island of Mayotte.

The draft resolution introduced by the Foreign Minister of the Comoros this morning once again brings out the position consistently held by the international community on this issue and urges both parties to accelerate the process of negotiation with a view to ensuring peace and security in the region. In extending our full support for this draft resolution, we are motivated by an earnest desire to encourage an expeditious process of negotiation between the two countries leading to an early solution of the problem on the basis of justice and recognized principles of international law.

Mr. CHEOK (Singapore): At its twenty-ninth session, in 1974, the General Assembly adopted resolution 3291 (XXIX), affirming the principles of the unity and inviolability of the territorial integrity of the Islamic Federal Republic of the Comoros. It was the hope of all of us then that that resolution would be a positive contribution, complementing efforts to reach a solution to the question of the Comorian island of Mayotte. Regrettably, 12 years later, there has been little substantive action taken to ensure the return of the island to the Islamic Federal Republic of the Comoros.

My delegation is very grateful to the representative of the Comoros for his extremely informative statement today, which has provided this Assembly with clear and concise information as regards the present position on this matter.

My delegation also wishes to thank the Secretary-General for his report contained in document A/41/765, dated 27 October 1986, which my delegation only

(Mr. Cheok, Singapore)

received this morning. The report does provide certain information that can be viewed in a positive way. The Organization of African Unity has not been resting on this matter, and the Organization of African Unity summit Conference has adopted resolutions reaffirming the sovereignty of the Islamic Federal Republic of the Comoros over the Comorian island of Mayotte and has called upon France to honour the commitment that it entered into on the eve of the independence of the Comoros, namely, to respect the territorial integrity of the Comoros archipelago.

(Mr. Cheok, Singapore)

It should also be noted that Mr. Abdou Diouf, President of the Republic of Senegal and former Chairman of the OAU, played a crucial personal role in persuading the Prime Minister of France, Mr. Jacques Chirac, to meet with a delegation of the OAU Ad Hoc Committee of Seven with a view to discussing the question, and that the meeting took place in Paris on 8 July this year in a cordial atmosphere. As a result of the meeting, the French Prime Minister expressed his desire to continue the dialogue with the OAU.

At the bilateral level, President Abdallah of the Comoros has had several meetings with President Mitterand and with Prime Minister Chirac. The significant development that has resulted from these high-level contacts is that the French authorities recently decided not to hold a referendum in the Comorian territory of Mayotte. This was corroborated by the Permanent Mission of France in its note to the Secretary-General dated 24 October 1986, in which it said:

"In the present context, the French Government does not intend to take measures with a view to organizing a possible referendum." (A/41/765, para. 17)

The Singapore Government's policy relating to this question is guided by a number of factors. The first is that any solution to this long-standing problem must be based on respect for the sovereignty, unity and territorial integrity of the Islamic Federal Republic of the Comoros. The second is our close and friendly relations with both France and the Comoros. The third is the calm, reasoned, measured and open-minded manner in which the Comoros has pursued its just cause through peaceful means, as well as its continuing faith in and commitment to this Organization's ability to assist in the resolution of the problem. The fourth is our concern that the continued delay in finding a solution to this issue could exacerbate the situation and complicate its resolution, and might be detrimental to peace and stability in that region of Africa. The fifth is that the will of the

(Mr. Cheok, Singapore)

international community, as expressed in the forums of the Organization of the Islamic Conference, the Organization of African Unity and the Movement of Non-Aligned Countries, and here at the United Nations itself, still awaits its full implementation.

Bearing in mind these factors, my delegation hopes that the Governments of France and the Comoros will intensify their efforts through negotiations to bring about a solution of the question of Mayotte consistent with the decisions of the United Nations. Draft resolution A/41/L.23, dated 31 October 1986, once again highlights the principled position maintained by the international community on this issue, and urges the reopening of the dialogue between France and the Comoros. The language of the draft resolution is moderate, balanced and clear. It also seeks the good offices of the Secretary-General to resolve the problem by peaceful negotiations. In supporting the draft resolution, my delegation is motivated by an earnest desire to encourage an expeditious process of negotiations between the two countries, leading to an early solution of the problem on the basis of justice and recognized principles.

Mr. SARRE (Senegal) (interpretation from French): For the eleventh year in succession the General Assembly is having to consider the question of the Comorian Island of Mayotte. Since it was put on the Assembly's agenda in 1975 the question has been given continuing attention by the international community, which for more than a decade has witnessed tireless efforts both by the parties concerned, France and the Comoros, and by the Organization of African Unity (OAU), the Organization of the Islamic Conference, the Non-Aligned Movement and the United Nations in the search for a just and final solution to the problem.

Despite those constant efforts, it must be acknowledged that no substantial progress has been made along the lines so much desired by the vast majority of

(Mr. Sarré, Senegal)

countries represented here. That is not for any lack of proposals. Suffice it to recall the generous approach on 8 July this year in Paris to the Prime Minister of France by the OAU's Committee of Seven dealing with the Comorian Island of Mayotte, and the pressing appeals issued by the sixteenth ministerial meeting of the Organization of the Islamic Conference, held in Fez, Morocco, in January this year, and more recently by the eighth summit Conference of Non-Aligned Countries held in Harare in September.

At its forty-fourth ordinary session, held in Addis Ababa from 21 to 26 July this year, the Council of Ministers of OAU adopted resolution CM/Res.1051 (XLIV), in which, inter alia, it called on the Organization's Ad Hoc Committee of Seven and the OAU general secretariat to continue the efforts already undertaken and to maintain the momentum following the meeting with the French authorities, with a view to the Comorian island of Mayotte being restored to the Federal Islamic Republic of Comoros as soon as possible.

It is regrettable that the constructive proposals I have mentioned and the commitment of the parties directly concerned to settle Mayotte's future once and for all through negotiations have not yet yielded the desired results. The documents of OAU and of the United Nations - in particular, the Secretary-General's report (A/41/765) - clearly show that the situation regarding Mayotte remains unchanged.

Senegal, which maintains excellent relations with both the Comoros and France, is aware of the delicate nature of the problem. That is why we remain convinced that only the persistent pursuit of dialogue between the two parties can create the conditions for a just solution acceptable to all.

(Mr. Sarré, Senegal)

My country is happy that in their bilateral relations, marked by frankness and cordiality, both the Comoros and France have shown the international community their common desire to overcome the obstacles that remain in the way of a truly constructive dialogue. That common desire to find an honourable solution to the question of the Comorian island of Mayotte strengthens my delegation's conviction that a peaceful, just and lasting settlement of the problem of Mayotte is possible, provided both parties demonstrate the same political resolve to make progress.

(Mr. Sarré, Senegal)

Senegal whole-heartedly urges the rapid resumption of serious dialogue in the spirit of the United Nations Charter and the relevant texts of the Organization of African Unity and the United Nations, particularly General Assembly resolution 3385 (XXX) of 12 November 1975, which reaffirmed

"the necessity of respecting the unity and territorial integrity of the Comoro Archipelago, composed of the islands of Anjouan, Grande-Comore, Mayotte and Mohéli". (resolution 3385 (XXX), third preambular paragraph)

It is imperative that a just solution be found rapidly to the question of the Comorian island of Mayotte, for that question could not only tarnish the image and reputation of a great country but also, in the long term, threaten international peace and security.

This Organization, one of whose primary tasks is the promotion of peace and understanding among peoples and nations, must take the unique opportunity provided by the International Year of Peace to make an urgent appeal to the parties directly concerned to give new and resolute impetus to this matter, by embarking upon a process that will lead to the speedy preparation of an agreement marking the final solution to the problem of Mayotte.

For its part, Senegal will - as in the past - spare no effort to contribute to the establishment of a climate of confidence between the two parties and to the quest for an honourable solution to the problem. Such a solution, if it is just and lasting, will undoubtedly have beneficial effects on the relations between the authorities of the two countries and between the French and Comorian peoples - which, over and above their historical and cultural ties, remain equally devoted to the common ideals of international peace and solidarity.

PROGRAMME OF WORK

The PRESIDENT: I wish to inform members that, on the basis of consultations, it has been agreed to postpone the consideration of agenda item 32, "Law of the sea", at this stage. Members will be informed of the new date for the consideration of this item as soon as feasible. I thank all those involved for their co-operation.

AGENDA ITEM 31 (continued)

QUESTION OF THE COMORIAN ISLAND OF MAYOTTE:

(a) REPORT OF THE SECRETARY-GENERAL (A/41/765)

(b) DRAFT RESOLUTION (A/41/L.23)

Mr. BADAWI (Egypt) (interpretation from Arabic): Egypt has paid, and continues to pay, special attention to the question of the Comorian islands, particularly because of the bonds of friendship and close co-operation it maintains and has always maintained with the two parties to the problem.

Egypt has consistently supported the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte, on the basis of respect for its unity and territorial integrity. Indeed, that sovereignty has been reaffirmed by the General Assembly in successive resolutions, the most recent being resolution 40/62, adopted by the Assembly at its last session. That is Egypt's firm position of principle - a position it has taken in the Organization of African Unity, in the Organization of the Islamic Conference and in the Movement of Non-Aligned Countries.

We understand the concern felt by the Islamic Federal Republic of the Comoros at the lack of progress in the efforts to reach a solution to this problem. Such a lack of progress entails risks of political instability, and could also have repercussions on the peaceful climate that prevails in the region.

(Mr. Badawi, Egypt)

Since the French Government has pledged to respect the unity and territorial integrity of the Comorian islands and to seek a just solution to the question of Mayotte, hopes remain alive for a constructive dialogue aimed at reaching a solution that will safeguard the territorial integrity of the Comorian islands.

Egypt hopes that the sincere intentions and efforts of the two parties, and their earnest desire to achieve a negotiated solution to this question, will yield tangible, positive results in the near future. We trust that the Government of the Comorian islands will be able to exercise full sovereignty over all the islands of the Archipelago, thereby enabling that Government and the Comorian people to focus their endeavours and energies on meeting the challenges of social and economic development.

Mr. CHAGULA (United Republic of Tanzania): The question of the island of Mayotte is as old as the independence of the Federal Islamic Republic of the Comoos itself. Historically, the Comoro Archipelago consisted of the islands of Grande-Comore, Anjouan, Mayotte and Mohéli, and this situation obtained up to the eve of independence, when, as a result of a referendum, the people of the Comoros overwhelmingly decided to exercise their right to self-determination as one nation. It is regrettable that, at that material time, the administering Power unilaterally decided to grant independence to the people of the Comoros without the island of Mayotte, thereby violating the unity and territorial integrity of the Comoro Archipelago. That is the root cause of the problem of the island of Mayotte, a problem which would not be with us today had France in December 1974 fully respected the results of the referendum for the Archipelago as a whole and logically translated them into action. It is also for that reason that ever since 1976 both the United Nations General Assembly and the Organization of African

(Mr. Chagula, United Republic of Tanzania)

Unity (OAU) have been seized of this issue of Mayotte with a view to finding a negotiated peaceful and lasting solution to the problem.

My delegation has noted with appreciation the report (A/41/765) submitted by the Secretary-General on this question in response to General Assembly resolution 40/62, and we should like to make a few comments on its contents.

First, while we have noted that at the bilateral level the Governments of both the Comoros and France have been holding talks at the highest levels on the problem, and that the OAU Ad Hoc Committee of Seven, as a result of the personal intervention of the President of the Republic of Senegal, former Chairman of the OAU, was able to meet with the Prime Minister of France on this problem of Mayotte last July, we were puzzled to learn from the Secretary-General's report that the French authorities have recently decided not to hold a referendum in the Comorian territory of Mayotte. That decision by France would be welcome to my delegation only if it meant that France was now prepared to accept the results of the December 1974 referendum as the only basis for any consultations that may be initiated by France for the self-determination of Mayotte as an integral part of the Federal Islamic Republic of the Comoros, in accordance with General Assembly resolution 1514 (XV) of 1960.

(Mr. Chagula, United Republic of Tanzania)

Secondly, and in the context of what I have just stated, my Government fully endorses the resolution of the OAU Council of Ministers adopted during its forty-fourth session, in which, inter alia, they expressed their appreciation of the resumption of dialogue between the French authorities and the OAU Ad Hoc Committee of Seven in Paris and appealed to all OAU member States and the international community to condemn categorically and reject any form of referendum that might be initiated by France in the Comorian territory of Mayotte on the international legal status of the island, as the referendum on self-determination held on 22 December 1974 remained the only valid consultation for the entire archipelago. We join the OAU Council of Ministers in the fervent hope that the efforts already undertaken and the momentum already gathered by the OAU Ad Hoc Committee of Seven on the Comorian island of Mayotte for the return of Mayotte to the Federal Islamic Republic of Comoros will continue.*

At this juncture, it is also pertinent to refer to the recent Harare Declaration of the eighth summit Conference of Heads of State or Government of the Movement of Non-Aligned Countries, which, in connection with Mayotte,

"reaffirmed that the Comorian island of Mayotte, which is still under French occupation, is an integral part of the sovereign territory of the Islamic Federal Republic of the Comoros. They regretted that the French Government, despite its repeated promises, had thus far not taken a single step or initiative that could lead to an acceptable solution to the problem of the Comorian island of Mayotte". (A/41/697, para. 132)

The Heads of State or Government furthermore,

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*The President returned to the Chair.

(Mr. Chagula, United Republic of Tanzania)

"expressed their active solidarity with the people of the Comoros in their legitimate efforts to recover the Comorian island of Mayotte and preserve the independence, unity and territorial integrity of the Comoros". (para. 134)

To this end, they

"called on the Government of France to respect the just claim of the Islamic Federal Republic of the Comoros to the Comorian island of Mayotte, in accordance with its undertaking given on the eve of the archipelago's independence, and they categorically rejected any new form of consultation which might be held by France in the Comorian territory of Mayotte concerning the international juridical status of the island, as the self-determination referendum held on 22 December 1974 remains the only valid consultation applicable to the entire archipelago". (para. 135)

My delegation fully concurs with that declaration by the summit Conference of the Non-Aligned Movement, which is fully in line with the views of the OAU on that issue.

In conclusion, my delegation would like to express its appreciation to both the OAU and the United Nations Secretary-General for their commendable mediation efforts in this dispute, and to urge the two parties concerned, and the international community as a whole, to contribute all they can towards the success of these mediation efforts. We further commend the Government of the Comoros for its restraint, understanding and flexibility in creating the necessary peaceful conditions to facilitate the speedy restoration of the island of Mayotte to the people of the Comoros.

Mr. de KEMOULARIA (France) (interpretation from French): My delegation has listened with close attention to other speakers from this rostrum, and particularly Mr. Said Kafe, the Minister of Foreign Affairs, Co-operation and Foreign Trade of the Islamic Federal Republic of the Comoros.

(Mr. de Kémoularia, France)

France regrets that once again this year the question of Mayotte is on the agenda of the General Assembly. We are unequivocally opposed to the text before us, in particular because of operative paragraph 1.

I believe that everyone in this Hall wants a just and lasting solution to this problem to be found as soon as possible. This is also France's position. The President of the Republic himself stressed this when he declared:

> "France is committed to the active search for a solution to the problem of Mayotte, in keeping with its national law and with international law. It is with the same desire for reconciliation and a return to peace that we have advised the Secretary-General that in the present situation the French Government has no intention of organizing a referendum."

It was in the same open-minded and frank spirit that the Prime Minister received the Chairman of the Organization of African Unity (OAU) Ad Hoc Committee of Seven last July in Paris.

Now France, in keeping with its Constitution and in keeping with the wishes of the peoples concerned, is completing specific plans to facilitate a satisfactory solution to this question. Mindful of its responsibilities, France is committed to a constructive dialogue with the Islamic Federal Republic of the Comoros on this problem. The bonds of friendship and co-operation that link our two countries cannot but facilitate this dialogue. Contacts between Moroni and Paris up to the highest level have never been more intense, as was stressed a moment ago. Indeed, President Abdallah has conferred on a number of occasions during the year with the highest French authorities, and last October he received the Prime Minister of France, Mr. Jacques Chirac, in Moroni.

In this spirit, France will spare no effort to find a lasting solution to this question.

The PRESIDENT: We have heard the last speaker in the debate on this item.

We shall now begin the voting process on draft resolution A/41/L.23.

A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Djibouti, Ecuador, Egypt, Equatorial Guinea, Ethiopia, Fiji, Finland, Gabon, Gambia, German Democratic Republic, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zimbabwe

Against: France

Abstaining: Australia, Austria, Belgium, Canada, Cyprus, Denmark, Germany, Federal Republic of, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Saint Vincent and the Grenadines, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America

Draft resolution A/41/L.23 was adopted by 122 votes to 1, with 22 abstentions.*

The PRESIDENT: The Assembly has now concluded its consideration of agenda item 31.

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*Subsequently the delegations of Guyana, Panama, Papua New Guinea, Saint Lucia and Zambia advised the Secretariat that they had intended to vote in favour.

AGENDA ITEM 13

REPORT OF THE INTERNATIONAL COURT OF JUSTICE (A/41/4)

The PRESIDENT: The Assembly will now turn to the report of the International Court of Justice covering the period 1 August 1985 to 31 July 1986.

If I hear no objection I shall take it that the General Assembly takes note of the report.

It was so decided.

The PRESIDENT: The Assembly has concluded its consideration of agenda item 13.

AGENDA ITEM 146

JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE OF 27 JUNE 1986 CONCERNING MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA: NEED FOR IMMEDIATE COMPLIANCE: DRAFT RESOLUTION (A/41/L.22)

The PRESIDENT: I call on the representative of Nicaragua who wishes to introduce the draft resolution on this item.

Mr. D'ESCOTO BROCKMANN (Nicaragua) (interpretation from Spanish): The illegal veto cast by the United States in the Security Council on Tuesday, 28 October, has compelled us to request the inclusion, as an urgent matter, of a new item on the agenda of the forty-first session of the General Assembly, entitled "Judgment of the International Court of Justice of 27 June 1986 concerning military and paramilitary activities in and against Nicaragua: need for immediate compliance". The draft resolution vetoed by the United States limited itself to reminding the Government of that country that in conformity with its obligations under the Charter it must abide by the International Court of Justice's judgment of 27 June 1986 and immediately halt the war of aggression that the United States carries out, directs and promotes against Nicaragua.

(Mr. D'Escoto Brockmann, Nicaragua)

The United States aggression against Nicaragua is open and is conducted in broad daylight. The aggressor State itself boasts of it, when its representatives confirm that it is financing and training the mercenaries, and shamelessly reiterate that this policy will be changed only if Nicaragua abandons its revolution and submits to imperialist domination. In addition to blackmailing and putting pressure upon those Governments that disapprove of its aggressive policy, the Government of the United States is setting up operational bases and training camps and arranging for logistical support for its mercenaries.

We have come before the United Nations on several occasions to denounce this aggression and describe its nature. Until about two years ago there were quite a few who fell for the falsehoods of Mrs. Kirkpatrick, for example, when she made use of this rostrum to defend the criminal policy of her Government. She accused us of being paranoid, of suffering from a persecution complex, and she alleged that the war in Nicaragua was a Nicaraguan matter, to be settled between Nicaraguans, in which the United States Government was a mere onlooker.

On Sunday, 26 October, a front-page article in The New York Times reported in-fighting between the military and political leaders in the war against Nicaragua. According to that article all those leaders are Americans, officials of the United States Government, who are apparently divided by their different views on how to "win" in Nicaragua.

It is obvious that the war being waged against Nicaragua is a United States war and that the so-called contras are merely hired hands serving the diabolical aims of the Reagan administration.

(Mr. D'Escoto Brockmann, Nicaragua)

A little less than two months ago the Non-Aligned Movement, at its latest summit meeting, held in Harare, once again denounced this fact emphatically and unambiguously in the following statement:

"The Heads of State or Government reiterated their firm solidarity with Nicaragua and demanded the immediate cessation of all threats and hostile acts against Nicaragua including attacks, the financing of mercenary groups by the United States Government and coercive economic measures taken against the people and Government of that country, all of which are aimed at overthrowing the legitimately-constituted Government of Nicaragua and which increase the risk of a generalized conflict. They appealed to all members of the Movement of Non-Aligned Countries, as well as the international community, to give solidarity and all such assistance as Nicaragua may require in order to preserve its right of self-determination, national independence, sovereignty and territorial integrity." (A/41/697, para. 228)

Everyone is well aware that my Government, in view of the failure of its many efforts and the efforts of third countries to induce the United States to follow the path of dialogue and abandon its policy of force against Nicaragua, was obliged to turn to the International Court of Justice in April 1984. On 10 May of that year the Court indicated certain provisional measures of protection, which were not heeded by the United States. The United States challenged the Court's jurisdiction in the case and on 26 November 1984 the Court addressed the issues of jurisdiction and the admissibility of the application, and ruled that it had jurisdiction in law.

(Mr. D'Escoto Brockmann, Nicaragua)

Finally, on 27 June of this year, the Court made public judgement on the merits of the suit. In that judgement the Court condemned the United States for its illegal policy against Nicaragua. Moreover, the Court ordered that the United States halt immediately its entire illegal, aggressive policy against Nicaragua and in particular that it cease

"training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua". (S/18221, para. 292)

In this regard, the Eighth Conference of Heads of State or Government of Non-Aligned Countries, meeting in Harare, urged the United States of America:

"to comply with the ruling of 10 May 1984 on Provisional Measures of Protection and the judgment of 2 November 1984 on the jurisdiction and admissibility of the demand of 9 April 1984 presented by Nicaragua. They further called upon the United States to comply with the decision of the International Court of Justice delivered on 27 June 1986, especially the findings of the Court that the United States, by its many hostile acts against Nicaragua, violated international law, that it is under a duty immediately to cease and to refrain from all such acts; that it is under an obligation to make reparations to the Republic of Nicaragua; and that the form and amount of such reparations, failing agreement between the parties, will be settled by the Court". (A/41/697, para. 229)

The Nicaraguan Government, as usual, has been extremely patient with the United States. Nicaragua waited for the United States to give full consideration to, and to comply with, the judgement. Yet the official response of the Reagan Administration was to ask Congress for $100 million more to continue to finance genocide against our people, give the Central Intelligence Agency (CIA)

(Mr. D'Escoto Brockmann, Nicaragua)

responsibility for running the war and approve sending United States military advisers to train its contra mercenaries. In the face of such a clear and flagrant violation of the Court's judgement, what could Nicaragua do?

Article 94, paragraph 1, of the Charter establishes clearly and unequivocally that

"Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

Paragraph 2 of the same Article, without allowing for any kind of exceptions, states:

"If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

Article 2, paragraph 2, of the Charter states:

"All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter."

There is nothing that allows a State to evade the obligation to comply with a judgement of the International Court of Justice in connection with a dispute to which it is a party. The United States is therefore under an obligation to comply immediately and faithfully with the judgement of 27 July 1986, especially since it has the privilege of being one of the permanent members of the Security Council. That privilege was conferred upon it so that it would act in accordance with the principles and purposes of the Charter, not wantonly violate its obligations under

(Mr. D'Escoto Brockmann, Nicaragua)

international law and treaties, and ride roughshod over the rights of small nations and peoples with its enormous military and economic might.

What happened in the Security Council over the past few days was truly historic. It was the first time in the history of our Organization that a case was brought before the Security Council under Article 94 of the Charter, that is, for non-compliance with a judgement of the International Court of Justice. It is not surprising that this has not occurred previously, given the fact that this is the first case of total contempt for a judgement and stubborn determination by a country to continue to commit crimes for which it has been condemned. It is also the first time that Article 27 of the Charter has been violated in such a clear and undeniable manner.

The representative of the current Government of the United States to the Organization has put forward the thesis that his Government rejects

> "the proposition that we have consented to the jurisdiction of the Court in the case brought by Nicaragua. Consequently, we do not believe that the current item brought by Nicaragua under Chapter XIV, Article 94, of the Charter has any merit. There is nothing in Chapter XIV of the Charter that speaks to the question of jurisdiction and nothing anywhere in the Charter that can be said to create consent to jurisdiction where none exists." (S/PV.2716, p. 7)

The paragraph from the statement that I have just quoted is legal nonsense pure and simple. Nicaragua has never brought any question of the Court's jurisdiction before the Security Council. Chapter XIV of the Charter sets forth the treaty basis of the International Court of Justice. Article 93 states:

> "All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice."

(Mr. D'Escoto Brockmann, Nicaragua)

It is in the Statute of the International Court of Justice, particularly Article 36, that matters of jurisdiction are established, and its paragraph 6 clearly states:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

Thus, it is not for any country or any other body to decide on the jurisdiction of the Court; it is for the Court alone to decide.

In the 27 June 1986 judgement the Court stated once again what it had decided on the issue of jurisdiction, recalling that

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"By its Judgment of 26 November 1984, the Court found that it had jurisdiction to entertain the present case, first on the basis of the United States declaration of acceptance of jurisdiction, under the optional clause of Article 36, paragraph 2, of the Statute, deposited on 26 August 1946 and secondly on the basis of article XXIV of a Treaty of Friendship, Commerce and Navigation between the Parties, signed at Managua on 21 January 1956. The Court notes that since the institution of the present proceedings, both bases of jurisdiction have been terminated. On 1 May 1985 the United States gave written notice to the Government of Nicaragua to terminate the Treaty, in accordance with article XXV, paragraph 3, thereof; that notice expired, and thus terminated the treaty relationship, on 1 May 1986. On 7 October 1985 the United States deposited with the Secretary-General of the United Nations a notice terminating the declaration under the optional clause, in accordance with the terms of that declaration, and that notice expired on 7 April 1986. These circumstances do not however affect the jurisdiction of the Court under Article 36, paragraph 2, of the Statute, or its jurisdiction under article XXIV, paragraph 2, of the Treaty to determine 'any dispute between the Parties as to the interpretation or application' of the Treaty." (S/18221, para. 36)

As a result of this second setback suffered by the United States, the United States notified the Court on 18 January 1985 that it was withdrawing from the suit. The Court, in paragraph 27 of its judgement, notes in this regard that:

"When a State named as party to proceedings before the Court decides not to appear in the proceedings, or not to defend its case, the Court usually expresses regret, because such a decision obviously has a negative impact on the sound administration of justice (cf. Fisheries Jurisdiction,

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I.C.J Reports 1973, p. 7, para. 12; p. 54, para. 13; I.C.J. Reports 1974, p. 9, para. 17; p. 181, para. 18; Nuclear Tests, I.C.J. Reports 1974, p. 257, para. 15; p. 461, para. 15, Aegean Sea Continental Shelf, I.C.J. Reports 1978, p. 7, para. 15; United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1980, p. 18, para. 33). In the present case, the Court regrets even more deeply the decision of the respondent State not to participate in the present phase of the proceedings, because this decision was made after the United States had participated fully in the proceedings on the request for provisional measures, and the proceedings on jurisdiction and admissibility. Having taken part in the proceedings to argue that the Court lacked jurisdiction, the United States thereby acknowledged that the Court had the power to make a finding on its own jurisdiction to rule upon the merits. It is not possible to argue that the Court had jurisdiction only to declare that it lacked jurisdiction. In the normal course of events, for a party to appear before a court entails acceptance of the possibility of the Court's finding against that party. Furthermore the Court is bound to emphasize that the non-participation of a party in the proceedings at any stage of the case cannot, in any circumstances, affect the validity of its judgment. Nor does such validity depend upon the acceptance of that judgment by one party. The fact that a State purports to 'reserve its rights' in respect of a future decision of the Court, after the Court has determined that it has jurisdiction, is clearly of no effect on the validity of that decision. Under Article 36, paragraph 6, of its Statute, the Court has jurisdiction to determine any dispute as to its own jurisdiction, and its judgment on that matter, as on the merits, is final and binding on the parties under Articles 59 and 60 of the Statute (cf. Corfu Channel, Judgment of 15 December 1949, I.C.J. Reports 1949, p. 248)." (para. 27)

(Mr. D'Escoto Brockmann, Nicaragua)

From the aforementioned it is clear that the judgement handed down by the International Court of Justice on 27 June 1986 is a judgement issued strictly in accordance with the law and, as the Court itself stated, "is final and binding on the parties under articles 59 and 60 of the Statute".

Therefore, Nicaragua, faced with the notorious noncompliance of the United States, went before the Security Council to ask that, in accordance with Article 94, paragraph 2 of the Charter, the Council make recommendations or adopt appropriate measures to ensure compliance with the judgement.

Draft resolution S/18428 presented by Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates, had that as its objective. Its aim was for the Council to remind the United States of America of its duty as a Member of the United Nations to abide by the ruling of the Court. As we demonstrated previously, there is no legal way for the United States to avoid compliance.

When the United States of America repeated in the Council the arguments it has always employed to justify its illegal policy against Nicaragua - arguments that incidentally were totally rejected by the Court itself - it was seeking to create institutional confusion. The Council's function in the matter presented by Nicaragua, in accordance with Article 94 of the Charter, is not to listen to arguments that were made before the Court and that were rejected there, but rather, at the very least, to proceed to remind the aggressor State of its duty under the Charter to comply with the judgement. The only matter that the members of the Council had to consider was whether, in light of the appropriation of another $100 million to continue financing the war against Nicaragua, as well as other flagrant acts in contempt of the judgement of the International Court of Justice of 27 June 1986, it became necessary or not to urge the United States of America

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immediately to comply. In that context, draft resolution S/18428 was totally in order and the United States, being a party to the dispute referred to in the judgement, should, in accordance with Article 27, paragraph 3 of the Charter, have refrained from voting.

(Mr. D'Escoto Brockmann, Nicaragua)

Article 27 of the Charter is clear:

"1. Each member of the Security Council shall have one vote.

"2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

"3. Decisions of the Security Council on all other matters" - namely, non-procedural - "shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."

In other words, there are two cases under Article 27 of the Charter in which the veto cannot be used: first, when the question is one of procedure; and, secondly, when the country in question is a party to a dispute in which a means of peaceful settlement is in process or there exists a judgement of the International Court of Justice or some other instrument of a similar - in other words, binding - nature which has resulted from one of the means of peaceful settlement contemplated in Chapter VI or in Article 52 of the Charter. In all other cases, the veto is allowed. Here, we are dealing with a case in which paragraph 3 of Article 27 of the Charter was unquestionably applicable, and the United States had no right to vote, much less to use its veto. There was no way that the draft resolution considered by the Security Council could be legally vetoed by the United States. Any of the other permanent members could have exercised the veto, but not the United States.

Therefore, since the draft resolution was not vetoed by any member of the Council not debarred from exercising its right of veto, the draft was legally adopted and should have been proclaimed as a legitimate resolution of the Security Council.

(Mr. D'Escoto Brockmann, Nicaragua)

In 1948 several permanent members of the Security Council - China, the United States, France and the United Kingdom, to be precise - went before the General Assembly seeking clarification on which items should be considered as procedural in Security Council votes, as regards the applicability of paragraph 2 of Article 27 of the Charter. On 14 April 1949, the General Assembly adopted a draft resolution on this matter, sponsored by China, France, the United Kingdom and the United States, adopted as resolution 267 (III). That resolution, based on Article 10 of the Charter, lists the type of resolutions to be considered questions of procedure and therefore not subject to veto. Among those it includes decisions that limit themselves to reminding Member States of their obligations under the Charter. It was precisely that type of resolution that was vetoed illegally on 28 October by the United States.

During the discussion of draft resolution A/AC.24/20 sponsored by four permanent members of the Security Council regarding the problem of voting in the Security Council the United States representative, Ambassador Warren R. Austin,head of the delegation at the time, expressed ideas that sound as if they had been formulated to be applied to the United States today:

"All Members of the United Nations had assumed definite obligations under the Charter. Those obligations were binding upon all nations, large and small. The permanent members of the Security Council could not evade or nullify those obligations by virtue of their special position; they could not use the privileged vote they were granted by the Charter to defeat the Charter. If a permanent member attempted, contrary to its obligations under Article 2, to destroy the political independence of its neighbour by force, it could not evade or obscure the responsibility for that violation by casting a negative vote when the victim took the case before the Council. No permanent member,

(Mr. D'Escoto Brockmann, Nicaragua)

through the exercise of the veto, could deprive Members of the United Nations of the right to defend themselves or take away the legal right or moral duty of other members to come to the aid of the victim in defence of the principles of the Charter".

Nicaragua's presentation, both before the Security Council and now before the General Assembly, of a case related to the obligation incumbent upon a Member State to comply with a judgement of the International Court of Justice in a matter to which it is a party, has been complicated by the United States attempt unilaterally to confer on itself a greater prerogative than those recognized traditionally for a permanent member of the Security Council. The United States has illegally vetoed a decision of the Council when it should not even have participated in the voting. This conclusion is reached by applying the criteria approved by the General Assembly in resolution 267 (III), or by applying Article 27 of the Charter. Nicaragua rejects this violation of the Charter perpetrated by the present United States Administration, and reserves the right to return to this question of illegality in the future.

The General Assembly will now begin considering the item that Nicaragua wished to have included in the agenda. Under this item a draft resolution has been introduced which is fundamentally the same as the one submitted to the Security Council. There the draft resolution obtained 11 votes in favour and 1 against - that of the United States. The illegal vote and veto by the United States, besides representing a clear rejection of the means of peaceful settlement of disputes, also demonstrates the determination of the United States Government to continue its illegal use of force against Nicaragua, which is precisely what the Court ordered it to cease.

(Mr. D'Escoto Brockmann, Nicaragua)

The General Assembly, by having agreed to consider that item, must be prepared to be objective and far-sighted. It is not only a matter of whether Nicaragua's legal arguments are correct, but of foreseeing the consequences of failing to take the measures necessary to prevent a State from putting itself above international law.

It is obvious that if the Government of the United States were permitted to put itself above the law, we would help to bury forever the possibility of peace in the world based on respect for the sovereign and juridical equality of States.

(Mr. D'Escoto Brockmann, Nicaragua)

To tolerate such conduct would be to deprive the United Nations of its reason for existence. We should be going back to the days before 1945 and making the horror of a third world war inevitable.

There can be no doubt that Nicaragua's tenacious and unwavering defence of its rights as a sovereign State will lead to the strengthening of the cause of peace, by strengthening the entire United Nations system, including the International Court of Justice.

In introducing the item we are now discussing we have kept in mind the overall interests represented by the Charter of the United Nations; the hopes of the poor, impoverished peoples for peace and development; the defence of the right to self-determination and independence, without foreign pressures or intervention. We all know that these are objectives supported by the overwhelming majority of the Member States of the United Nations. That is why we know that we can count on an overwhelming majority in favour of this draft resolution, which has as its exclusive purpose the defence of the Charter, which establishes the binding nature of the judgements of the International Court of Justice.

Lastly, I should like to reiterate our request that this item be maintained on the agenda of the General Assembly until the 1986 judgement of the International Court of Justice has been complied with by the United States Government.

Mr. OKUN (United States of America): As my delegation stated in the General Committee on 30 October, the United States believes the new item proposed by Nicaragua is not an appropriate item for consideration by the General Assembly. In regard to judgements of the International Court of Justice, Article 94, paragraph 2, provides that a "party may have recourse to the Security Council". There is no mention of any role for the General Assembly.

(Mr. Okun, United States)

For this reason, until now no Member State has requested the General Assembly to take a decision on an issue of this nature. Even those Member States which have accepted the compulsory jurisdiction of the International Court of Justice should have serious reservations about involving the General Assembly in implementing decisions of the International Court of Justice.

The United States believes that the question that Nicaragua has insisted on bringing up today must be considered in the context of what is happening within Nicaragua and between Nicaragua and its neighbours in Central America. I will have more to say about that presently.

As we have often stated before, it is not enough to claim that, just because Article 36, paragraph 6, of the Court's Statute says that it may decide disputes concerning jurisdiction, the Court indeed did have jurisdiction in this particular dispute. No court, including the International Court of Justice, has the legal power to assert jurisdiction where there is no basis for that jurisdiction.

The absence of any foundation in either law or fact for the Court's assertion of jurisdiction in this case is clear. Look at the language and the negotiating history of the Charter of the United Nations. Look at the language and the negotiating history of the Statute of the International Court of Justice. Look at the consistent interpretation of these instruments by the Court, by the Security Council and by Member States.

The resolution before us today is based on a fundamentally flawed interpretation of the significance and validity of the decision of the International Court of Justice. Moreover, even if it were not so flawed, it is not appropriate for consideration by the General Assembly. Those are two of the reasons why my delegation will vote against this draft resolution.

(Mr. Okun, United States)

Given this background, why has Nicaragua chosen to come to the General Assembly today? As they have done so often in the Security Council in the past, the Sandinistas clearly intend to manipulate the United Nations General Assembly for propaganda purposes. If Nicaragua had wished serious consideration of this issue in its totality, it would have agreed to take it up as part of item 42, on the situation in Central America, which is already on the General Assembly's agenda for discussion.

In spite of what the representative of Nicaragua has asserted here this morning, the issue at stake is the crisis in Central America and how to resolve it. Nicaragua has twisted the issue by portraying it as a conflict between Nicaragua and the United States. My Government, the people of Central America and the Sandinistas themselves know that this is not the case. The Sandinista régime is responsible for the crisis. It has waged a campaign of subversion against all its neighbours and a campaign of repression against its own people, whose revolution it has betrayed.

During the 1979 revolution in Nicaragua the Sandinistas pledged to follow a policy of non-alignment. They promised not to export their revolution. But, from the outset, the Sandinistas planned to ally themselves with Cuba and the Soviet bloc. By 1980 the Sandinistas were deeply involved in regional subversion, supporting the Marxist guerrillas seeking to overthrow the Government of El Salvador. The evidence that proves this support is massive and undeniable. It ranges from statements by former guerrillas and mountains of captured documents to physical proof such as captured weapons and munitions.

Nicaraguan subversion goes far beyond El Salvador. The Sandinistas provide clandestine assistance to subversive groups throughout the region. The Sandinistas directly participated in the 1983 and 1984 attempts to infiltrate subversives into

(Mr. Okun, United States)

Honduras, as captured subversives themselves have admitted. The Sandinistas have also supported terrorists in Costa Rica, and their agents have repeatedly attempted assassinations in that country. The Nicaraguan connection with the weapons used by the Colombian M-19 in the bloody attack on the Palace of Justice in Bogota is well known.

A threatening rise in Nicaragua's conventional forces has accompanied the Sandinistas' subversion of their neighbours. Since 1979 the Sandinistas have created the largest army in the history of Central America - 10 times the size of Somoza's army. To equip it they have received from their Cuban and Soviet allies an arsenal without precedent in the region, including fleets of combat helicopters, battalions of tanks and armoured vehicles and scores of artillery pieces and rocket launchers. They have militarized Nicaragua, turning the country into an armed camp. I refer members to an article printed just last Wednesday in The New York Times on the latest delivery of Soviet helicopter gunships. Every day these formidable weapons, piloted in many cases by Cubans, are killing ever larger numbers of Nicaraguans.

(Mr. Okun, United States)

Just as the Sandinistas have betrayed their neighbours, all of whom welcomed the Nicaraguan revolution, they have also betrayed the Nicaraguans who believed the Sandinista promises of freedom and democracy. In recent months the Sandinista régime has ruthlessly intensified the consolidation of its totalitarian rule. Using its secret police - 10 times the size of Somoza's - and its network of Cuban-inspired block committees, it has created an atmosphere of fear and repression that far exceeds the worst excesses of the Somoza régime. The Sandinistas have suspended even the most basic of human rights. They have engaged in a systematic pattern of summary executions, arbitrary detentions and physical and psychological abuse of prisoners.

Let me dwell for a moment on the Sandinistas' violations of human rights. According to the human rights office of the Organization of American States, there are at present some 2,000 Nicaraguan prisoners who have been tried or are awaiting trial by the so-called Popular Anti-Somocista Tribunals, whose conviction rate is 99 per cent. The Organization of American States report notes that these prisoners enjoy no presumption of innocence, have limited access to defence counsel and face judges whose "impartiality, fairness and independence of judgment are seriously compromised".

Since the Nicaraguan representative insists upon invoking the rule of law and concepts of justice before the Assembly, let me call to the attention of those who may have missed it the description of the Sandinista system for dispensing justice which appeared in the 31 October issue of The New York Times. The article reported that the popular tribunals have become a principal Sandinista instrument for repressing the peaceful democratic opposition under the guise of adjudicating national security cases. It stated:

(Mr. Okun, United States)

"Independent labor unionists, opposition party activists, journalists and other peaceful dissidents have been proclaimed 'counter-revolutionaries' and given stiff jail terms by the tribunals ...

"The common experience of political defendants is arrest without warrant and incommunicado detention. Though the tribunals' summary procedures are meant to expedite justice, many defendants are held for several months before being charged or tried. They are interrogated in harsh conditions, invariably making self-incriminating statements under duress and sometimes torture. Once charges are brought, proceedings are speedy ...

"Human rights groups have noted that several lawyers have been imprisoned for too vigorously defending political clients." (The New York Times, 31 October 1986, p. A35)

The Sandinistas claim that they somehow have been given a mandate to rule Nicaragua. From whom or what did they obtain this mandate? Certainly not from the hundreds of thousands of Nicaraguans who participated in the 1979 revolution, thinking it would bring genuine democracy to Nicaragua, who subsequently have had to flee the country. The Sandinistas have persecuted the genuinely democratic political parties that played such a noble role in the revolution, and have forced many of their leaders into exile, as well as harassing and intimidating those who chose to remain. Among the many tragic ironies of the Sandinista betrayal of the revolution is the fate of La Prensa. The assassination of La Prensa's publisher in 1978 was the spark which ignited the revolution. In June this year the Sandinista régime closed down La Prensa as the last step in its seven-year effort to stamp out a free press, which is one of the essential elements of democratic government.

Because the draft resolution totally ignores the situation that prevails between Nicaragua and its neighbours, making not even a single reference to the Contadora process, and because it also ignores the fundamental principles of human

(Mr. Okun, United States)

rights embodied in the Charter, my delegation believes it is a totally unacceptable portrayal of the tragic reality of Central America. This is yet another reason why my delegation will vote against the draft resolution.

My delegation had been planning to elaborate its views on how to reach a peaceful settlement in Central America during the long-scheduled plenary debate on Central America. In spite of today's diversionary exercise by the Sandinistas, it still plans to do so. Let me nevertheless restate the fundamental approach of my Government to the conflict in the region.

The United States continues to seek a negotiated settlement. It has supported, and continues to support, the Contadora process in its quest for a regional solution. United States policy towards Nicaragua remains fully consistent with the 21 points of the Contadora Document of Objectives agreed to by the four Contadora Group countries and the five Central American countries, including Nicaragua, in September 1983. The United States has stated repeatedly and categorically that it would abide by a comprehensive, verifiable, and simultaneous implementation of the Document of Objectives. But only the full realization of all 21 points, including true national reconciliation and democratization in Nicaragua, can lead to a lasting peace in Central America.

Once again the United States calls on the Sandinistas to enter into serious negotiations with the democratic opposition aimed at achieving national reconciliation and democratization. Our long-standing offer to hold simultaneous talks with the Sandinistas if they undertake such negotiations still stands.

My delegation is concerned that the tactics used so blatantly by the Sandinistas in provoking this debate today have been designed with one purpose in mind. They wish to avoid answering the following basic questions about their intentions towards their neighbours and their own people. Why do the Sandinistas

(Mr. Okun, United States)

continue to attack and subvert their neighbours? Why do they continue to destroy those within Nicaragua - such as labour unions, the free press, the Church, the private sector and even the Miskito Indians - who cling to the ideals of the revolution and attempt peacefully to make these ideals a reality? Why do the Sandinistas need a secret police 10 times the size of Somoza's? And, finally, why are the Sandinistas unwilling to enter into the dialogue with all of the democratic opposition that could lead to genuine national reconciliation?

We ask: when will this body and - more important - the Nicaraguan people, be given answers to these questions?

Mr. MOYA PALENCIA (Mexico) (interpretation from Spanish): My delegation had the opportunity of explaining its views on this subject in detail last week in the Security Council. We do not intend to repeat what we said then, but we are convinced that this is a case that goes beyond the confines of a unilateral claim by one Member State against another and that it involves the very viability of the international legal order envisaged in the Charter. That affects and concerns all of us.

(Mr. Moya Palencia, Mexico)

My delegation is well aware of the political implications of the point at issue, the substance of which entails a problem of respect for the right to self-determination of the claimant country as well as respect for the principle of non-intervention, and, by the same token, affects the precarious balance of peace in the Central American region and the world. My delegation, however, wishes to take a basically legal approach to this subject, because of its present and future importance.

From the juridical point of view, we think it is clear that the issue that Nicaragua unsuccessfully raised a few days ago in the Security Council, and is today raising in the General Assembly, is the need for immediate compliance with or execution of a judgement of the International Court of Justice, which is the principal judicial organ of the United Nations and to whose Statute all Members of the United Nations are ipso facto parties. Thus, Article 94 of the Charter provides that

"Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party. ...". And, if that is not done,

"the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement".

The Security Council considered Nicaragua's request that effect be given to the judgement in question - the first request of that kind presented in the history of the United Nations - but the Council was unable to make the recommendation contained in a draft resolution proposed by a number of countries, owing to the veto cast by the State that was the other party in the case before the Court.

(Mr. Moya Palencia, Mexico)

Today the matter is before the General Assembly, as is a draft resolution whose text is identical to that submitted to the Security Council. The draft resolution before the Assembly urgently calls for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986, and requests the Secretary-General to keep the General Assembly informed on the implementation of the resolution.

The procedures envisaged in the Charter for ensuring that judgements of the International Court are given effect are very similar to those contained in the overwhelming majority of - if not all - the domestic legislation governing lawsuits in Member States, including that of the parties to the conflict. The various legal codes state that when the parties - or one of them - fail to comply with the obligations flowing from a judgement of a competent tribunal, urgent measures may be taken to deal with this non-compliance. In Anglo-Saxon law, such a situation and the complex of measures pertaining to ensuring compliance ensuring compliance are considered under what is known as "contempt of court".

In the case before us, Nicaragua, through draft resolution A/41/L.22 of 31 October 1986, and the statement by its Minister for Foreign Affairs, Mr. Miguel D'Escoto, is requesting the Assembly to call urgently for the full and immediate compliance by the other party with the Judgment of the International Court. My delegation believes that the appropriateness and urgency of this call and of Nicaragua's right to request the General Assembly to make it are beyond question, in view of the result of its request recently considered in the Security Council. We feel that the international community, regardless of any particular position taken on the substance of the issue that led to the litigation, must support compliance with the Judgment. Failing to do that would undermine the legal foundations of the international order as well as the importance and compulsory nature of the judgements of the International Court of Justice, which would

(Mr. Moya Palencia, Mexico)

be tantamount to undermining the very foundations of the civilized coexistence of nations.

The Security Council and the International Court of Justice were established precisely to ensure the application of the purposes and principles of the Charter, primarily those relating to the maintenance of international peace and security. President Harry Truman, in closing the San Francisco Conference on 25 June 1945, described the Charter as a great instrument for peace, security and human progress in the world, and added that the principle of justice was the cornerstone of the Charter. Today, the matter we are considering precisely affects the maintenance of international peace and security and the very survival of the principle of justice - a concept that is basic to the community of nations.

The other legal problem raised by Nicaragua's complaint is the indiscriminate, and therefore wrongful, use of the right of veto by the permanent members of the Security Council.

When the United Nations was being established, Mexico submitted a draft for the Charter which was organically more democratic and which called for the elimination of the veto. That is referred to by Mr. Luis Padilla Nervo, who was the head of the Mexicn delegation to the San Francisco Conference, in a book published in 1985. But, as this distinguished diplomat also states in his book, the idea prevailed that peace depended on unity among the major Powers and that it was necessary to maintain that unity, and at the time the veto seemed to be the right instrument for doing that.

It has been said that the veto right was the price that the small nations had to pay the large Powers to bring the United Nations into being. However that may be, this high price was paid to dissuade the great Powers from engaging in conflicts and to persuade them to work together to keep the peace and actively to contribute to resolving regional or local conflicts. In any event, my country has

(Mr. Moya Palencia, Mexico)

always understood that the right of veto was to be regarded as an exception and that it was to be used to uphold and apply the purposes and principles of the United Nations Charter - and not in any way to grant immunity for violating or failing to comply with it.

The widespread, constant use of the veto in the Security Council, often against principles expressly laid down in the Charter and without respect for its purposes and spirit, has in fact changed the nature of the Council. The President of Mexico, Miguel de la Madrid, in his statement to the General Assembly on 24 September this year, said:

> "The indiscriminate use of the right of veto has, unfortunately, all too frequently, kept the Security Council from fully achieving its aims and has prevented that important body from speaking out on events and conflicts that threaten international peace and security". (A/41/PV.8, p. 7)

Today we are dealing with a case in point - but this one has particular features. The recommendation that the Security Council had planned to make - for the first time - to ensure compliance with a judgement of the International Court of Justice calling for the cessation of all military or paramilitary assistance against Nicaragua, could not be made because of the veto cast by the State that was the other party in the litigation. Some of the relevant provisions of the Charter have already been mentioned here - in particular, Article 27. Reference has also been made to a resolution, sponsored by four permanent members of the Council, which was adopted by the General Assembly on 14 April 1949. That resolution, on the basis of Article 10 of the Charter, lists the kinds of resolutions that should not be vetoed, including those that are limited to reminding Member States of their obligations under our constituent document. Now, that is precisely what was requested in the draft resolution that the Council was unable to adopt.

(Mr. Moya Palencia, Mexico)

In any case, it seems clear that no permanent member of the Security Council can exercise its veto when it is a party to a dispute before the Council. This is particularly so when that dispute has been put before the International Court of Justice and on which the Court has handed down a binding judgment. As stated in paragraph 3 of Article 27 of the Charter, this is particularly true when the matter raised is related to Chapter VI of the Charter pertaining to the peaceful settlement of disputes.

The contrary view would lead to the conclusion that the permanent members of the Security Council are in fact not subject to the jurisdiction of the International Court of Justice, notwithstanding the Charter's provisions. It would also prompt the conclusion that they can avoid compliance with the Court's findings by unilaterally vetoing the Security Council's decision that the Court's ruling should be implemented, or, as in this case, that the parties should abide by the Court's ruling.

The delegation of Mexico finds most positive and appropriate that any Member State which feels that international law has been violated against it should go before the International Court of Justice with its claim. That procedure contributes to the peaceful settlement of international disputes through essentially legal procedures not relating to any political considerations. Action of that kind implies respect for the international legal order and a desire to settle disputes by peaceful means.

But such a position would be discouraged even more than it is now if judgements by the Court remain unfulfilled and if the Security Council of the United Nations becomes unable to take action promoting compliance with the findings of the International Court of Justice.

(Mr. Moya Palencia, Mexico)

The question of the veto in the Security Council was one of those issues which was most discussed at the San Francisco Conference. Many delegations harboured serious doubts about the so-called rule of unanimity among the permanent members of the Council. That rule unquestionably was one of the major causes of the paralysis of the former League of Nations.

On 7 June 1945 in a joint statement, the four co-sponsors of the Dumbarton Oaks proposals plus France, replied to the various questions which had been raised pertaining to the veto. Reference was made to the limitations which later were included in paragraphs 2 and 3 of Article 27 of the Charter. In the light of that joint declaration, the Mexican delegation on 13 June 1945 stated that it was imperative that the five permanent members "formally reaffirm" the contents of their declaration to the effect that "they will resort to the veto, in so far as it concerns peaceful settlements only in entirely exceptional circumstances."

All those declarations appear in volume 11 of the documents of the United nations Conference on International Organization, issued in San Francisco in 1945, on page 531.

Our country's present position has not changed. We remain convinced that the veto was given the major Powers precisely to help them attain the goal and discharge the primary responsibility of maintaining international peace and security and implementing the principles and purposes of the Charter. It should most certainly not be used to prevent settlement of disputes among Member States and cover up violations of international law in general and of the Charter in particular, or to help them avoid compliance with the judgments of the International Court of Justice. In our opinion, the permanent members of the Security Council must amply demonstrate their political will and use the veto only on exceptional occasions. It must not be allowed to become a source of privilege, nor must it be used routinely. It must not be used to keep the Security Council

(Mr. Moya Palencia, Mexico)

ineffective, which it has remained for a number of years, most regrettably, all of which has had a very harmful effect on international peace and balance.

For all these reasons, the General Assembly, the supreme body representing the entire Organization, exercising its powers under the Charter, in particular its powers under Articles 10 and 11, should consider the question put before it by Nicaragua and adopt the draft resolution to which we have been referring. If it does so, it will in fact be emphasizing the interest of the international community of nations in ensuring respect for the international legal order and its desire to obtain compliance with the judgement of the International Court of Justice. This would also help to make progress towards the peaceful settlement of the dispute and towards the attainment of peace in the region of Central America.

The PRESIDENT: I shall now call on those representatives who wish to explain their vote before the vote on draft resolution A/41/L.22.

May I recall that those statements are limited to 10 minutes and should be made by delegations from their seats.

Mr. MEZA (El Salvador) (interpretation from Spanish): I have asked to take part in this debate at the present time in order to explain to this gathering the vote against the draft resolution presented by Nicaragua which my delegation is planning to cast.

My delegation is firmly convinced that this Assembly is not the right place to deal with the judgement of the International Court of Justice of 27 June 1986. The draft resolution proposed by Nicaragua will most certainly not promote the cause of

(Mr. Meza, El Salvador)

international law, nor the search for peace and justice. To the extent that the United Nations Charter confers responsibility for consideration of judgements of the International Court of Justice upon a body other than the Court itself, it does so on the Security Council, not on the General Assembly. Consequently, it is the Council which should deal with the matter before us.

But the main question is whether Nicaragua's draft resolution will promote peace and law, or be used by Nicaragua to continue its false, one-sided portrayal of the conflict in Central America? In the opinion of my delegation, that question contains its own reply. Nicaragua went to the Court to secure a propaganda victory. As many had anticipated, Nicaragua has sought to raise the question of the Court's judgement of 27 June in every possible international forum to obtain a greater political and promote its own cause for propaganda advantage.

(Mr. Meza, El Salvador)

That is why Nicaragua has come before the Assembly and it is also precisely why we should reject Nicaragua's manoeuvres. If the draft resolution were adopted, international law would be the loser, contrary to what some would claim.

My delegation took part in the debate on Nicaragua's case at the International Court of Justice and not only put forward the facts pertaining to Nicaragua's aggression against my country but also stated that the Court did not have jurisdiction in this matter and that Nicaragua's allegations were inadmissible. My Government's intervention was based on Article 63 of the Statute of the Court, because what was involved was the interpretation of multilateral treaties, in particular the United Nations Charter and the Statute of the Court, to which El Salvador is a party. The interpretation of those treaties in questions of the jurisdiction of the Court and the inadmissibility of Nicaragua's case will inevitably and directly affect El Salvador's rights under international law, despite the fact - and I take this opportunity to put this on record - that El Salvador has since 1975 expressed a general reservation regarding the jurisdiction of the Court. Moreover, our country has always been respectful of that Court.

Nicaragua has presented the judgement of the Court of 27 June 1986 as proof of the innocence of the Sandinista régime. My delegation knows very well that that is false. Nicaragua has portrayed the judgement of 27 June as a victory for international law. My delegation knows very well that that too is untrue.

All countries which, like El Salvador, are poor and militarily weak and have been unlawfully attacked by powerful neighbours should give serious thought to the implications of the Court's judgement of 27 June 1986.

Mr. BUKETI-BUKAYI (Zaire) (interpretation from French): The foreign policy of Zaire is based on respect for law and the principles governing

(Mr. Buketi-Bukayi, Zaire)

international relations, irrespective of any subjective considerations. It is imperative that law be respected by all States, without distinction. The force of arms must be replaced by the force of law so that an atmosphere of peace and security may prevail in international relations, in accordance with the purposes and principles of the United Nations.

Since the International Court of Justice is the supreme organ that states the law on behalf of the international community, its findings and decisions are binding on all States without exception.

Accordingly, my delegation will vote in favour of the draft resolution A/41/L.22.

Mr. HUSSAIN (Maldives): Maldives will support the draft resolution because it calls for the strengthening and respect for the judgements of the International Court of Justice. However, Maldives is not fully satisfied with the format or the text. We would have preferred the draft resolution to be based on actual arguments against the country not accepting the authority of the International Court of Justice, rather than entirely on a statement made by the leader of the delegation of one of the parties to the dispute. The statement referred to in the draft resolution is not confined simply to the rejection by the other party to the conflict.

As far as the text is concerned, it lacks the clarity and detail which would have made it more meaningful as far as the objective of upholding the authority and credibility of the International Court of Justice is concerned.

Mr. ANDRADE DIAZ DURAN (Guatemala) (interpretation from Spanish): The delegation of Guatemala, in accordance with instructions from its Government, will abstain in the vote on the draft resolution. That abstention is in accordance with the foreign policy of our country relating to Central America and is consistent

(Mr. Andrade Diaz Duran, Guatemala)

with what we said in the Security Council last week. In any event, it is relevant to reaffirm our devotion to the Charter of the United Nations and the generally accepted principles and norms of international law. In this context, we reiterate our respect for the findings of the International Court of Justice, the principal judicial organ of the United Nations, and recognize the procedures and the corresponding bodies responsible for the implementation of the findings of the Court.

Notwithstanding the legal aspect of this matter, which has its own intrinsic value and undeniable importance, we cannot disregard the fact that the problem in Central America is extremely complex and deserves to be dealt with in all its aspects and studied from all angles. It is also undeniable that the problem of Central America is basically a political one, with serious economic and social implications. Failure to recognize that reality is, in our view, an error in evaluating the situation.

As we said in the Security Council, Guatemala believes in dialogue and diplomatic and political negotiations in order to find comprehensive solutions. We reject all faits accomplis and consider the possibility of a generalized armed confrontation, which would have unforeseeable, catastrophic consequences, extremely dangerous.

Guatemala has maintained and persists in a policy of active neutrality, for we feel that this is the best way in which we can contribute to the restoration of peace and the establishment of conditions in which the integration of Central America and the development of our peoples will be possible. We maintain a balanced, neutral position and offer choices which would make it easier to find agreement. We do not take a passive, inactive attitude but, on the contrary, are

(Mr. Andrade Diaz Duran, Guatemala)

fully committed to any action that could lead to a relaxation of tension and lasting peace.

This is the time for the delegation of Guatemala to restate in this forum its support and unconditional backing for the Contadora process and the Support Group.

Last week the Foreign Minister and the Deputy Foreign Minister of Guatemala visited all the countries of Central America to invite the Governments to reinitiate the dialogue within the Contadora framework and to reactivate and strengthen those negotiations.

(Mr. Andrade Diaz Duran, Guatemala)

Guatemala would also like to reaffirm its neutral position, and at the same time its readiness to co-operate in seeking formulas for an agreement that could lead to peace within the framework of democracy and pluralism that would encourage the integrated development of our peoples. These are the main reasons that determined our delegation's decision to abstain in the vote on the draft resolution which is now before the Assembly.

Mr. ALBAN-HOLGUIN (Colombia) (interpretation from Spanish): Colombia has always, from the first dawn of its independence, been commited to the ideals of pan-Americanism, and to the aims of the charters both of our hemispheric organization and of the United Nations. My country has brought its best traditions of international law to these forums: the principles of non-intervention, the peaceful settlement of disputes, the self-determination of peoples and the acceptance of the findings of international courts of justice. Moreover Colombia is convinced of the importance of dialogue as an irreplaceable means of settling disputes. This tradition means that Colombia cannot remain aloof from an issue such as the one now before us. As Member States of the United Nations we respect the legal order of this Organization and system which provides the States of the world with the opportunity of living in peace.

In the particular case now before the Assembly, the Court has done no more than apply the principles in the Charter, which have been endorsed in the documents prepared by the Contadora Group and are irreplaceable principles of international law. Thus, this is a question of principle going beyond bilateral disputes. It refers to the guarantees that all States must have that the international legal order shall prevail in the international community and not the law of might is right. My delegation feels it is necessary to respect the decisions of the highest court of justice in the world, which is the legal voice of a community which

(Mr. Alban-Holguin, Colombia)

regards the Court as the protector of the fundamental rights of all States, large and small. My delegation lives up to its commitment as a Member of the United Nations, and will therefore vote in favour of draft resolution A/41/L.22. Our decision is strictly objective, and closely in accordance with the essential foundations underlying international peace and coexistence.

The PRESIDENT: The Assembly will now begin the voting process and take a decision on draft resolution A/41/L.22.

A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, China, Colombia, Comoros, Congo, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Ethiopia, Finland, German Democratic Republic, Ghana, Greece, Guinea-Bissau, Guyana, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Kenya, Kuwait, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malawi, Maldives, Mali, Malta, Mexico, Mongolia, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Romania, Sao Tome and Principe, Seychelles, Solomon Islands, Spain, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Trinidad and Tobago, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: El Salvador, Israel, United States of America

Abstaining: Antigua and Barbuda, Bahamas, Bahrain, Belgium, Brunei Darussalam, Central African Republic, Chad, Costa Rica, Côte d'Ivoire, Egypt, Equatorial Guinea, Fiji, France, Gabon, Gambia, Germany, Federal Republic of, Grenada, Guatemala, Haiti, Honduras, Italy, Jamaica, Japan, Jordan, Lebanon, Liberia, Luxembourg, Malaysia, Morocco, Niger, Oman, Paraguay, Portugal, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sri Lanka, Togo, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland

Draft resolution A/41/L.22 was adopted by 94 votes to 3, with 47 abstentions (resolution 41/31).

The PRESIDENT: I shall now call on those representatives who have asked to explain their vote on the draft resolution.

Mr. TOBAR ZALDUMBIDE (Ecuador) (interpretation from Spanish): In voting in favour of the draft resolution that we have just adopted, the delegation of Ecuador would like to say that we have tried to disregard the substance of the resolution because of its eminently political implications. By its affirmative vote the delegation of Ecuador merely wished to stress once again our unswerving respect for the legal and peaceful means provided by international law for the consideration and settlement of disputes, one of the most effective ways of which is resort to the International Court of Justice and full respect for the Court's judgements.*

Mr. PHILIPPE (Luxembourg) (interpretation from French): Luxembourg did not vote against the draft resolution because it recognizes the validity of the judgements of the International Court of Justice. We consider that international law, however imperfect it may be, is the only defence against arbitrary action and violence in international life. However, Luxembourg did not vote for the draft resolution in the belief that it is inadvisable to consider the judgement of 27 June 1986, in isolation from a general review of the situation in Nicaragua, including the peace proposals of the Contadora Group, involving concessions by all parties concerned in the conflict in Central America. For this two-fold reason my delegation considered it must abstain.

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*Mr. Turkmen (Turkey), Vice-President, took the Chair.

Mr. GUTIERREZ (Costa Rica) (interpretation from Spanish): The delegation of Costa Rica abstained in the vote. This vote should be seen in light of the fact that our Government has explicitly accepted the jurisdiction of the International Court of Justice in response to a complaint against it entered by Nicaragua in relation to matters connected with its case against the United States. We accepted the jurisdiction of the Court because our country has fully accepted the jurisdiction of the Court, and, wishing as we do to respect our international obligations, we stand ready to discuss our rights before that Court.

(Mr. Gutierrez, Costa Rica)

We have a clear conscience, for we have complied with our international obligations. We are also particularly interested in the Court's giving a judgement also on the interference by the Government of Nicaragua in our right of navigation in the San Juan river, the frequent acts of aggression by the Government of Nicaragua against our borders and the obligations of that Government with respect to the very large number of refugees that have arrived in our country. Accordingly, we feel that we should save our views for the debate on this matter before the Court.

We are also profoundly affected by the fact that there is no clear connection between the actions taken by the Government of Nicaragua before the International Court of Justice and the Contadora process. In accordance with the inter-American Treaty on the peaceful settlement of disputes, a new procedure for the settlement of disputes cannot be begun between the countries of the Americas until the earlier process has been concluded. Therefore, in bringing its differences with a neighbour to the Court, Nicaragua dealt a mortal blow to the Contadora process, which has been the subject of open rejection by one of the parties. There is a clear contradiction between the support given by the Assembly to Contadora and the silence over the request made by Nicaragua.

Lastly, my Government recognizes that acceptance of the jurisdiction of the International Court of Justice is a sovereign act of each State. Given this situation, we were rather surprised that many countries that do not accept the jurisdiction of the Court for their own international problems are now presenting the Court as a tribunal with mandatory jurisdiction, even for those States that have not recognized it or have denounced it. Such an act, obviously, has implications that will be discussed in due course.

Mr. JACOBOVITS de SZEGED (Netherlands): The Netherlands voted in favour of the draft resolution because it attaches primary importance to respect for the rule of law in international relations. The International Court of Justice at The Hague has played an invaluable role in resolving international disputes and in clarifying the rights and obligations of States under the Charter. The Netherlands is one of the few countries that have accepted the compulsory jurisdiction of the Court without any reservation. In the view of the Netherlands, all Members of the United Nations should accept the compulsory jurisdiction of the Court. We would have liked the resolution to stress this point. By failing to do so, the resolution falls short of making an unequivocal contribution to furtherance of respect for the Court.

We cannot ignore the fact that much of the support for this resolution comes from countries which confess themselves to be supporters of the Court only when it fits their political objectives. We are not convinced by the support from those which have not matched or even tried to match the record of respect for the International Court of Justice which some Members maintain.

Finally, I should like to state that the Netherlands is in favour of more frequent calls on the Court. However, the prestige of the Court would be threatened if the Court were misused for short-term political gains. Such motives do come to mind when considering the Court action recently initiated against countries in the region. It is difficult to see how such action can further the course of a negotiated solution to such a persistent conflict as that facing Central America.

Mr. SVOBODA (Canada): In voting for draft resolution A/41/L.22 Canada has registered its full support for the rule of law in international relations, for the International Court of Justice as the highest judicial body in the United Nations system and for the central role the Court can and should play in the

(Mr. Svoboda, Canada)

peaceful settlement of international disputes. Canada accepts the compulsory jurisdiction of the International Court of Justice.

While supporting the resolution, we wish to express our concern that it points only to the United States and fails to mention others, including Nicaragua, that "intervene in the internal affairs of other States" in the region.

We also wish to note that, in voting for this resolution on the case brought by Nicaragua against the United States, the Canadian Government is mindful of the complexities of the questions before the Court in that case as attested by the many dissenting judgements. It is our hope that the Court's judgement will assist the parties in achieving a peaceful solution of the matters in dispute.

We note also that in invoking the integrity of the International Court of Justice Nicaragua has not maintained the same judicial standards, particularly in its popular anti-Somozist tribunals, which are the subject of observations by Amnesty International in its 1986 report.

Mr. HAMADNEH (Jordan) (interpretation from Arabic): My delegation abstained in the vote on draft resolution A/41/L.22, which has just been adopted by the Assembly. Jordan accepts the jurisdiction of the International Court of Justice and we comply with our international obligations. We believe that some of the language in the draft resolution could delay agreement between the parties. Had it not been for that wording, we would have voted in favour of the draft resolution. We believe that a policy of constructive dialogue between the various parties is the best way of arriving at a solution and putting an end to the conflict in that part of the world.

The meeting rose at 1.30 p.m.