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SUMMARY RECORD OF THE 6th MEETING

Chairman:

Mr. AFONSO

(Mozambique)

CONTENTS

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/46/33 and Corr.1, A/46/335, A/46/383)

1. Mr. KOURULA (Finland) welcomed the fact that the Special Committee had been able to complete its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security at its most recent session and that it had been able to resolve questions relating to the prior consent of the State to which a fact-finding mission was being dispatched. In that connection, his delegation fully endorsed paragraph 21 of the draft Declaration, which recommended that States follow a policy of admitting United Nations fact-finding missions to their territory. As to the question of the title of the document, it considered the use of the term "declaration" consistent with the practice of both the Special Committee and the United Nations.

2. With respect to the draft handbook on the peaceful settlement of disputes between States, an idea originated by France, his delegation was happy to note that preparations for its publication had been completed, thanks to the efforts of the Secretariat. The draft handbook was an important and concrete contribution by the Special Committee to the United Nations Decade of International Law. His delegation was convinced that it would prove useful to legal advisers, government officials, academics and the general public and hoped that, once published, it would be widely distributed.

3. With those two documents completed, the agenda of the Special Committee warranted careful consideration. A number of proposals had been put forward by various delegations, as well as by the Secretary-General in his latest report on the work of the Organization (A/46/1). In the view of his delegation, there was very clearly work to be done in the Special Committee. For several years the Special Committee had been able to produce documents according to its mandates, and a clearly defined mandate should again be elaborated for its future work. It had been standard practice to entrust the Committee with the preparation of fairly comprehensive documents, and there was no reason not to continue that practice rather than to overload the Committee with several minor questions.

4. At the Special Committee's most recent session, the Soviet Union had presented a specific proposal on the enhancement of cooperation between the United Nations and regional organizations. That question had also been touched on by the Secretary-General in his report on the work of the Organization, in which he stated that the United Nations was not designed to monopolize the maintenance of peace and security, the role of regional arrangements being explicitly recognized in the Charter, but that regional efforts should complement rather than compete with or complicate those of the United Nations. According to the Secretary-General, that required a working

(Mr. Kourula, Finland)

relationship based on mutual rapport between the United Nations and the regional agencies.

5. His delegation shared the Secretary-General's concerns. The provisions of Chapter VIII of the Charter and their interpretation in practice had recently become more pertinent. Regional developments had international repercussions, which was why the Soviet proposal provided a good basis for discussion. However, the Sixth Committee should not content itself with reiterating the relevant provisions of the Charter, but should endeavour to find practical and useful interpretations. Furthermore, it should be aware of the possible political difficulties inherent in the question of enhancing cooperation between the United Nations and regional organizations and should exercise care in selecting the legal aspects to be considered.

6. The idea proposed in the Special Committee's report, of drafting a general convention on the peaceful settlement of disputes was an ambitious one. Regional efforts in that field, such as the Valletta meeting under the auspices of the Conference on Security and Cooperation in Europe, had demonstrated the difficulties inherent in procedures for the settlement of disputes that called for the mandatory involvement of a third party. Peaceful means already existed for settling disputes; the problem was that they were not used. If a decision were made to embark on the drafting of a general convention on the settlement of disputes, it would be essential to emphasize the jurisdictional questions and to strengthen the commitment of States to resort to the various procedures already available. In any event, that question might be more suitably dealt with in the context of the United Nations Decade of International Law. The proposal concerning the development of measures to promote the prevention of armed conflicts was an interesting one, but inasmuch as it included such ideas as preventive peace-keeping, it would be more suitably discussed by the Special Committee on Peace-keeping Operations.

7. In his report on the work of the Organization, the Secretary-General repeated the suggestion that the General Assembly should give the Secretary-General the authority to request an advisory opinion from the International Court of Justice. The suggestion was an interesting one, and it would be worth while for the Special Committee, which had already examined the role of the Court, to consider even in a more general way the possibility of developing the system of advisory opinions.

8. The Secretary-General also underlined the need to supplement Article 50 of the Charter with agreements that created obligations to provide practical assistance to third States adversely affected by sanctions imposed on a State in breach of its obligations under the Charter. Even though each situation was unique and very strict rules would therefore be inappropriate, the existence of general, flexible guidelines on at least some aspects of "sanctions management" might facilitate Security Council action and give Member States a better idea of what was expected of them in such an event.

(Mr. Kourula, Finland)

With respect to the implementation of economic sanctions, for instance, it might be possible to grant exceptions for humanitarian reasons or to recognize the particular economic problems that strict compliance with an embargo could cause for third States. Although the latter instance was recognized in Article 50 of the Charter, its provisions simply noted that the States concerned had the right to consult the Security Council with regard to a solution of their problems. The establishment of general guidelines for dealing with such situations might facilitate not only the implementation of sanctions as such but also conflict management by the United Nations as a whole. That was but one of the many proposals that had emerged in the discussion on the reform of the United Nations; the issues touched upon in the work on the revitalization of the General Assembly also merited attention.

9. With respect to the proposal to draft rules for the conciliation of disputes between States, his delegation considered it important and endorsed its careful study. It was convinced that such rules would constitute yet another important contribution by the Special Committee to the United Nations Decade of International Law.

10. Mr. FARRUKH (Pakistan), reviewing the events of recent years, welcomed the increasing recourse to the United Nations for solving regional as well as international problems. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had played a significant role within the United Nations system in dealing with such important issues as the peaceful settlement of disputes and the maintenance of international peace and security. He was happy to note that it had completed its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security.

11. In that connection, his delegation believed that whenever the situation so warranted, the Secretary-General should be empowered to establish a fact-finding mission in consultation with the parties concerned and with a mandate from the Security Council or the General Assembly. States in general should cooperate fully with United Nations fact-finding missions dispatched to their territories. Under Article 99 of the Charter, the Secretary-General should also be encouraged and given the discretion to bring the findings of such missions to the attention of the Security Council.

12. Pakistan remained firmly committed to the settlement of international disputes by peaceful means and the promotion of friendly and harmonious relations among States. Conciliation was a proven method of settling disputes and he felt that it had a place among the various other means of settlement, on the understanding that the parties remained free to choose the method they felt was appropriate. The idea of extending to international public law, with the necessary flexibility, the conciliation rules of the United Nations Commission on International Trade Law was an interesting one. Flexibility in any proposed set of norms was an important and essential element of conciliation.

(Mr. Farrukh, Pakistan)

13. The concept of the acceptance of the compulsory jurisdiction of the International Court of Justice was gaining ground. Pakistan had accepted that jurisdiction for the settlement of legal disputes and felt that the rule of law in international affairs should be promoted by greater recourse to the Court.

14. His delegation agreed with the delegation of Argentina that the working paper entitled "New issues for consideration in the Special Committee" (A/AC.182/L.65), presented by the Union of Soviet Socialist Republics at the Special Committee's most recent session, provided a good basis for work on the question of the maintenance of international peace and security. With respect to the working document of the Soviet Union on the enhancement of cooperation between the United Nations and regional organizations, his delegation felt that the role of the regional organizations must be consistent with the purposes and principles of the United Nations as stated in Chapter VIII of the Charter.

15. Pakistan would welcome any initiative to strengthen the role of the United Nations and enable it to carry out its tasks more effectively, but emphasized that consideration must be given to the effective implementation of the collective security provisions of the Charter. Indeed, the effectiveness of the United Nations depended primarily on strict compliance by all Member States with the provisions of the Charter and the resolutions of the Security Council. Although there had been occasions when the United Nations had been unable to live up to its primary responsibility of maintaining international peace and security, its inadequacy in that field could not be attributed to any flaws in the Charter, but rather to the attitude of those who did not abide by the Charter's provisions and failed to implement United Nations decisions.

16. Mr. WOOD (United Kingdom) congratulated the Special Committee on having completed work on the draft Declaration on Fact-finding by the United Nations. For the reasons expounded by the representative of Spain, he considered it appropriate that the term "declaration" should be retained and hoped that, in view of its importance, the draft would be adopted unanimously by the General Assembly.

17. The handbook on the peaceful settlement of disputes between States should be of practical use to all those interested in the subject. It had the great merit of summarizing, in a concise and uncontroversial manner, the whole range of means of settlement available to States, including some less well-known procedures. His delegation hoped that it would prompt States to use the various techniques covered, including recourse to the International Court of Justice. In that regard, he noted that the Secretary-General, in his latest report on the work of the Organization (A/46/1), had reiterated one specific proposal concerning the Court about which the United Kingdom had already expressed serious doubts. However, his delegation remained willing to study any other proposals that would genuinely contribute to enhancing the role of the Court.

(Mr. Wood, United Kingdom)

18. He was pleased to note the success of the Secretary-General's Trust Fund for the International Court of Justice and hoped that contributions would come from as wide a range of sources as possible, including private sources. The Trust Fund needed to be more widely publicized.

19. Since conciliation between States was an important but somewhat neglected field of study, his delegation had read with interest the comments, reproduced in the Secretary-General's report, on Guatemala's proposals concerning United Nations rules for the conciliation of disputes between States (A/46/383). It would support further work on the matter and considered the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to be the best forum for such work. In the comments submitted on their behalf by Luxembourg, the Twelve States members of the European Community expressed doubts concerning three points in the draft conciliation rules: the scope of application of the rules, the necessity of adopting different rules for procedures with one conciliator and procedures with a conciliation commission, and the rules for disputes involving more than two parties. Other aspects of the draft should be considered in due course, inter alia, the role foreseen for the Secretary-General, the provision allowing conciliation commissions to withhold from one party information received from the other and the question of whether conciliation commissions would meet at United Nations Headquarters.

20. The Soviet delegation had put forward some thoughts on possible issues to be considered by the Special Committee, both in its 1990 working paper and in its 1991 working document on the enhancement of cooperation between the United Nations and regional organizations. He noted from paragraph 45 of its report (A/46/33) that the Special Committee proposed to continue its consideration of the Soviet working paper at its next session, before deciding which of the proposals contained in the paper should be included in its agenda. He would not, therefore, comment in detail on the paper at the current stage, except to note that there were important lessons to be learned from recent and ongoing experiences. His delegation did not think it an appropriate time to begin the study of such matters as sanctions management or the question of regional organizations. The Special Committee might consider further aspects of preventive diplomacy, however.

21. His delegation felt that certain minimum criteria should govern decisions to include an item in the Special Committee's agenda. First, there should be general agreement in the Sixth Committee that the item was suitable for inclusion in the agenda. There would be no point in deciding to include an item if it was clear from the outset that there was no general wish to deal with it. Secondly, the Special Committee's agenda should include only those items for which there was reasonable hope that substantive results would eventually ensure. Such results need not necessarily take the form of a legal instrument; in some cases, a study might be more appropriate. What must be avoided were items whose consideration made no practical contribution, for instance, those which merely led to a reiteration or reordering of existing provisions.

22. Mr. GOMA GOUBAIL (Libyan Arab Jamahiriya) said that his delegation was following the work of the Special Committee closely and hoped that it would lead to practical results that would make it possible to overcome the shortcomings or partiality of United Nations organs, particularly those responsible for the maintenance of international peace and security, and to prevent any one of them from imposing its rule on the others, or a small number of States from dominating all the others. The post-war world had seen profound upheavals, including the fall of the Berlin Wall - that symbol of the struggle between two antagonistic and hegemonic super-Powers, each of which had sought, in an all-out arms race, to arm itself with the most destructive weapons - and the emergence of Germany as a major economic Power that also had influence in the political sphere.

23. Europe was embarked on a new policy of cooperation aimed at ensuring its political security and economic unity, colonized peoples had liberated themselves and peoples of the third world yearned for development and prosperity. Countries such as Italy and international organizations such as the Organization of African Unity and the Movement of Non-Aligned Countries had called for the strengthening of the role of the United Nations. The time had come to reflect on the effectiveness of United Nations organs in maintaining international peace and security and on the capacity of the United Nations Charter to respond to new developments. It was imperative, therefore, to revise the Charter, taking a collective, responsible approach and setting aside past errors, so that it could meet the requirements of development and realize the aspiration of peoples to a new world order based on international law, in which force would be outlawed and the rights of the weak would be recognized.

24. The Socialist People's Libyan Arab Jamahiriya had been the first country to urge the international community to seek ways of strengthening the United Nations system and ensuring compliance with its resolutions: it had in fact called repeatedly for a rescinding of the right of veto of the five permanent members of the Security Council which allowed each of them to paralyse the Organization. In criticizing the Libyan proposal, the representative of Argentina had said that the Security Council had demonstrated its effectiveness by implementing its resolutions on the Gulf crisis and the Gulf war. What was important, however, was not the fact that the Council adopted and then implemented its resolutions by one means or another but what happened when those resolutions were implemented. It should be recalled that Libya had condemned the occupation of Kuwait and the use of force, and had proposed a peaceful solution from the outset of the crisis. Yet the Security Council had acted in a selective manner, taking a different position with regard to the occupation of the Arab territories by the Zionist entity and its aggression against the Arab nation and with regard to South Africa, which continued to pursue its policy of racial discrimination against the black majority in that country. His delegation would have liked the Security Council to be less selective in its application of its resolutions. In any event, it could not be said that the Council had always maintained the same position it had taken during the Gulf crisis.

(Mr. Goma Goubail, Libyan
Arab Jamahiriya)

25. His delegation wished to reaffirm the importance of democratic participation in international affairs and urged the Special Committee to give careful attention to the proposals Libya had submitted to it: to consider ways to eliminate the adverse consequences for the maintenance of international peace and security of the application of the principle of consensus among the permanent members of the Security Council, which had paralysed it and rendered it incapable of fulfilling the responsibilities assigned to it under the Charter; to pay due regard to the fact that the maintenance of international peace and security was a joint responsibility of all the States Members of the United Nations, regardless of their size, power and resources, in accordance with the principle of sovereign equality and democratic participation in the conduct of international affairs; and to strengthen the role of the General Assembly in regard to the maintenance of international peace and security.

26. In all matters concerning the maintenance of international peace and security, the organs of the United Nations must gather all the necessary facts in a prompt, objective and impartial manner taking due account of the efforts made in that area by the States concerned and by regional organizations. States members of regional organizations should endeavour to settle regional disputes within that framework by peaceful means before submitting them to the Security Council. Fact-finding missions in the region must be approved by the States concerned, since such activities affected their sovereignty.

27. His delegation endorsed the preparation of a handbook on the peaceful settlement of disputes between States which, being based on precedents, would enable the States involved in a dispute to choose the best means of resolving it. Relations between States should be governed by those principles of international law that were linked to the principle of the peaceful settlement of disputes and set out in the first chapter of the draft handbook on the peaceful settlement of disputes between States.

28. With the proclamation of the period 1990-1999 as the United Nations Decade of International Law, his delegation wished to recall that the Libyan Arab Jamahiriya was a party to all human rights conventions and as such endorsed the convening of an international conference on human rights in 1993.

29. Mr. JOEDO (Indonesia) said that the Special Committee had made significant progress on two major items on its agenda, namely, United Nations fact-finding activities and the draft handbook on the peaceful settlement of disputes between States.

30. Fact-finding was a useful mechanism for addressing a particular situation before it led to an outbreak of hostilities; however, it could be used only with the prior consent of the State in whose territory the fact-finding activities were to be carried out. Paragraph 6 of the draft Declaration on

(Mr. Joedo, Indonesia)

Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security rightly prescribed such consent, which had to be given expressly. Paragraphs 20 and 21 of the draft Declaration must not be interpreted as derogating from the sovereign right of every State to choose freely whether or not to grant access to fact-finding missions.

31. With respect to the working paper submitted by the Soviet Union (A/AC.182/L.65), his delegation wished to emphasize that regional organizations played a pivotal role in conflict prevention. In fact, their actions complemented United Nations efforts to negotiate peaceful settlements. One of the most useful functions of regional organizations was undoubtedly to provide their members with a forum for consultation and negotiation in the event of potential or actual disputes. His delegation hoped therefore that the current session would include a fruitful debate on the role of regional organizations in the area of collective security.

32. In the wake of the Gulf crisis and in view of the Organization's steadily growing role in peacemaking, the search for ways and means of ensuring broad and stable support for such activities had become essential. The Secretary-General's proposal to review the powers of the Security Council under Chapter VII of the Charter was a step in that direction, as were the suggestions by some analysts that expanding the membership of the Security Council might be considered, in view of the new political and geographical realities, and the suggestion that the Security Council should hold periodic high-level meetings to review international political developments and identify potential crisis situations, thereby enhancing the Council's capacity for preventive diplomacy; such meetings would necessitate a strengthening of the Secretary-General's capacity to gather information. Those proposals merited further consideration, and the United Nations Decade of International Law would provide the appropriate framework for that activity.

33. The draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.68, annex) was an invaluable source of information, particularly for developing countries; it should be widely distributed after publication.

34. Finally, his delegation, which had attached particular importance to the work of the Special Committee since its inception, wished to express its appreciation to the Secretary-General for having suggested measures for the reform and restructuring of the United Nations system to enable the Organization to contribute more effectively to the promotion of a better and more peaceful world (A/46/1). The United Nations had been gaining recognition as a multilateral framework that was uniquely suited to the achievement of those objectives; accordingly, the potential of the Special Committee, and thus of the Organization itself, should be utilized to the fullest in order to realize the aspirations that were shared by all peoples.

35. Mr. SAMAD (Afghanistan) said that all efforts aimed at strengthening the role of the Organization must serve the realization of the objectives of

(Mr. Samad, Afghanistan)

maintaining international peace and security and peaceful settlement of disputes. In that regard, the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and the draft handbook on the peaceful settlement of disputes between States prepared by the Special Committee were of great practical value and would be useful to Governments as well as other institutions.

36. The handbook, which could serve as a basis for further development and codification of international law concerning peaceful settlement of disputes, deserved wide distribution. The enrichment of international law alone, however, could not ensure the strengthening of the role of the Organization and guarantee maintenance of international peace and security. The commitment of all States to respect their international obligations was absolutely essential to the attainment of that objective.

37. Afghanistan was committed to the objectives and principles of the United Nations, which had played a vital role in maintaining international peace and security, and attached great value to the role of the Organization in the peaceful settlement of disputes between States. In that regard, it had signed and faithfully observed the Geneva Accords negotiated under United Nations auspices and it had supported, along with the majority of the Afghan people, the recent five-point statement by the United Nations Secretary-General aimed at finding a peaceful solution to the Afghan problem.

38. Consequently, his delegation firmly supported the further strengthening of the role of the Organization in the maintenance of international peace and security and the peaceful settlement of disputes.

39. Mr. DONIGI (Papua New Guinea), referring to the draft Declaration on Fact-finding by the United Nations in the Field of Maintenance of International Peace and Security contained in the report of the Special Committee (A/46/33), said that his delegation had no strong opinion on the title of the document, but it believed that the English version could be shortened by deleting the words "the field of".

40. Concerning the last line of the preamble, his delegation believed that the word "solemnly", which had given rise to differences of opinion, was inappropriate. The draft declaration did not state a series of facts which Member States must swear to or solemnly declare to be true. Furthermore, to his delegation's knowledge, the term had not been used in comparable documents. After citing several examples, he suggested, that the word "solemnly" should therefore be deleted.

41. Paragraph 1 appeared to state that United Nations organs must add an additional activity, fact-finding, to their statutory activities. The word "organ" was not defined, though it appeared from reading the rest of the document that it was used only to mean the Security Council and the General Assembly. Broadly interpreted, however, paragraph 1 seemed to say that all

(Mr. Donigi, Papua New Guinea)

other organs of the United Nations, including the International Court of Justice, should extend their terms of reference to include fact-finding activities. If such was the case, the jurisdiction of the International Court of Justice would thereby be enlarged, which clearly was not the Special Committee's intention. Therefore, he proposed that the words "the competent organs" should be replaced by the words "the Security Council and the General Assembly".

42. In paragraph 2, the term "the present paper" should be replaced with the words "the present declaration". In paragraph 3, the use of the word "timely" was amply justified. Experience had proven that it was necessary to intervene from the outset of a dispute.

43. According to the wording of paragraph 5, sending a fact-finding mission might have the effect of confirming the belief of each party to a dispute in the rightness of its position. Those parties might then adopt irrevocable positions that could not be resolved by mediation or consensus. His delegation feared that the words "and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it" might be susceptible to misinterpretation, and suggested that they be deleted.

44. Turning to paragraph 6, his delegation believed that, when considering the question of the consent of the State in whose territory a fact-finding mission would take place, it was necessary to bear in mind the real purpose of such a mission. The question was whether requesting a State's consent to enter its territory amounted to intervention. If intervention was defined as a specific act intended to effect change in the territory of a State, collection of information should not be interpreted as intervention. The Declaration on fact-finding missions should be viewed not as a document validating intervention but as a document facilitating the collection of true information on the facts surrounding a particular dispute. From that perspective, the desirability of creating obstacles to fact-finding missions by requiring the prior consent of the State into whose territory a mission was to be sent could be questioned. It would be preferable to adopt a more positive language, and to provide that consent should not be unreasonably withheld.

45. His delegation believed in the sanctity of the territorial integrity of a State. Yet experience had shown that disputes between peoples within a State had a tendency to involve third parties, adjoining States or peoples of adjoining States. If the dispute concerned the democratic rights of "peoples" within States as recognized by the Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights or other similar instruments, it could be asked if member States should allow fact-finding missions access to their territory only in certain specified situations. Some States, indeed, were not party to the above-mentioned instruments, but those

(Mr. Donigi, Papua New Guinea)

which were parties should be able to say that they had undertaken to provide those rights to their citizens and peoples, and that an impartial report by a visiting United Nations mission would assist their Governments in improving relations and in providing better service to their peoples. United Nations conventions, declarations and resolutions would have no meaning if there was no way of monitoring the extent of their application.

46. His Government believed that indigenous peoples' rights to property and wealth from their land must be recognized by the constitutional framework of a State. In international law, property could only be acquired or transferred by four methods: conquest, occupation, discovery or cession. The age of acquisition by conquest was over. Title to property by occupation, under international law, could only be justified if the property belonged to no one, and it could, therefore, not be justified when property or territories belonged to individuals, groups of individuals or another State. The fact that property or territory was not physically occupied or controlled by the individuals, groups or other State did not justify the application of the principle of acquisition by occupation. In the twentieth century, it should be accepted that there was no longer any ownerless property to be acquired by occupation.

47. The days of discovery had ended when Antarctica had been divided among the States with powerful fleets. Again, acquisition of territory or property by discovery could only be justified if such territory or property was unoccupied or ownerless. Discovery had not begun with the first European explorers. Papua New Guinea had been discovered 50,000 years before the first European came near its coasts.

48. The fourth method of acquisition was by agreement or treaty of cession. That method had been used in a valid way for some countries of the Pacific, for example the Treaty of Cession in respect to Fiji and the Treaty of Waitangi in respect to New Zealand.

49. None of those four methods of acquisition was applicable to Papua New Guinea. Consequently, the rights to property, particularly to resources, of the indigenous populations of countries like Papua New Guinea should be protected if the Charter, the declarations and the various covenants on economic, social, cultural, political and civil rights were to have any meaning.

50. With regard to paragraphs 8 to 11 of the draft declaration, he noted that they contained the words "should consider the possibility of", and he was not sure that that type of language was appropriate. The relationship between the Security Council and the General Assembly was such that the Security Council could act only on matters referred to it by organs of the United Nations or by a State. If that was the case, the paragraphs in question should be worded in such a way as to give the Security Council precise instructions. The current wording gave the Security Council a discretionary power where the organization

(Mr. Doniqi, Papua New Guinea)

of fact-finding missions was concerned, and he wondered whether it had in fact been the intention to give the Council that discretionary power. If the rights of "peoples" were really to be protected, care should be taken not to give the Council discretionary powers in that area and, consequently, paragraphs 8 to 11 of the draft declaration should be amended. To that end he proposed amending the phrase "should consider the possibility of undertaking" in paragraph 8 to "should undertake", the phrase "should, wherever appropriate, consider the possibility of providing" in paragraph 9 the phrase "should consider the possibility of undertaking" in paragraph 10 to "should undertake" and the phrase "should, wherever appropriate, consider the possibility of providing" in paragraph 11 to "should, wherever possible, provide".

51. With regard to paragraph 13, bearing in mind the observations he had just made concerning the rights of "peoples", he wondered whether the power to request a fact-finding mission should be limited to States. He believed that that power should be extended to representatives of a distinct people or peoples. That could be provided for by adding, after the word "concerned" in line 2 of paragraph 13, the words "or representatives of peoples concerned".

52. With regard to paragraph 16, his delegation believed that if the amendments which it had proposed to paragraphs 8 to 11 were adopted, the paragraph should be reworded as follows: "In undertaking a fact-finding exercise or mission, due regard should be given by the competent United Nations organ to other relevant fact-finding efforts, including those undertaken by the States concerned and in the framework of regional arrangements or agencies." That wording would have the merit of specifying that in certain cases it might not be necessary to mount a United Nations fact-finding mission and fact-finding could be totally based on impartial reports from other agencies, whether governmental, intergovernmental or non-governmental, as well as on reports from professional organizations.

53. The comment on paragraph 16 applied equally to paragraph 18, namely, that the power to make a request should not be limited to States.

54. With regard to paragraphs 21 and 22, States which had acceded to, or were signatories to, the various United Nations declarations, resolutions and conventions concerning the rights of peoples should be under an obligation to admit United Nations fact-finding missions to their territory. The current wording of paragraphs 21 and 22 should only be applicable to States which had not acceded to, or were not signatories to, those declarations, resolutions and covenants.

55. Paragraph 24 set forth the privileges and immunities enjoyed by the members of missions and indicated that those members were obliged to "respect" the laws and regulations of the State in which they exercised their functions. It was possible, however, to "respect" the laws and regulations of a State while acting within the bounds of those laws in such a way as to

(Mr. Donigi, Papua New Guinea)

hinder the law enforcement agencies of that State in the discharge of their lawful duties and obligations. His delegation suggested, therefore, that paragraph 24 should be amended by inserting the words "not only" after the word "obligation" in line 4 and the words "but also to act in a manner consistent with the least hindrance to the law enforcement agencies in the execution of their lawful duties in the State" after the word "State" in the last line.

56. With regard to paragraph 26, Papua New Guinea believed that the words "has been entrusted to obtain" in line 3 were not appropriate because they implied that the facts were already known, while it was the task of the mission to obtain them. The real intent of that paragraph was to recognize the general principle of law under which the receiving State had the right to be heard in defense or in explanation of the facts as found by the visiting mission. If that was the case, the words "has been entrusted to obtain" should be replaced by the words "has obtained".

57. Paragraph 27, which was designed to guarantee the impartiality of hearings, should be worded in a more positive and directive manner. It would be sufficient to add a second sentence, which would read: "The minimum requirement of fairness is the right of any aggrieved or affected party to be heard without fear or favour."

58. For the reasons set forth with reference to paragraph 2, it would be advisable, in paragraph 31, to replace the words "the present paper is to" with the words "this declaration shall". As to the termination of fact-finding missions, provision should be made for it in the terms of reference of the mission concerned at the time when it was set up.

59. With regard to the working paper submitted by the Union of Soviet Socialist Republics on the enhancement of cooperation between the United Nations and regional organizations, he said that the possibility of establishing regional security arrangements had been considered by some politicians in Papua New Guinea. Consideration had first been given to that issue during the uprising in Vanuatu, when Papua New Guinea had subsequently sent in troops to restore stability. At that time, he had been leading counsel for the opposition leader, who had objected to the sending of troops to Vanuatu by Papua New Guinea, not in principle, but because it could not be established that the Government in power in Papua New Guinea at the time had acted in a manner consistent with international law and with the provisions of the Constitution of Papua New Guinea. He therefore supported the establishment of any regional security arrangements, provided that those arrangements were compatible with the constitutional provisions of each of the participating States. The Government of Papua New Guinea had not, however, considered the issue and it was therefore not possible for his delegation to take a firm position, although it believed that certain associated issues of substance should, nevertheless, be examined by the Committee.

(Mr. Donigi, Papua New Guinea)

60. In the light of his comments on the rights of the "peoples", and noting that paragraph 4 of the working paper made mention of "a local dispute", he wondered whether he could take it that the USSR delegation shared the opinion of Papua New Guinea, namely, that disputes between "peoples" within a State could give rise to regional, as well as international, concerns, and that the paragraph therefore, gave the regional organization a say in disputes between peoples of the same State. If the USSR delegation agreed, it would be logical for the "initiative" referred to in paragraph 6 to include the initiative of the peoples living within the States concerned.

61. Finally, with regard to the handbook on the peaceful settlement of disputes between States, he expressed appreciation to the Chairman of the Special Committee on the Charter, Mr. Calero-Rodrigues, for his efforts, as well as to the Committee members for their outstanding work. The handbook should be disseminated as widely as possible, since it was only through education that the role of the United Nations in promoting liberty, equality and justice could be properly appreciated, recognized and enhanced. The handbook was a notable contribution to the United Nations Decade of International Law.

62. Mr. VILLAGRAN KRAMER (Guatemala), referring to the proposal submitted by the Libyan Arab Jamahariya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security said that while he did not share the view that the Council had not fully discharged the responsibilities assigned to it under the Charter, the other ideas put forward in the proposal merited careful examination. Certainly there was a case for taking a further look at the structure of the Council, on the basis, for example, of the proposals submitted by the Brazilian delegation during the previous session and by the Italian delegation during the current session. While there had been a relationship between the number of States Members of the Organization and the composition of the Security Council in 1945, that was no longer the case. A new situation had also arisen with the coming into being of collective bodies such as the European Community, and also with the proposal for a European confederation. Those were all questions which the Special Committee would be able to consider, since the point at issue was how to adapt the Charter to the new realities.

63. Referring to the proposal submitted by the USSR on the enhancement of cooperation between the United Nations and regional organizations, he remarked that relations between the United Nations and regional organizations had in the past given cause for concern and had raised questions regarding, for example, the circumstances in which the Security Council would exercise authority jointly with the regional organizations and those in which it would play a dominant role, and likewise concerning political situations which were difficult for smaller States to manage. No doubt the distinction between local and other disputes would provide a means of resolving such questions. However, the definition of aggression adopted in 1974 had introduced a new

(Mr. Villagran Kramer, Guatemala)

framework of reference for relations between the United Nations and regional organizations. That definition, which had received very wide acceptance in Latin America, had offered the means by which the debate concerning the respective competences of the Security Council and the Organization of American States could be resolved. Thus it had been agreed that once the act of aggression and its consequences had been established, the competence of the Council was absolute, the only exception being that provided for by the Charter with regard to local disputes.

64. Referring to the situation which had arisen recently in Haiti, he expressed his concern that the Security Council had not chosen to meet to consider a question until such time as the permanent members had seen fit. He feared that, in seeking to strengthen the role of the Security Council or that of the General Assembly, the formulation of rules such as those to be followed in similar circumstances might be overlooked. In that regard, the Soviet Union's proposal merited further consideration.

65. His delegation supported the adoption of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, which was a very well drafted document. Guatemala basically agreed with the comments made by the delegation of Papua New Guinea, in particular concerning the scope of fact-finding activities. For example, Article 2, paragraph 7, of the Charter laid down that the United Nations should not intervene in matters which were within the domestic jurisdiction of States. The question arose as to the circumstances in which the possibility of intervention might be discussed. It appeared that questions relating to human rights were now within the international domain. The question as to whether intervention was to be limited needed to be raised at the time of the preliminary investigation. Should the Security Council be given complete latitude to establish the facts required to clarify a matter or should such activity be made conditional upon States' express consent in all circumstances? There was certainly some lack of clarity in that regard.

66. His delegation joined with the other delegations in recommending the adoption of the handbook on the peaceful settlement of disputes between States, which would be of valuable assistance to foreign ministries and academic lawyers, even though not all the problems relating to the definition and use of terms had been resolved, with particular reference to paragraph 1 of article 36 and paragraph 2 of article 37.

67. Lastly, his delegation expressed its opinion that the debate in the Sixth Committee had made a valuable contribution to the work of the Special Committee and that the Special Committee would respond magnificently if it was entrusted with the task of examining the conciliation procedures of the United Nations.

68. Mr. ZARIF (Islamic Republic of Iran) said that the unprecedented developments in international relations in recent years, most notably the

(Mr. Zarif, Islamic Republic of Iran)

collapse of communism, the end of the cold war and the easing of bloc rivalries had provided the international community, and in particular the United Nations system, with the opportunity of acting to shape the future structure of international relations. That extremely important issue on the international community's agenda was of direct relevance to the subject under consideration, particularly with regard to the principles that should govern the future order and the role that the United Nations was expected to play in shaping the structure of international relations and in coordinating and managing such relations.

69. The Charter and the principles enshrined therein clearly demonstrated that the international community aspired to achieve a world in which not only were peace and security guaranteed but justice, equality, the mutual respect for the sovereignty and territorial integrity of States, along with respect for the cultural and moral values of all nations, were the cornerstones of international relations. Regrettably the system which had prevailed after the Second World War had created major obstacles to the realization of the lofty objectives of the United Nations. However, the end of the bloc rivalries which had obscured those principles and objectives now offered an opportunity to base the future system on the principles of the Charter and give the United Nations a more prominent role to play.

70. The recent admission of seven new Member States to the United Nations, making a total of 166, was a clear indication that the members of the international community wished to have an active presence in the United Nations and was a further sign of their desire to see the United Nations play a central role in resolving world problems of common concern. That desire was mainly the result of the recent successes the United Nations had achieved in the maintenance of international peace and security. It was essential to maintain and even to reinforce that positive trend. It was imperative, therefore, that particular attention should be paid to certain questions.

71. First, given the experience of recent years, it was evident that the Organization could only be revitalized through a democratization which would allow it to avoid domination by the great Powers. The fact that the membership of the United Nations had more than trebled since its formation needed to be reflected in current efforts to revitalize the United Nations. It was imperative also to establish a new balance between the main organs of the United Nations. The Special Committee on the Charter was the most appropriate forum for addressing such issues and finding the means of ensuring the extensive participation of all Member States in the activities of all the organs of the United Nations. That would not only facilitate the implementation of the decisions of those organs, but more importantly, would also increase the Organization's effectiveness and relevance.

72. Secondly, all issues of an international character should be addressed by the United Nations. As the Secretary-General had observed in his report on the work of the Organization, "We still see a dappled international landscape,

(Mr. Zarif, Islamic Republic of Iran)

with large spots of threatened trouble and incipient conflict." All regional issues which had thus far not received due attention should be looked into very seriously; it was important to avoid double standards and to rectify the negligence of the past.

73. Thirdly, the vigorous reaction of the United Nations, supported by the international community, in confronting the invasion and attempted annexation of Kuwait by its neighbour had indeed been a turning point. The Security Council, in discharging its primary responsibility, had made use of its powers under Chapter VII of the Charter and had authorized the use of enforcement measures to restore the independence of a Member State. Meanwhile the Council, in dealing with the crisis in the Persian Gulf, had in practice broadened the scope of the provisions of the Charter with regard to enforcement measures. As the Secretary-General observed in his report on the work of the Organization, "the enforcement action was not carried out exactly in the form foreseen by Articles 42 et sequentia of Chapter VII. ... The experience of operations in the Gulf suggests the need for a collective reflection on questions relating to the future use of the powers vested in the Security Council under Chapter VII." Regarding the use of force in the future, the Secretary-General expressed the view that the Council should "satisfy itself that the rule of proportionality ... is observed and the rules of humanitarian law applicable in armed conflicts are complied with", and he added that careful thought would have to be given to ensuring that the application of the Chapter VII measures was not perceived to be overextended. Those issues were of paramount importance and required careful study by the Special Committee.

74. With regard to the report of the Charter Committee on the work of its 1991 session, he was gratified to see that the Committee had succeeded in completing its consideration of fact-finding activities by the United Nations and had prepared a draft declaration on the subject. The draft Declaration was the result of intensive consultations and, being a compromise text, could not completely satisfy everyone. His delegation had participated actively in the Charter Committee's deliberations on the subject and had put forward various proposals designed to enrich and improve the draft instrument. The final draft before the Sixth Committee was acceptable to his delegation in general, but he wished nevertheless to give a brief outline of his delegation's understanding of some of its provisions.

75. It was evident that fact-finding activities constituted preventive measures aimed at resolving disputes at their early stages in a peaceful manner. Although that aspect was mentioned in the preamble, it was not properly reflected in the provisions of the draft Declaration. It was his delegation's understanding that the Security Council, the General Assembly and the Secretary-General, in undertaking fact-finding activities, would endeavour to ensure that such activities were carried out in the early stages of a dispute in order to find a peaceful solution. That point had not escaped the attention of the Secretary-General, who, in his report on the work of the

(Mr. Zarif, Islamic Republic of Iran)

Organization, had stated: "Too often, the Organization's mediatory or investigative capacity, in situations threatening large-scale conflict, has been kept in reserve while wars have occurred and disputes have festered."

76. Secondly, paragraph 6 of the draft Declaration had addressed one of the key points of the subject, namely the consent of the receiving State in undertaking fact-finding activity, which in the understanding of his delegation included the agreement of the receiving State to the composition of the fact-finding mission.

77. Moreover, the draft did not contain any provision concerning the termination of a fact-finding endeavour. Although proposals had been made to that effect, the Special Committee had not had sufficient time to consider them. His delegation therefore wished to put on record its concurrence with the statement of the Chairman of the Special Committee that "the withdrawal of the consent given by a State would result in the cessation of the activities of the fact-finding mission in its territory".

78. His delegation wished to express its appreciation to the members of the Codification Division for their untiring efforts in the preparation and completion of the draft handbook on the peaceful settlement of disputes between States. Although peaceful means of dispute settlement had been incorporated in many bilateral treaties and agreements, as well as in several multilateral instruments, they had often been ignored by the parties to many of the disputes. As a consequence, conflicts had occurred, causing innumerable human casualties and irreparable damage. His delegation considered that the handbook, which presented a major contribution by the Charter Committee to the activities of the United Nations Decade of International Law, provided a very useful reference tool and it strongly recommended its publication.

79. Mr. HAMAI (Algeria) said he felt that the 1991 session of the Special Committee had undoubtedly been one of its most productive, since it had seen the finalization of two important documents, namely the draft Declaration on Fact-finding by the United Nations and the draft handbook on the peaceful settlement of disputes between States. The spirit of cooperation and conciliation which had reigned within the Special Committee had contributed significantly to that achievement. Nevertheless, there was still scope for improving the two documents, which contained a number of inadequacies, omissions or inaccuracies.

80. By way of example, he cited paragraph 23 of the draft Declaration, which on the one hand stipulated that fact-finding missions had an obligation to respect the laws and regulations of the State in which they exercised their functions and, on the other, that "such laws and regulations should not however be applied in such a way as to hinder missions in the proper discharge of their functions". The two provisions seemed rather contradictory, since it was difficult to reconcile the need to respect the laws and regulations of the

(Mr. Hamai, Algeria)

receiving State with the possibility of derogating from such laws and regulations if they lacked specific provisions to that effect.

81. Nevertheless, bearing in mind the diversity of opinions and interests involved, it would, admittedly, be difficult to agree on provisions which fully satisfied all delegations. His delegation therefore felt that the draft Declaration was on the whole satisfactory. From several points of view, it represented a useful contribution towards strengthening the role of the United Nations in the maintenance of international peace and security.

82. First, the draft established a degree of balance between the competent organs of the Organization. Paragraph 7 empowered the Security Council, the General Assembly and the Secretary-General to undertake fact-finding missions in the context of their respective responsibilities, in other words as laid down in the Charter.

83. Secondly, the text took account of the fact-finding efforts undertaken by the States concerned and in the framework of regional arrangements or agencies. His delegation considered that taking account of national and regional efforts in such a way would make it easier to secure a full knowledge of the facts concerning individual disputes, which would undoubtedly help ensure that fact-finding missions were comprehensive, objective and impartial, as required by paragraph 3.

84. Thirdly, fact-finding missions should be given a clear mandate and their reports limited to findings of a factual nature, refraining from any subjective assessments, which would be by definition contrary to the mission's mandate.

85. Finally, as specified in paragraph 6, the sending of a United Nations fact-finding mission to the territory of any State required "the prior consent of that State". His delegation, like many others, felt that that provision was vital since it established a new procedure capable of strengthening the Organization's role in maintaining international peace and security which could be applied within the framework of the principles laid down in Article 2 of the Charter and in particular paragraph 7 thereof.

86. With regard to the draft handbook on the peaceful settlement of disputes between States, his delegation welcomed the fact that the Special Committee had completed its work on the subject and it endorsed the latter's recommendation that the publication of the handbook should be approved by the General Assembly.

87. His delegation had also taken note of the proposals and suggestions put forward by certain delegations and in due course would contribute to the consideration of those proposals and suggestions, some of which, both old and new, viewed in the context of consideration of the agenda of future sessions of the Committee, could contribute to a promising resumption of its work. It

(Mr. Hamai, Algeria)

was high time that the Committee returned to its original mandate without preconditions or taboos as to what could be discussed. His delegation had always believed that the law should never allow itself to be overtaken by historical developments and it was in the clear interest of all States that the quantitative and qualitative changes continually under way in the international community since the signing of the Charter should be reflected in the machinery, structures and activities of the United Nations.

The meeting rose at 12.25 p.m.