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at 10 a.m.  
New York

SUMMARY RECORD OF THE 7TH MEETING

Chairman:

Mr. AFONSO

(Mozambique)

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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. DELON (France) drew attention to the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and contained in paragraph 19 of the report under consideration (A/46/33). He emphasized the importance of preventive diplomacy and of as thorough a knowledge of the facts as conceivably possible on the part of the organizations which might be involved in conflict prevention since information was fundamental to carrying out the work of the United Nations, and of the Security Council in particular. His delegation endorsed the adoption by the General Assembly of the Declaration because it had the merit both of establishing the rules for United Nations fact-finding activities and of suggesting a number of approaches to the concept of preventive diplomacy.

2. With respect to the peaceful settlement of disputes, his delegation hoped that the General Assembly would approve the publication of the draft handbook on the peaceful settlement of disputes between States, which was both a repertory of practice and a very valuable guide for States.

3. The Special Committee seemed to be in a particularly good position to participate actively in implementing the programme of the United Nations Decade of International Law, in particular in the field of the peaceful settlement of disputes, in which it had developed special expertise.

4. On the question of the future work of the Special Committee, he said that he discerned three major lines of attack. In the field of the maintenance of international peace and security, the working document submitted by the delegation of the Soviet Union and contained in paragraph 46 of the report introduced a matter which, although untested in practice, had been shown by recent events to be very important, namely, strengthening the cooperation between the United Nations and regional organizations. For the first time Security Council resolution 713 (1991) had invoked Chapter VIII of the Charter in calling for United Nations support for the regional organizations involved in efforts to restore peace in Yugoslavia. In the area of the peaceful settlement of disputes, the draft conciliation rules of the United Nations, submitted by the delegation of Guatemala, should assist the Special Committee in its deliberations. Finally, the Special Committee could play a role in implementing the guidelines by which the General Assembly might strengthen its own functioning, in particular through the rationalization of its agenda and the possible consolidation of the activities of the Fourth Committee and the Special Political Committee.

(Mr. Delon, France)

5. In conclusion, he regarded the proliferation of recent initiatives launched under the aegis of the United Nations and the success it had achieved in settling regional conflicts as a sign of the renewed vitality of the Organization and of the resources that the Charter could provide.

6. Mr. LIAO JINCHENG (China) welcomed the completion of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. He wished also to congratulate the Secretariat on the finalization of the draft handbook on the peaceful settlement of disputes between States.

7. The draft Declaration was the first document which systematically established the mandate and procedures for United Nations fact-finding activities. Such activities clearly were implicated in the mandate of the competent organs of the United Nations, as provided, for example, under Article 34 of the Charter with respect to the Security Council. In United Nations practice, however, the Secretary-General himself had also undertaken a number of missions and had played a positive role in the settlement of disputes. Thus, the draft had combined the provisions of the Charter with actual practice of United Nations organs. That represented a positive step towards strengthening the role of the Organization in the maintenance of international peace and security.

8. The text prepared by the Special Committee reflected to a great extent the views of the various countries. It had the merit first of all of striking the necessary balance between the mandate of the United Nations and the rights and obligations of States. In particular, it established the general principle that a United Nations fact-finding mission could be sent only with the prior consent of the State concerned. That was not only in keeping with Article 2 (7) of the Charter but it also helped to develop a climate of confidence between the member countries and the Organization. The second merit of the draft was that it took into consideration the fact that the various organs of the United Nations had responsibilities under the Charter for maintaining international peace: the Security Council, the General Assembly and the Secretary-General each had a role to play in that area.

9. Nevertheless, fact-finding was only one aspect of the work of the United Nations, and not an end in itself. In future, activities for the maintenance of peace should be better coordinated with United Nations efforts to promote international peace and security. The success of fact-finding activities depended to a certain degree on cooperation between the Security Council, the General Assembly and the Secretary-General. Recent history had shown that it was important for the Security Council, in its fact-finding capacity, to intervene in international disputes as early as possible. The fact-finding role of the United Nations would be more effective in future if the three complementary elements were to strengthen their collaboration.

(Mr. Liao Jincheng, China)

10. Each co-sponsor had made an important contribution to the draft Declaration. Each had striven to be positive and constructive. Since the text was therefore the result of the joint efforts of all the delegations, he hoped that it could be adopted at the current session.

11. Since its founding in 1975, the Special Committee had undergone a complex process of development. After having made slow progress for eight years, it had completed two texts since 1984 (the Declaration on the Prevention and Removal of International Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field and the draft currently under consideration by the Sixth Committee), closely linked to international developments. In the meantime, several countries had also adopted pragmatic positions and had worked hard gradually to strengthen the role of the United Nations, on the basis of the Charter. What the Special Committee had achieved in eight years pointed the way for its future work.

12. His delegation believed that, having stood the test of time for over 40 years, the purposes and principles of the Charter of the United Nations had demonstrated their vitality. Yet, the role of the United Nations needed to be strengthened further, an important task facing all countries. China was ready to adopt a pragmatic approach in participating in that endeavour and to do so in a spirit of respect for and accommodation of differences.

13. Mr. YAÑEZ-BARNUEVO (Spain) said that a pragmatic approach offered the best chance of strengthening the role of the United Nations in the maintenance of international peace and security, and the authors of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, found in paragraph 19 of the report of the Special Committee (A/46/33) had clearly understood that reality.

14. The draft Declaration did not create new obligations for Member States, nor did it affect the respective competence of United Nations bodies or the relations between them defined in the Charter. It simply offered a group of policy recommendations intended to strengthen the possibilities stated in the Charter for peace-keeping. Like all texts adopted by consensus, it represented the common denominator of the views of all the States that took part in the discussion. The United Nations bodies and the Member States would have to make the best of the situation by using it to compensate for a deficiency of the United Nations peace-keeping system, to which the Secretary-General had repeatedly referred: the lack of means to maintain an impartial and effective global watch over situations of potential or incipient conflict.

15. As for the title to be given to the draft, "Declaration", which did not have the solemn connotation that some attributed to it, seemed most appropriate, and was in keeping with the tradition of many previous Special Committee texts on the subject.

(Mr. Yañez-Barnuevo, Spain)

16. His delegation welcomed the completion of the Handbook on the Peaceful Settlement of Disputes between States and hoped that it would receive the widest possible distribution in view of the high quality of the information it provided on texts and practice.

17. The decision regarding the future work of the Committee should be structured around two traditional themes: maintenance of international peace and security and the peaceful settlement of disputes.

18. Regarding the former point, he drew attention to a working document submitted by the Soviet Union and reproduced in paragraph 46, which put forward specific proposals to enhance cooperation between the United Nations and regional organizations. Such cooperation should be based on the practical division of responsibilities, taking care to avoid duplication of work and to repair omissions in the spirit of harmony and reciprocal trust advocated by the Secretary-General in his report on the work of the Organization (A/46/1).

19. New possibilities were open to the Special Committee in the area of the peaceful settlement of disputes. His delegation would like it to examine the proposed United Nations conciliation rules submitted by Guatemala, orienting them towards greater flexibility in the wider context of efforts intended to strengthen recourse to conciliation as a means of peaceful settlement. Because of its flexibility, simplicity and informality, conciliation provided an appropriate method for resolving thorny conflicts and for achieving a just and honourable solution for all parties involved. It would be worthwhile to study the Procedure for the Peaceful Settlement of Disputes drawn up at Malta in the Conference on Security and Cooperation in Europe (A/46/335). It represented a good example of conciliation in the broadest sense because of its flexibility and adaptability.

20. Regarding the strengthening of the role of the International Court of Justice in the peaceful settlement of disputes, his delegation favoured the Secretary-General's suggestion, summarized in his Report on the Work of the Organization (A/46/1), that he should be authorized, like the General Assembly and the Security Council, under Article 96 of the Charter to request an advisory opinion from the Court on the legal aspects of questions within his competence.

21. Mr. ASTAPENKO (Belarus) said that United Nations mechanisms had awakened from a long slumber since the previous session of the Sixth Committee, opening up new prospects in the settlement of regional conflicts, disarmament and coordinated action among States. During that period, the United Nations had proved that it was a genuine universal instrument for solving the problems of humanity. Its role and prestige had increased substantially. The end of the cold war had allowed it to mobilize the efforts of the international community to tackle the practical tasks of implementing the ideals of the Charter, which, as shown by recent events, had stood the test of time.

(Mr. Astapenko, Belarus)

22. However, in the light of the fundamental changes taking place in the world, the mechanisms provided in the Charter would benefit from an in-depth appraisal, given the new challenges. A new reading of the Charter was needed to allow the United Nations to keep pace with developments. The Special Committee had played a major role in that area by addressing questions with direct impact on the key problems of modern policy: safeguarding international peace and security, the peaceful settlement of disputes between States, and enhancing the prestige of the United Nations.

23. In that context, the main achievement of the Special Committee at its last session had been the adoption by consensus of the Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. Indeed, fact-finding was essential to preventive diplomacy, which was based on intensified peace-making efforts by the Secretary-General, interaction among Security Council members, the endowment of the Council with additional functions, especially formal and informal consultations, and coordination of effort among all members of the international community. His delegation supported the draft Declaration and hoped that it would meet with the approval of members of the Sixth Committee and the General Assembly.

24. Without doubt, the Handbook on the Peaceful Settlement of Disputes between States, prepared by the Secretariat and approved by the Special Committee at its last session, would be useful in preventing and settling international disputes by peaceful means. The General Assembly should therefore adopt that important instrument; it would certainly serve as a reference source not only for States but also for specialists and researchers throughout the world.

25. Today, the United Nations offered the real possibility of in-depth examination of proposals submitted by any Member State without prejudice to their usefulness, particularly those intended to increase cooperation between the United Nations and regional organizations in the maintenance of international peace and security, to call on the Secretary-General more frequently to assist in peacemaking, to broaden the scope of preventive diplomacy and to strengthen collective security mechanisms. Those measures could lead to remarkable results.

26. In conclusion, Belarus reaffirmed its support for the ideals and principles of the United Nations Charter. The possibilities offered under the Charter for strengthening the effectiveness of the Organization were far from exhausted. Without doubt, the will to cooperate in the United Nations now motivating States which had formerly been adversaries would allow the Organization's resources to be fully exploited for the prosperity and peaceful development of humanity.

27. Mr. MARTINEZ GONDRA (Argentina) first analysed the Draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security submitted by the Special Committee. He was pleased to note that the sending of a fact-finding mission would be subject to the prior consent of the State concerned. However, such consent must be stated unequivocally, and a State's silence must not be interpreted as implying consent. Moreover, none of the draft's provisions should be interpreted in a manner that would derogate from or undermine the rights of States under international law.

28. Furthermore, the lists of experts in various fields envisaged in paragraph 14 of the draft should be prepared bearing in mind the relevant provisions of General Assembly resolution 2329 (XXII) on methods of fact-finding and the need to ensure the broadest possible representativeness. Paragraphs 28 and 29 of the draft, on the information-gathering capabilities of the Secretariat, were satisfactory. The inclusion of other considerations in that set of provisions would have risked altering the Secretariat's duties under the Charter.

29. As to the title to be given to the draft, his delegation, after lengthy reflection, had no objection to calling it a "Declaration". It would provide States Members and the competent United Nations bodies with an additional tool for the maintenance of international peace and security, the peaceful settlement of disputes and the prevention and elimination of threats to peace.

30. As to the proposal by the USSR on the enhancement of cooperation between the United Nations and regional organizations, paragraphs 1, 5, 6, 8 and 9 of the text incorporated some of the provisions of Chapter VIII of the Charter and referred in paragraph 14 to the nature of the interaction between the Secretary-General and the leaders of regional organizations. In view of the usefulness of the document, the Special Committee should consider it at its next session.

31. While the Libyan delegation was right to point out that it would be appropriate to enhance the effectiveness of the Security Council, his delegation could not endorse the assertion in that delegation's proposal to that end to the effect that the Council had been rendered incapable of fulfilling the responsibilities assigned to it under the Charter. Indeed, recent events, in particular, decisions adopted by the Council following Iraq's aggression against Kuwait, demonstrated that the Council had been able to overcome the paralysis of the cold-war period and act firmly to repulse aggression. Furthermore, the Council had acted effectively and taken decisions which had contributed to the settlement of a series of regional conflicts (Nicaragua, Namibia, etc.) constituting a threat to international peace and security. Accordingly, there was no reason significantly to modify the procedures or composition of the Council.

32. He welcomed the elaboration of the handbook on the peaceful settlement of disputes between States annexed to the report, for it made a valuable contribution to the United Nations Decade of International Law. As other

(Mr. Martinez Gondra, Argentina)

delegations had noted, the procedure followed in the preparation of the Handbook, which had established close cooperation between the Secretariat and members of permanent missions in New York as a Consultative Group, should be used in similar future endeavours.

33. Perhaps the time had come to consider what new topic should be entrusted to the Special Committee with respect to the peaceful settlement of disputes between States. It might be asked to consider the proposal by Guatemala concerning the United Nations conciliation rules.

34. The view had been expressed that the fact that States did not often have recourse to the International Court of Justice, the main judicial organ of the United Nations, reflected a failing of the system of collective security. That was in fact an erroneous impression. As the report of the Court indicated (A/46/4), five disputes had been submitted to it between 1 August 1990 and 31 July 1991, which demonstrated that it was very busy and that States turned to the Court when they felt it was necessary to do so. Moreover, there were various judicial and extrajudicial procedures for the peaceful settlement of disputes, including arbitration, and States were entirely free to choose whatever method they wished. His delegation was in favour of recourse to the International Court of Justice as long as the States concerned felt that, in the circumstances, that procedure was preferable to any other.

35. Lastly, his delegation believed that the proposal by the Secretary-General that the Assembly should authorize him to seek advisory opinions from the International Court of Justice should be the subject of a careful study assessing the legal and practical consequences and the effect on the existing balance between the major United Nations organs.

36. Mr. VILLEGAS (Mexico) recalled that in July 1991 his country had hosted the first Ibero-American Summit, in which 21 countries had participated. The subject of that gathering had been similar to the topic with which the Special Committee was concerned and clearly was related to the objectives of the United Nations Decade of International Law, as demonstrated by the Guadalajara Declaration, issued as document A/46/317. Those objectives were all the more relevant in an era characterized by far-reaching political and economic change on a global scale, which required not only the strengthening of international law, but also its accelerated development.

37. The fact that 30 delegations had participated as observers in the work of the Special Committee attested to the interest of the Sixth Committee in that body's work. Moreover, since certain official members of the Special Committee had been absent, it would be desirable to give the most assiduous observers full membership status. The most active delegations for some years had included those of Cuba, Chile and Peru, and they should be considered in any discussion of expanding the Special Committee's membership, perhaps also with a view to ensuring more balanced geographical representation.



(Mr. Villegas, Mexico)

38. Although its report did not underscore the point, there could be no denying that the general debate had diminished in importance in the Special Committee and that some had wished to eliminate it at the last session. That was unfortunate, for the general debate provided an opportunity for dialogue and for assessing international opinion in legal areas which might have an impact on the work of the Special Committee.

39. That having been said, paragraphs 12 and 13 of the report suggested that the general debate had not resulted in a consensus on the institutionalization of the practice whereby four affirmative votes by the permanent members of the Security Council were equivalent to the five votes required by Article 27, paragraph 3, of the Charter. Non-permanent members of the Security Council had questioned that practice on a number of occasions. However, his delegation would not revert to those interpretations in the Sixth Committee, since the Special Committee clearly was not a body responsible for the supervision or defence of the constitutionality of the Charter of the United Nations.

40. He welcomed the draft Declaration in chapter III of the report on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. As to the future title of the draft, no choice should be made yet between "declaration" or "resolution", since lack of time had prevented adequate consultations on that point. The Legal Counsel of the United Nations had offered an opinion on the use of the terms "resolution" and "recommendation". In the light of his analyses, his delegation was prepared to accept "declaration".

41. Among the many qualities of the text, he noted, firstly, that it established an appropriate balance between the United Nations fact-finding bodies; secondly, that it recognized the need for States to collaborate in the exercise of their sovereignty with the competent United Nations bodies; and, lastly, that it established the rule of the prior consent of the receiving State, subject to the provisions of the Charter, a solution which afforded the composition and nature of such missions considerable flexibility.

42. With regard to the Handbook on the Peaceful Settlement of Disputes between States, his delegation agreed that the text should be issued in all the official languages, for, as was noted in paragraph 51 of the report, the Handbook would serve as a useful basis for the drafting of a universal convention on the subject.

43. For the second time the Secretary-General had raised the possibility of augmenting the means available to him for limiting international conflicts and preventing crises, if the General Assembly authorized him to request advisory opinions from the International Court of Justice. That approach was indeed in line with the increase in the Secretary-General's responsibilities and was consistent with the interests of a large number of Member States, since the aim was to multiply and expand the means of preventing the escalation of disputes which had a legal aspect. Recent experience showed how important it

(Mr. Villegas, Mexico)

was to act speedily in such cases. The debate on the Special Committee's report gave an opportunity for discussing the legal questions raised by the Secretary-General - to the extent that they related to the Charter - and it might also be possible to discuss them during consideration of the Decade of International Law.

44. Mexico thought that the Secretary-General should be given the legal means to enable him to work for peace. That was consistent with the content of the letter addressed to the Secretary-General by the Permanent Representative of Colombia (A/46/437), which developed the idea of strengthening the role of the Secretary-General and the General Assembly. Mexico looked forward with very great interest to the guidelines which might emerge from the debate on that question.

45. Mr. SARDENBERG (Brazil) noted that the Special Committee had discharged the mandate entrusted to it by the General Assembly in resolution 45/544 but that it had taken three years to reach agreement on the draft declaration on fact-finding activities. There was no doubt that such a text would strengthen the role of the Organization and thus prevent disputes from deteriorating and threatening international peace and security.

46. It might be wondered why it had been so difficult to reach consensus. The difficulties seemed to result from the revival of ideas which questioned the principle of the sovereign equality of Member States and instead favoured intervention. Some of those ideas were the result of the cold war and had recently faded away. Others, inspired by older practices and diverse interests, were still being upheld. But the legal regime established by the Charter of the United Nations gave no room to that kind of thinking. On the contrary, it rested on the principle of collective action. That was no doubt the reason why delegations had stressed that the Organization's mandate should be defined in such a manner that its missions were conducted with total impartiality; that they should defuse rather than aggravate disputes; that they should not be undertaken without the consent of the receiving State; that they should take into account similar initiatives taken at the regional level; and that they should remain under the control of the General Assembly.

47. The harsh reality which had recently disturbed international peace and security indicated a need both to strengthen the role of the United Nations and to respect the sovereign rights of States. Any intervention set a dangerous precedent which could inspire unlawful acts unless it was conducted strictly in accordance with the Charter. If a State caused an actual threat to peace, the United Nations could and should intervene. The fact of a breach of the peace assured the legality of resort to self-defence or collective action. After years of debate on the definition of aggression there was not even a tiny minority of States which defended the legality of intervention for any other reason. The United Nations should not embark on a course which would cause it to sacrifice legality to more immediate political motivations. The principle of non-intervention could not be subject to loose interpretation

(Mr. Sardenberg, Brazil)

and must be respected by all Member States. The Organization's credibility would otherwise be undermined by a vicious circle, with one intervention justifying another.

48. It had become clear, and it would perhaps become even clearer in the future, that the maintenance of peace was the responsibility of all. The emergence of a more equitable international order led to the expectation of a more important role for international law. For how would it be possible to move from confrontation to cooperation without strengthening the rule of law under the Charter of the United Nations? The United Nations would have to return to the original political intentions of the Charter, which had often been misinterpreted although they presupposed the maintenance of a balance between the prerogatives of the permanent members of the Security Council and respect for the principle of the equality of Member States.

49. With the end of the cold war the measures provided in Chapter VII of the Charter had acquired new possibilities. The Security Council was no longer paralysed by the use of the veto, and its decisions would have increasingly clear effects on Member States. It went without saying that Member States must abide by such decisions, even if they had taken no part in them. Such a trend raised legitimate questions, for ultimately it was the Member States which delegated competence to the Security Council. As the President of Brazil had said in the general debate, it was participation and not coercion that provided the basic stimulus of lawful behaviour.

50. Since the General Assembly and the Secretariat were undergoing reform, consideration should also be given to improving the Security Council, making it more representative and thus increasing the legitimacy of its deliberations. During the forty-fifth session of the General Assembly the question of defining the "sanctions management" procedures had been raised in connection with the Security Council Committee established by resolution 661 (1990). The idea was to enable the Committee to overcome certain difficulties: the lack of guidelines defining the humanitarian circumstances which constituted exceptions to the sanctions regime; the Charter's silence on criteria for assessing the special economic problems confronted by States following action taken by the Security Council; and the choice of the body authorized to interpret the provisions of resolutions and evaluate implementation measures. Those were all examples of what could be done to improve the work of the Security Council.

51. There was also the question of the perceived gap between the activities of the Security Council and those of regional organizations. There appeared to be some ambiguity in the delimitation of the competence of the United Nations and regional organizations. The coincidence of their purposes and principles argued in favour of collaboration between them in accordance with Article 52 of the Charter. But the cold war had influenced the behaviour and the capacity for action of regional organizations. It was perhaps time to redefine their role and recognize their political potential.

(Mr. Sardenberg, Brazil)

52. The paper submitted by the Soviet Union and reproduced in paragraph 46 of the report of the Special Committee dealt with that very problem. It was not yet clear what should be done with the paper, which might constitute a sound basis on which to build the Sixth Committee's work. All Member States should therefore be encouraged to present their views on the question, which the Special Committee would take into account at its next session. Questions might also be put directly to senior officials of regional organizations, who could be invited to address the Special Committee.

53. Brazil welcomed the completion of the draft handbook on the peaceful settlement of disputes between States, which was annexed to the Special Committee's report. The handbook would be a useful tool both to Governments and to academic institutions. His delegation therefore endorsed the proposal that the handbook should be distributed as widely as possible. It also welcomed the initiative of the United Nations Library, which was to publish an extensive bibliography of works on the settlement of disputes between States covering the period 1944 to 1991.

54. There had been a time when the work of the Special Committee was characterized by the length of its general debate. Some delegations had argued that such a debate made little contribution to the Special Committee's work, and indeed only one meeting had been devoted to it in 1991, but it could still be useful. The Brazilian delegation believed therefore that the general debate should be expanded again, as soon as circumstances allowed, so as to secure a wider exchange of views on questions concerning the Special Committee.

The meeting rose at 11.40 a.m.