UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.119/SR.17
21 October 1964
ENGLISH
ORIGINAL: FRENCH

SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

First Session

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at Mexico City,
on Wednesday, 9 September 1964, at 4.5 p.m.

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Rapporteur:	Mr. BLIX	Sweden
Members:	Mr. COLOMBO	Argentina
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	U SAN MAUNG	Burma
	Mr. CHARPENTIER	Canada
	Mr. PECHOTA	Czechoslovakia
	Mr. IGNACIO-PINTO	Dahomey
	Mr. MONOD	France
	Mr. DADZIE	Ghana
	Mr. HERRERA IBARGÜEN	Guatemala
	Mr. KRISHNA RAO	India
	Mr. ARANGIO RUIZ	Italy
	Mr. OHTAKA	Japan
	Mr. FATTAL	Lebanon
	Mr. CASTAÑEDA) Miss TELLEZ)	Mexico
	Mr. RIPHAGEN	Netherlands
	Mr. ELIAS	Nigeria
	Mr. BIERZANEK	Poland
	Mr. CRISTESCU	Romania
	Mr. KHLESTOV	Union of Soviet Socialist Republics
	Mr. EL-REEDY	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland

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PRESENT (continued):

Members (continued):	Mr. SCHWEBEL	United States of America
	Mr. ALVARADO	Venezuela
	Mr. VILFAN	Yugoslavia
Secretariat:	Mr. BAGUINIAN	Acting Representative of the Secretary-General
	Mr. WATTLES	Deputy Secretary of the Committee

I. CONSIDERATION OF THE FOUR PRINCIPLES REFERRED TO THE SPECIAL COMMITTEE IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 1966 (XVIII) OF 16 DECEMBER 1963, NAMELY:

(a) THE PRINCIPLE THAT STATES SHALL REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF ANY STATE, OR IN ANY OTHER MANNER INCONSISTENT WITH THE PURPOSES OF THE UNITED NATIONS (A/AC.119/L.6, L.7, L.8, L.14, L.15) (continued)

Mr. KRISHNA RAO (India), introducing the joint proposal of Ghana, India and Yugoslavia (A/AC.119/L.15), said that the sponsors had taken account in their proposal of the task laid upon the Special Committee, namely, to contribute to the progressive development and codification of the four principles so as to secure their more effective application. Their proposal was also based on (1) the dictum pronounced by Judge Max Huber in the Island of Palmas Case: "International law has the objective of assuring the coexistence of different interests which are worthy of legal protection"; (2) the principal conclusions that emerged from the practice of the United Nations; and (3) the views expressed in the Sixth Committee and the Special Committee. They therefore hoped that their text would constitute a basis acceptable to all. At the present stage, he would only comment briefly on the various paragraphs of the joint proposal, but might perhaps speak at greater length later on the constructive suggestions and criticisms put forward. Paragraph 1 used the language of Article 2 (4) of the Charter, taking account of its objective. Paragraph 2 defined force in accordance with the criterion given in Article 2 (4), namely, the effect which the threat or use of force might have on the territorial integrity or political independence of a State, for it was undeniable that there were forms of force other than armed force which might also have considerable effect. In the sponsors' view, the first part of paragraph 3 faithfully reflected the de jure situation as established in the Charter. The remainder of the paragraph required no comment. There seemed to be general agreement on the situations envisaged in paragraph 4. Moreover, in previous statements he had pointed out that there were

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precedents in other international instruments. Lastly, the sponsors had been greatly impressed by the statement made by the Mexican representative on the subject of reprisals (A/AC.119/SR.9) and had been at pains to embody the relevant principle in paragraph 5. That principle had been confirmed by the Security Council in its resolution S/5650, especially in operative paragraph 1, which he quoted.

Mr. VILFAN (Yugoslavia) announced that he would withdraw the first part of the Yugoslav proposal (A/AC.119/L.7), relating to principle A, since that proposal had been replaced by the three-Power text (A/AC.119/L.15), which restated in more precise terms the ideas contained in his delegation's original proposal and, in addition, took account of the views expressed by other delegations during the debate. He sincerely hoped that the new proposal would facilitate the Committee's task.

In his present statement, he would deal with only one question, namely, that of the meaning to be given to the word "force" in Article 2 (4) of the Charter, not because he underestimated the importance of the other questions with which the Committee had to deal, such as the right of self-defence against colonial domination, but because several representatives, the Romanian representative in particular, had spoken so eloquently on the subject that it was pointless to repeat what had already been said.

With regard to the meaning of the word "force" in Article 2 (4) of the Charter, the Soviet representative had made some terminological remarks at the fourteenth meeting (A/AC.119/SR.14) which he fully endorsed. That was why he would not take up that aspect of the question again and would take up what might be called, "the historical argument". Those who claimed that the word "force" in that paragraph meant only armed force based their arguments on the fact that, during the

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travaux préparatoires at the San Francisco Conference, a Brazilian amendment, to extend the prohibition contained in that paragraph to include economic pressure, had been rejected.[1] In the first place, his delegation wished to point out that that argument was irrelevant. The Charter was a constitutional act and, as such, it had value in itself and an independent existence. It was precisely because the Charter was a constitutional act whose provisions could and should be interpreted in the light of actual circumstances that it was possible to speak of the progressive development of the principles of the Charter and at the same time remain faithful to that instrument.

Nevertheless, he wished to refute the argument based on the rejection of the Brazilian proposal, if only to destroy its psychological effect, by showing that quite different conclusions could be drawn from that rejection.

When the Brazilian delegation had submitted its amendment to Article 2 (4) of the Charter at the United Nations Conference on International Organization at San Francisco, it had in fact been trying to link the question of intervention to the question of the threat or use of force, which that provision covered; the amendment had represented its final attempt to achieve that end. To read the text of that proposal was to be convinced of that. The submission of the Brazilian amendment and its rejection had not brought the meaning of the word "force" into question; the proof of that was that while the authors of the Charter had rejected the amendment they had seen no need to replace the word "force" by "armed force". In acting as they did, they had shown their anxiety to permit the progressive development of the principles of the Charter. The authors of the Charter had simply refused to identify the prohibition of the threat or use of force with the prohibition of intervention and, whether or not a clear-cut distinction

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1/ See United Nations Conference on International Organization, Commission I, 5 June 1945, vol. 6, pp. 339 and 340.

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between those two notions was considered desirable, it must be recognized that intervention on the one hand, and the threat or use of force on the other, were two distinct concepts in international law; that was clear, moreover, from the list of principles under consideration and the Committee's plan of work.

After re-establishing in that way the real significance of the Brazilian amendment and its rejection, he drew attention to two points. First, the prohibition of the threat or use of force in Article 2 (4) of the Charter was not an abstract prohibition isolated from any context. That prohibition covered the threat or use of force directed against the territorial integrity or political independence of States. The provision was not intended merely to prohibit an act, but also to protect values, and, taken as a whole, it prohibited the use or threat of force in all its forms when those forms endangered the territorial integrity or political independence of States. Any other interpretation would lead to absurd conclusions, namely that only armed force was condemned and that the condemnation was a purely formal one with no specific object. No one wished to exclude armed force from the word "force", but it was obvious that other forms of force, and particularly economic and other pressures, could threaten the political independence and territorial integrity of States. Perhaps when the Charter was drawn up economic pressure was not considered as a force which could threaten those values - and that was the real reason for the rejection of the Brazilian amendment - but that was no longer true at the present time because of the accession of new States to independence and the multiplication of economic pressures. If the Committee wished to be faithful to the Charter and to the intentions of its authors, it should interpret Article 2 (4) in such a way that it really did protect the territorial integrity and political independence of States. The question, then, was whether or not economic pressure was at the

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present time a force which threatened the existence of the values mentioned. The answer to that question must be in the affirmative.

Secondly, the course of developments over the past twenty years had made it possible to distinguish more clearly between the concept of intervention and the concept of the threat or use of force in conformity with Article 2 (4) of the Charter. The difference between those two concepts lay in the values they sought to protect. In the case of the threat or use of force, it was a question of the territorial integrity or political independence of States, i.e. of the protection of the State from without. In the case of intervention, it was a question of the organic, free and unhampered development of States, i.e. the protection of the State from within. Once that distinction was made, it becaue clear that according to the circumstances one and the same act might be either a threat to the territorial integrity or political independence of a State under Article 2 (4), or an act of intervention not covered directly by that Article. One of the advantages of the three-Power proposal (A/AC.119/L.15) over the original Yugoslav proposal (A/AC.119/L.7) was that the criterion it adopted was not only the nature of the act itself but also its effects. The proposal made it quite clear that it was when they were directed against the territorial integrity or political independence of a State that force and pressure in all their forms were prohibited according to Article 2 (4). That distinction excluded any possibility of considering the three-Power proposal as being outside of the Charter.

Some representatives, for example those of Guatemala, Mexico and Sweden, were afraid that equating economic or other pressures with the use of force would make normal international relations impossible by extending the idea of aggression and the scope of Article 51 too far. He believed that the distinction drawn in the three-Power proposal according to whether or not the act in question threatened

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the territorial integrity or political independence of a State should dispel those fears, and that Article 51 was so clear that it could hardly be misinterpreted.

A definition of pressure would of course be valuable, just as it would be valuable to have a definition of aggression. However, in the case of pressure, as in that of aggression, matters could be left in the first place to the judgement of the victim State, and then to the decision of the United Nations bodies to which that State appealed. At the tenth meeting (A/AC.119/SR.10), the Swedish representative had recognized that the power of decision could be left to the competent United Nations body in determining whether or not a particular entity was a State, and consequently whether it could avail itself of Article 2 (4) of the Charter. That same power might be left to such bodies in determining whether an act of pressure constituted a threat or use of force within the meaning of Article 2 (4).

In conclusion, he expressed sympathy with the ideas contained in the Italian amendment (A/AC.119/L.14). However, he thought that the objections which had been raised to some of the other ideas expressed during the debate, were equally valid in regard to the Italian amendment. His impression was that it would not be easy to incorporate the idea of that amendment to the statement of the principle.

Sir Kenneth BAILEY (Australia) said that there were three ways in which the Committee could best assist in the development and codification of international law in the field of the four principles referred to it for study and report:

Firstly, it could formulate interpretative texts making explicit in detail what the Charter stated only in general terms or merely implied. The United Kingdom proposal (A/AC.119/L.8) was a remarkable illustration of how much could be done in that way. He fully supported that proposal and equally in principle the addition to it by the Italian delegation (A/AC.119/L.14).

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Secondly, the Committee could formulate additional legal rules for each principle, as supported by the practice of States. Any reference to the latter required the greatest possible delicacy but the Committee had been explicitly directed by its terms of reference in General Assembly resolution 1966 (XVIII) to consider both the practice of States and that of the United Nations in forming its conclusions and recommendations. The practice of States since 1945 could not of course support any rule of international law contrary to the Charter; on the other hand, it might well supply rules of international law consistent with the Charter but not to be found either explicitly or implicitly in that text.

Thirdly and lastly, the Committee could keep in mind, as the representative of Lebanon had emphasized, the distinction between existing international law and the rules which it thought States should be willing, in the year 1964, to accept as binding. Not all delegations would perhaps agree on what should be put in one or the other category, but the method outlined by the Lebanese representative was an indispensable instrument for the progress of the Committee's work. The Committee should beware of confusing international law as it was with what it thought international law ought to be.

His delegation could not agree that the Charter could now be given a meaning different from the meaning it bore in 1945 merely to meet the wishes of some new Members of the United Nations. The text adopted in 1945 had represented the maximum on which unanimous agreement could be reached among both the Members of the United Nations at that time and the permanent members of the Security Council. For that reason the interpretation of the Charter must be regarded as the proper sphere of the lex lata; but, of course, that did not mean that the words of the Charter could cover only the points envisaged in 1945.

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The Committee should also bear in mind that the effectiveness of its work would depend wholly on the degree of unanimity it could attain in its conclusions, and in that respect he drew attention to the unanimous agreement reached on the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, despite the very wide divergence of views when the subject had first been raised for discussion.

Taking up the proposals before the Committee and, first, the United Kingdom proposal (A/AC.119/L.8), he agreed with the Guatemalan delegation that that proposal offered a basis on which agreement could be reached on a number of points. In his delegation's view, by devoting his statement to the enumeration of the points on which agreement was possible, the Guatemalan representative had employed an extremely useful method, and he hoped that the text submitted by the United Kingdom delegation could be accepted by consensus as an accurate and adequate formulation of the lex lata.

Recalling the reference to Lord Byron made by the Soviet representative at the fourteenth meeting, he said that, in his opinion, even if that distinguished poet had been a member of a corps of volunteers in the service of the United Kingdom Government, it would be difficult to say whether that fact had constituted a violation of international law in 1824. In any case, that was not a sufficient reason for saying that a Government could today use armed forces of volunteers against the political independence or the territorial integrity of another State without violating Article 2 (4) of the Charter. He would not pursue the subject any further since a similar problem was that very day coming before the Security Council. He hoped, however, that when it was perceived how carefully the definition given in paragraph 2 of the United Kingdom proposal had been stated, that paragraph would receive unanimous support. In that connexion, his delegation

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noted that though it differed on some points from the United Kingdom proposal, paragraph 2 (a) of the proposal submitted by the representatives of Ghana, India and Yugoslavia constituted a real advance towards a reconciliation of the two texts.

His delegation would also accept as it stood the first sentence of paragraph 2 of the United Kingdom text as an interpretation of the Charter principle. In his delegation's view, the fact that the word "force" and not the words "armed force" had been used in Article 2 (4) of the Charter was not conclusive. The words "to use force" occurred twice in the Charter: once in Article 44 and once in Article 2 (4). In Article 44 the words could not mean anything but armed force and no sufficient reason existed for giving it any other meaning in Article 2 (4). As applied to the international action of States, physical coercion was in fact the essential ingredient of force, as the word was defined in the dictionary. That interpretation was confirmed by the whole context of the Charter and especially by the Preamble and the provisions of Articles 1 and 2 and Chapters VI and VII.

The Yugoslav representative had spoken eloquently about the rejection of the Brazilian amendment at the time of the San Francisco Conference. His delegation, for its part, did not base its opinion on that fact, but found it difficult to see how the Brazilian amendment could be used in support of the view that the word "force" in Article 2 (4) meant anything other than armed force. It would seem that if anything could refute that argument, it would be the terms of the Brazilian amendment, whether adopted or not.

The texts referred to by the Czechoslovak representative at the eighth meeting also served only to prove that when it was desired to provide against economic and political pressure or any pressure other than armed force, it was so stipulated. Moreover, not only was it impossible to base the broader

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interpretation which some sought to give to the word "force" on the Charter, but there was nothing in the practice of the United Nations to support it.

In his view, the Committee's task involved formulating both principles of law which could be considered as interpretations of the Charter and rules of law which could be added in those fields to the Charter principles by derivation from the practice of States, and also such further rules as the Committee by consensus could recommend de lege ferenda for adoption by the Members of the Organization.

The three-Power text (A/AC.119/L.15) was not to be considered so far as paragraph 2 (b) was concerned as an interpretation of the Charter but as a proposition de lege ferenda. In that text the word "force" was to be understood to include such forms of pressure, other than the use of armed force, as had the effect of threatening the political independence or territorial integrity of a State and raised a problem of international policy. That text rightly recognized that to exclude all forms of pressure would be unrealistic. On the other hand, no delegation had ever taken the view that no law could be made to restrict or prohibit any form of pressure whatever other than armed force. His delegation had so far had no opportunity to study the new document A/AC.119/L.15 closely. However, one question that had immediately occurred to his delegation on reading that text was who was to judge whether a given policy or economic measure had or had not the effect proscribed in that document.

Turning to the proposals of Czechoslovakia (A/AC.119/L.6) and Yugoslavia (A/AC.119/L.7), he said that his delegation could not accept the provisions of the second, third, fourth, fifth and sixth paragraphs of the Czechoslovak proposal or the second, third and fourth paragraphs of the Yugoslav proposal. That was not to say that Australia advocated the matters condemned in those paragraphs.

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On the contrary, in many of the matters in question, Australia had the same political objectives as the sponsors of the proposals. The questions dealt with in those paragraphs might perhaps be suitably placed in a preamble, as the Swedish representative had suggested, but the layman, unfortunately, was very apt to take no account of the very different legal status of the preamble and the operative part of a legal document.

With regard to the right of self-defence of nations against colonial domination (fifth paragraph of the Czechoslovak proposal and fourth paragraph of the Yugoslav proposal), two questions arose. First, did the citizens of a State have the legal right to take up arms against that State to secure their independence? Second, did other States have the legal right to aid insurgents under such conditions? In his delegation's view, the use of force within a State did not fall within the scope of Article 2 (4) of the Charter, which simply stated that States should refrain "in their international relations" from the use of force; Article 2 (4) could not, therefore, be interpreted as either forbidding or permitting a right of insurrection, because its provisions were simply not relevant. Juridically, a revolution acquired legitimacy if it was successful, but neither the Charter nor international law recognized any right to rebellion. On the other hand, Article 2 (4) explicitly forbade a State to use force to impair the territorial integrity of another State; and "wars of liberation" would in many cases have precisely that object and that result. The Yugoslav and Czechoslovak proposals found in the concept of self-defence in the exercise of self-determination support for the right of minorities or other groups to fight with arms for their independence and the right of other States to assist them against the Member State of which they formed a part juridically. Australia had

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never supported that point of view. His delegation considered that colonial rule, whether by way of the administration of a Trust Territory or otherwise, was not contrary to the Charter, and States administering dependent territories in accordance with the Charter were responsible for the maintenance of law and order in those territories. There was nothing in the Czechoslovak or Yugoslav proposals which necessarily conflicted with that view; but if that was not the case, it would only increase the difficulty the Australian delegation had in accepting those proposals, because in those circumstances the Czechoslovak and Yugoslav proposals would not only find no support in the Charter but would contradict the express provisions it contained.

Mr. CRISTESCU (Romania), exercising his right of reply, said that remarks like those made at the previous meeting (A/AC.119/SR.16) about his country were scarcely calculated to contribute to the success of the Committee's work. His delegation had always refrained from arguing political questions in a legal committee and it would continue, in support of the Chairman, whose wisdom and impartiality it was happy to acknowledge, to try to maintain an atmosphere of serenity and co-operation.

Mr. KRISHNA RAO (India), exercising his right of reply, said that he was encouraged by the preliminary remarks of the Australian representative, which he regarded as a break, if not as a breakthrough. Since the Australian representative had referred to the dictionary definition of the word "force", he read out the definition given in the Oxford Dictionary in the hope that his colleague would bear it in mind when he came to define his position on paragraph 2 of the joint proposal (A/AC.119/L.15).

The CHAIRMAN suggested that he should depart from the usual procedure and, by way of exception, give the floor to two representatives whose names had not been on the list of speakers.

It was so decided.

Mr. EL-REEDY (United Arab Republic) said that his delegation had combined its comments on the proposals submitted by Czechoslovakia (A/AC.119/L.6), Yugoslavia (A/AC.119/L.17) and the United Kingdom (A/AC.119/L.8) with its general observations on principle A, and that it would now like to give its views on the Italian proposal (A/AC.119/L.14) and the joint proposal (A/AC.119/L.15), which had just been put before the Committee.

His delegation had examined with care and interest the Italian proposal aimed at strengthening the United Nations bodies responsible for the maintenance of international peace and security. That was an important agenda item for which the Committee should make due allowance in its consideration of principle A. Indeed, the ideas underlying the Italian proposal were so relevant that they deserved more thorough study by both the Special Committee and the Drafting Committee.

His delegation appreciated the spirit of compromise and open-mindedness which had inspired the three co-sponsors of the joint proposal (A/AC.119/L.15). It was glad to note that that proposal reproduced and refined the essential ideas in the Czechoslovak and Yugoslav proposals, which it had already welcomed, particularly the right of peoples to self-defence against colonial domination which denied them the right to self-determination. In his delegation's opinion, that was one of the most important phenomena in the evolution of international life since the signing of the Charter.

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(Mr. El-Reedy, United Arab Republic)

Paragraph 4, he noted, contained a new idea. His delegation, of course, supported any formula which would strengthen the principle of peaceful settlement of disputes (it would return to that point when the Committee took up principle B), but justice should always prevail in any such settlement. In other words, according to his interpretation of paragraph 4 - and he would like to hear the opinion of the sponsors on the matter - it did not legalize or condone the occupation of a territory by means contrary to the Charter or to United Nations resolutions, and hence the occupation of a territory in such circumstances was contrary to its provisions.

In conclusion, he said his delegation considered that the two proposals were a major contribution to the Committee's work.

Mr. SCHWEBEL (United States of America) said that he too wished to give the Committee his preliminary thoughts on the two new proposals (A/AC.119/L.14 and L.15) just submitted.

Although his delegation appreciated the efforts of the sponsors of the joint proposal (A/AC.119/L.15), it could not accept some of the conclusions they had reached. It felt that the end of paragraph 1 was unhelpful rhetoric. What was the significance of paragraph 2, and especially sub-paragraph (b)? He gave a number of hypothetical examples illustrating the many difficulties to which its interpretation gave rise. Paragraph 3 erred by omission since it failed to provide for the use of force by regional agencies acting in conformity with the United Nations Charter. So far as he knew, the validity of the Inter-American Treaty of Reciprocal Assistance, which envisaged that right for the Organization of American States, had not been challenged; nor had its conformity with the Charter.

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(Mr. Schwebel, United States)

In paragraph 3, his delegation could not accept the provision concerning the "right of peoples to self-defence against colonial domination in the exercise of their right to self-determination" for the same reasons which had prevented it from accepting the earlier texts. Assuming that that provision had already been adopted, one of the parties to the dispute at present before the Security Council could invoke it in an attempt to "crush" its victim. With regard to paragraph 4, on boundaries, he stood by what he had said at an earlier meeting (A/AC.119/SR.15). He was surprised, in view of the events of the past three years, to see a certain country among the sponsors of that paragraph. Lastly, he wondered whether a clause on acts of reprisal was necessary or desirable, since the notion of "reprisals" was difficult to define.

On the other hand, his delegation supported the excellent proposal by Italy (A/AC.119/L.14).

Mr. DADZIE (Ghana) confirmed that the interpretation of paragraph 4 of the joint proposal (A/AC.119/L.15) given by the representative of the United Arab Republic was in fact that of the sponsors. They, too, did not condone any breach of international law relating to existing boundaries, whether legally demarcated or not, and considered that any dispute in the matter should be settled in conformity with the Charter or with such decisions as the General Assembly might take after studying the report of the Special Committee.

He reserved the sponsors' right to reply at a future meeting to the questions asked by the United States representative. He asked the latter, however, to name the country to which he had just referred.

The CHAIRMAN, reminding the members of the Committee of the request he had made the previous afternoon, asked the representative of Ghana not to press his last question since the allusion did not relate to the discussion.

Mr. DADZIE (Ghana) deferred to the Chairman's request.

The meeting rose at 6.5 p.m.