UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.119/SR.36
27 October 1964

ORIGINAL: ENGLISH

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

First Session

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held at Mexico City,
on Friday, 25 September 1964, at 4.15 p.m.

CONTENTS.

PRESENT:

Chairman:	Mr. GARCIA ROBLES	(Mexico)
Rapporteur:	Mr. BLIX	Sweden
Members:	Sir Kenneth BAILEY	Australia
	U SAN MAUNG	Burma
	Mr. CHARPENTIER	Canada
	Mr. PRUSA	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. RATZIMBAZAFY	Madagascar
	Mr. MORENO	Mexico
	Mr. van GORKOM	Netherlands
	Mr. AGORO	Nigeria
	Mr. OLSZOWSKA	Poland
	Mr. CRISTESCU	Romania
	Mr. KHLESTOV	Union of Soviet Socialist Republics
	Mr. KHALIL	United Arab Republic

PRESENT (continued):

Members (continued):	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland
	Mr. HARGROVE	United States of America
	Mr. SALCEDO	Venezuela
	Mr. SAHOVIC	Yugoslavia
Secretariat:	Mr. STAVROPOULOS	Representative of the Secretary-General
	Mr. BAGUINIAN	Secretary of the Committee

/...

CONSIDERATION OF THE QUESTION OF METHODS OF FACT-FINDING IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 1967 (XVIII) OF 16 DECEMBER 1963 (A/5694, A/5725 and Add.1 and 2; A/AC.119/L.9, L.29)

Mr. van GORKOM (Netherlands) said that the material assembled by the Secretariat in its excellent study (A/5694) showed beyond any doubt the need for and the value of inquiry or fact-finding in the settlement of disputes between States. As could be seen from that study, the institution of international inquiry had evolved from an independent means of settlement of disputes into a procedure subsidiary to other means. The Hague Conventions of 1899 and 1907 had contained detailed provision for inquiry, and some disputes had been solved satisfactorily under the procedures established. The Bryan treaties of 1913-1915 had provided for permanent commissions of inquiry, but they had not been effective in practice, probably because they had made recourse to the commissions of inquiry binding and because the commissions were entitled to initiate action. Under the League of Nations, inquiry procedure had become an instrument of preliminary investigation available to the Council and the Assembly as central organs of conciliation. However, it had been little used. The General Act for the Pacific Settlement of International Disputes of 1928, revised in 1949, as also numerous bilateral treaties concluded during the same period, provided for commissions of conciliation and inquiry. It should be noted that as was stated in paragraph 125 of the Secretary-General's report, the reports of the commissions established under these instruments had not been binding.

In the period following the creation of the United Nations few treaties had been concluded in the matter but a considerable number of cases of inquiry and conciliation had been conducted through the United Nations. Inquiry took more and more the character of a subsidiary institution enabling the United

(Mr. van Gorkom (Netherlands)

Nations organs to decide what course of action should be followed in the light of prevailing circumstances. Inquiry combined with conciliation, however, had not worked satisfactorily. The panel of inquiry and conciliation established under General Assembly resolution 268 D (III) had never been used, probably for the following reasons:

(1) too much stress was laid on conciliation;

(2) the rules of procedure were rather scant and unclear;

(3) the Panel did not sufficiently provide for the need of technical fact-finding by experts in the field and;

(4) the articles relating to its use did not make clear whether the report of a commission chosen from the Panel was binding or not.

Inquiry as such, initiated by the organs of the United Nations, had in most cases, been successful.

Similarly, committees of investigation established by the Council of the Organization of American States had worked satisfactorily whereas the Pact of Bogota, which provided for inquiry combined with conciliation had been ratified by only nine States.

He pointed to the following common aspects and conditions for success of the cases of inquiry cited in the report of the Secretary-General: the fact-finding procedure was voluntarily accepted; the fact-finding organ had a subsidiary or auxiliary function; in most cases fact-finding proper was combined with expert investigation in the field; the reports of the fact-finding organ were in most cases not binding on the parties; decision-making was left to higher organs.

In the United Nations era, fact-finding had sometimes been lacking in system, and it could probably be greatly improved by better procedure and more

/...

centralization. With regard to the Secretary-General's suggestion in paragraph 386 that the General Assembly should appeal to Member States to accede to the Revised General Act and to participate in the establishment of the Panel for Inquiry and Conciliation, his delegation felt that before such an appeal was made, consideration should be given to ways of making both the General Act and the Panel more effective fact-finding instruments.

Only ten Governments had so far submitted comments on the question of fact-finding (A/5725 and Add.1 and 2). Six Governments had supported the idea of a permanent fact-finding centre, one had stressed that the effectiveness of its operation would depend on flexibility, and one had rightly drawn attention to the need for allowing for voluntary acceptance of the jurisdiction of any fact-finding body. In addition, two Governments had expressed doubts and raised objections.

In its working paper on methods of fact-finding (A/AC.119/L.9), the Netherlands delegation had tried to anticipate some of the objections which might arise. He wished to stress that:

(1) Recourse to any fact-finding body should be based on voluntary acceptance;

(2) The body in question should be a subsidiary one, in accordance with Article 22 or 29 of the United Nations Charter or Article 50 of the Statute of the International Court of Justice;

(3) It should be at the disposal of the parties to a dispute or to United Nations organs without prejudice to the right of the parties or the organs concerned to choose other means of fact-finding;

(4) Its reports should not be binding, any final decision resting with the parties or the organ concerned;

(5) It should be complementary to existing schemes for fact-finding;

(6) It should combine fact-finding proper with technical investigation by experts in the field.

(Mr. van Gorkom, Netherlands)

Since very few Governments had submitted their views and since the Secretary-General's report, for lack of time, had not dealt with certain aspects of inquiry not related to the settlement of disputes, his delegation believed that further study was required before any firm recommendation could be made. That was the reason for the draft resolution which it had submitted (A/AC.119/L.29).

Mr. BLIX (Sweden) said that his delegation had been among the sponsors of the General Assembly resolution calling for a study of the question of fact-finding. As had been stated by his delegation in the Sixth Committee, it was not thereby committed to the view that some kind of fact-finding machinery should be created. In its comments reproduced in document A/5725/Add.2, Sweden had suggested that it might be desirable to appeal to more States to accede to the revised General Act and to participate in the Panel for Inquiry and Conciliation set up in pursuance of General Assembly resolution 268 D (III). With regard to the proposal for new machinery, his Government had been more cautious, on the ground that ad hoc machinery could always be established as the need arose. However, Sweden was not opposed to the further exploration of the idea and welcomed the Netherlands delegation's contribution to the Committee's consideration of the subject.

For the reasons he had stated at the 34th meeting in connexion with principle D, he would not favour the adoption of any substantive resolution on the question of fact-finding at the present session. The Netherlands draft resolution (A/AC.119/L.29) was procedural in character and he agreed with its proposal that the Secretary-General should be asked to complete his study and that Member States should be invited to submit any views or further views they might have.

Mr. SINCLAIR (United Kingdom) said that his Government considered the establishment of the true facts of international disputes to be of cardinal importance if international peace and security was to be preserved. There should

(Mr. Sinclair, United Kingdom)

be no reluctance among States to accept the investigation of facts. Wherever the facts were in dispute, States unfortunately tended to interpret the situation so as to suit their own ends. Greater resort to the procedure of fact-finding, and perhaps the very existence of some new international fact-finding machinery, would probably lead to higher standards in the presentation of their cases by States. The Secretary-General's valuable report (A/5694) cited many cases where disputes had been prevented from reaching a dangerous stage through the method of fact-finding. It also showed the important role which had been played by the United Nations itself during recent years in the field of fact-finding. It was desirable, however, that fact-finding should be given a more important place in international affairs, and his delegation was interested by the suggestions along those lines made in the Netherlands working paper (A/AC.119/L.9, section A). While it had not had sufficient time to give to those suggestions the careful consideration which they deserved, his delegation supported the general approach adopted in the Netherlands document. It agreed in particular with the principle that fact-finding functions should be kept separate from decision-making functions. Fact-finding must be recognized as a distinct operation if States were to be encouraged to resort to it; it should not be regarded as a commitment to further procedures. At the same time, the independent and impartial determination of the facts might assist the settlement of disputes through negotiations or lead the parties to agree on some further third-party procedure.

He supported the resolution submitted by the Netherlands delegation; it was procedural in character and would allow Governments further time for reflection, not only on the Netherlands suggestions but also on those advanced in the written comments of Governments (A/5725 and Add.1 and 2) - notably the Swedish Government's suggestion that States might be urged to accede to the Revised General Act for the Pacific Settlement of Disputes.

/...

Mr. KRISHNA RAO (India) observed that under the Committee's terms of reference, any recommendation regarding the institution of a special international fact-finding body must be without prejudice to the right of the parties to any dispute to seek other peaceful means of settlement of their own choice; as was clear from the terms of General Assembly resolution 1967 (XVIII), recourse to any fact-finding body would have to be optional. His delegation, however, considered that the Committee should refrain from making any positive recommendation at all regarding the establishment of a fact-finding body. In the first place, it was wrong to suppose that the entire factual position connected with a particular dispute could be objectively assessed by an international fact-finding organ; in most disputes it would be very hard to separate the factual elements from legal and political issues. Disputes frequently centred not so much in points of fact as in questions arising from the moral or juridical implications of those facts; moreover, the wide variety of the ad hoc bodies which had been set up by the United Nations indicated the difficulty of establishing one body to deal with all contingencies.

As the Secretary-General's report (A/5694) showed and as the Swedish Government had pointed out (A/5725/Add.2), there was no lack of existing procedures and methods for fact-finding. The Swedish Government had also suggested that Member States should be urged to accede to the Revised General Act for the Pacific Settlement of Disputes and to participate in the Panel for Inquiry and Conciliation available under General Assembly resolution 268 D (III). At present only six States were parties to the Revised General Act. Thus, there was abundant machinery available; what was required was its more effective utilization.

The Secretary-General's report drew attention to the fact that during the League of Nations period, inquiry had been increasingly combined with conciliation. Another significant point had been raised in connexion with the consideration by

(Mr. Krashna Rao, India)

the League Assembly of a Norwegian-Swedish proposal for the compulsory reference of international disputes to an independent and permanent commission of conciliation. The Rapporteur of the First Committee, as quoted in the Secretary-General's report (A/5694, para. 381), had stressed that in some cases the Council of the League might be the most competent body to adjust the dispute, and compulsory previous recourse to a conciliation commission might have unfortunate consequences. The same argument held good with regard to commissions of inquiry. The appropriate United Nations body should not be prevented from embarking upon an investigation of its own when it seemed desirable. The ad hoc fact-finding bodies which had been established from time to time by the United Nations, as was pointed out in the Secretary-General's report, had formed part of the machinery of the peace-keeping system created under the Charter. The close inter-connexion between fact-finding and peace-keeping operations had helped to ensure the maintenance of international peace and security; it was undesirable that a separate international fact-finding body should duplicate the functions of United Nations organs in that respect. Moreover, an international fact-finding centre might not command the same respect as United Nations fact-finding bodies.

The possibility of misuse of commissions of inquiry had been mentioned in the Security Council in 1946 by the Netherlands representative, who had pointed to the danger of setting up commissions of inquiry as a matter of course whenever one State lodged a complaint against another State, whether or not the complaint was adequately substantiated. It seemed evident that a permanent fact-finding body could be similarly misused.

The best course would seem to be to rely on existing machinery. General Assembly resolution 268 D (III) already provided for a Panel for Inquiry and

(Mr. Krashna Rao, India)

Conciliation, and the similarity between that Panel and more recent proposals relating to fact-finding missions was admitted in paragraph 157 of the Secretary-General's report. There seemed to be no need either for the establishment of a special fact-finding body or for entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements.

His delegation had not had sufficient time to study the draft resolution just submitted by the Netherlands (A/AC.119/L.29). His preliminary reaction was that further study of the problem and further comments by Governments were unnecessary and that the financial implications of the proposal would need to be considered.

Mr. HARGROVE (United States of America) said that the study of methods of fact-finding had only just begun, and that it would probably not be possible to reach any substantive conclusions before the end of the session. It would be recalled that in the Sixth Committee, as well as at the present session of the Special Committee, the United States delegation had manifested some scepticism with regard to the mere proliferation of rules and had tried to distinguish between the desirability of reform in the behaviour of States on the one hand and the desirability of reform in the rules governing that behaviour on the other. The need for increased employment of effective fact-finding techniques was one thing; the need to establish new institutional devices or procedural rules another. As in the case of the four principles which the Special Committee had been studying, so in the matter of fact-finding, it would appear that the structure of international order was in some need of renovation; but it should not be assumed that its existing defects could be remedied merely by laying down new rules without shoring up its sometimes crumbling foundation of national resolve.

Those remarks were not intended to prejudge the question either of the desirability of changes in the existing arrangements for international fact-finding

(Mr. Hargrove, United States)

or of the establishment of entirely new procedures or institutions. On the contrary, his delegation was inclined at the present early stage of the Committee's deliberations to feel that certain changes could prove desirable. While no procedure was of any use without the requisite will to employ it in good faith, the mere availability of well-designed machinery set up for the specific purpose of fact-finding might induce States or United Nations organs to use it. The United Nations was in a better position than it had been even only five years ago both to assess the need for international fact-finding machinery in general and to determine what features should be incorporated in any new machinery that might be set up. Much experience in the use of fact-finding procedures had been accumulated both within and outside the United Nations, and that invaluable body of empirical evidence should be taken into account.

The question of fact-finding machinery had characteristically been raised in connexion with the types of circumstances envisaged in Chapters VI and VII of the Charter. Obviously, those were not the only circumstances in which international organizations were concerned with the determination of facts, and it would be worth while to explore the question whether new machinery or the increased use of existing procedures might be needed to perform the fact-finding function in spheres other than that relating to the settlement of disputes. Perhaps the improvement of fact-finding techniques in areas where national interests did not clash so sharply would serve to increase the international community's confidence in fact-finding procedures to be employed in connexion with disputes falling under the provisions of Chapters VI and VII.

The Netherlands delegation had made a useful contribution to the Committee's work, for the question of fact-finding was integrally related to that of the four principles just examined. His delegation thought that more could be done to

(Mr. Hargrove, United States)

improve existing procedures, but it had no objection to a continued study of the actualities and potentialities of fact-finding machinery.

Mr. PRUSA (Czechoslovakia) said that the parties to a dispute should have the widest possible choice of means of settlement; that was one of the reasons why many States had refused to recognize the compulsory jurisdiction of the International Court of Justice. Similarly, that explained why the Czechoslovak delegation was unable to endorse the idea of an international fact-finding body proposed by the Netherlands representative. The experience gained since the signing of The Hague Convention of 1899 and the Bryan Treaties showed that a permanent fact-finding body was unnecessary; the organs of the United Nations itself, and those of individual States, had at their disposal a great variety of means of obtaining information, and the establishment of a special international fact-finding body might encourage attempts to circumvent the United Nations organs, particularly the Security Council. From the practical standpoint, moreover, it was difficult to see how a permanent body could be set up which would be both capable of inquiring into the complicated circumstances of the manifold disputes characteristic of the present era and at the same time acceptable to all the parties. Under existing international law and practice, means of inquiry were available which allowed the parties the utmost flexibility in fixing conditions and procedures; a permanent fact-finding body, on the other hand, would not easily be able to adapt itself to the special circumstances of a particular case. Careful study of the question led to the conclusion that the idea of establishing such a body was both impractical and legally disputable, for it might well complicate rather than simplify the settlement of disputes and could in some instances infringe the sovereignty of the States parties. Finally, to consider the question of fact-finding would only divert the Special Committee from its main task, that assigned to it under General Assembly resolution 1966 (XVIII).

/...

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation was opposed to the establishment of a fact-finding body empowered to inquire into the facts of international disputes. That did not mean that the Soviet Union in any way underestimated the importance of determining the facts of a dispute or situation; on the contrary, it felt that objective inquiry into the facts was of the utmost importance in reaching correct decisions aimed at bringing about peaceful settlements. The need for such verification of the facts explained why States made use of a wide variety of means of inquiry, such as those provided for in many multilateral agreements and the ad hoc committees of inquiry which could be set up under the United Nations system. Thus the problem was to see that the means already available were used rather than to establish a special international fact-finding body, which might, indeed, undermine the existing arrangements provided for in the United Nations Charter and infringe the rights of the principal organs of the United Nations, particularly the Security Council.

There was no need to ask the Secretariat to continue study of the matter, as proposed in the Netherlands draft resolution (A/AC.119/L.29) for it had already made a thorough study. The fact that very few States had submitted comments in response to the request contained in General Assembly resolution 1967 (XVIII) showed that most States did not attach great importance to the matter.

The Special Committee should not submit a draft resolution on methods of fact-finding; it could simply state in its report that it had discussed the matter.

Mr. DADZIE (Ghana) said that at the last session of the General Assembly his delegation had argued in the Sixth Committee that the question of fact-finding, in view of its great importance, should be made a separate agenda item so that it could

(Mr. Dadzie, Ghana)

be given exhaustive consideration in all its aspects. Ghana had opposed the idea of assigning the matter for study to the Special Committee together with the four principles because it had foreseen that the study of the latter would raise considerable difficulties, and that the Special Committee would be unable to make specific proposals until the matter had been examined further. He would like, however, to express his delegation's appreciation of the valuable work already done by the Secretariat on the subject and of the initiative taken by the Netherlands delegation. The provision in the Netherlands draft resolution requesting further study was in conformity with the Ghanaian delegation's views on the subject, but only in respect of such further study as the Secretary-General might deem necessary and for which the General Assembly might make funds available. In the absence of an opportunity for further discussion of the matter in the Special Committee, his delegation would be unable to support the inclusion of the words "and in particular with regard to fact-finding not relating to the settlement of international disputes" in operative paragraph 1 or the provisions of sub-paragraphs (a), (b) and (c) of paragraph 2.

Mr. MORENO (Mexico) said that the principle of peace with justice was one of the most important of the foundations on which Mexico's foreign policy rested. The Mexican delegation felt that the best contribution it could make to the Committee's study of methods of fact-finding would be to give a brief account of existing law on the subject in the Americas, in view of the notable successes achieved by the American States in the peaceful settlement of disputes. Under the system established by the Organization of American States, members had at their disposal various means of establishing the facts of a dispute. Thus, under the Inter-American Treaty of Reciprocal Assistance, the Organ of Consultation had appointed committees of inquiry

/...

(Mr. Moreno, Mexico)

in almost all the cases in which that instrument had been invoked, and the information thus obtained had made it possible to settle the disputes in question. Yet that very success highlighted one of the greatest deficiencies in the Inter-American system - the lack of truly effective provision for establishing adequate procedures for the pacific settlement of disputes and determining the appropriate means for their application. The requisite instrument existed - the American Treaty on Pacific Settlement - but it had so far been ratified by only nine States, including Mexico. The successes of the Inter-American community in the peaceful solution of conflicts had been achieved in spite of that deficiency, which should be remedied by a larger number of ratifications, with the smallest possible number of reservations, of the American Treaty on Pacific Settlement. That Treaty provided for procedures of investigation and conciliation, the purpose of which was to clarify the points at issue and try to bring the parties to agreement in conditions acceptable to both or all of them. If in the view of the parties the controversy related exclusively to questions of fact, the committee making the inquiry limited itself to investigating those questions; perhaps that answered the Netherlands representative's remark about a possible defect in the Treaty. In any case, the conclusions of the committee of investigation and conciliation were not binding with respect to either questions of fact or questions of law, but were simply recommendations submitted to the parties to facilitate a peaceful settlement. Mention should also be made of the Inter-American Peace Committee, one of whose major functions was to investigate the facts underlying international disputes. That Committee acted at the request of any State directly interested in a dispute, but only with the consent of the other party or parties, and it required the express consent of States to carry out investigations in their territory. The Committee's conclusions, which were not binding on the

/...

(Mr. Moreno, Mexico)

parties, were set forth in a report submitted not only to the higher organs of the Organization of American States, but also to the United Nations Security Council. It should be stated in conclusion that the successes achieved by the Americas in relation to fact-finding were due in large measure to the flexibility which the present system allowed.

His delegation was therefore prepared to support the Netherlands proposal (A/AC.119/L.29), in view of the following considerations: firstly, that it was aimed at strengthening the means of peaceful settlement of international disputes; secondly, that it recognized that further study was needed before a substantive decision on the matter could be reached; thirdly, that it allowed for the possibility of assigning the task of fact-finding to existing bodies; fourthly, that it would leave the parties free to make use of other means of peaceful settlement if they so desired; and fifthly, that it would not infringe the authority of any organ of the United Nations to choose other methods of fact-finding.

Mr. CRISTESCU (Romania) reiterated his view that negotiation was the most important means for the settlement of disputes, and that parties to a dispute should be free to choose among the various means of peaceful settlement. He was not opposed to international inquiry, but held that it must be effected in accordance with the Charter. In view of the functions of the principal organs of the United Nations and the possibility of resorting to ad hoc organs of inquiry, he was opposed to the establishment of a standing international fact-finding body; he would therefore vote against the Netherlands draft resolution (A/AC.119/L.29). The task of the Special Committee was to concentrate on the elaboration and development of principles of international law, not to prepare new procedures overlapping existing United Nations arrangements and encroaching on the right of States to choose freely and in conformity with the Charter the means of settling their disputes.

/...

Mr. OHTAKA (Japan) endorsed the idea of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements. From the point of view of maximum effectiveness and impartiality, he was inclined to favour the establishment of a new international body, and if such a body was set up it would be desirable for all Members of the United Nations to be automatically parties to its statute, for its expenses to be shared by all parties and for it to have compulsory jurisdiction. He recognized, however, that it might be more practicable to leave some room for voluntary acceptance of the new body's jurisdiction. Careful attention should be paid to the body's composition and terms of reference, so as to ensure its prompt action and impartiality. The early establishment of a fact-finding body would greatly contribute to the maintenance of world peace and security.

Mr. MONOD (France) said that the term "fact-finding", which was relatively new and perhaps not yet fully accepted in juridical terminology, was being used in preference to the older and better-established term "inquiry".

The excellent report of the Secretary-General on methods of fact-finding (A/5694) showed that while there had been relatively frequent recourse to commissions of inquiry or conciliation before and immediately after the First World War, such bodies had been little used in recent years. Indeed, the Revised General Act for the Pacific Settlement of International Disputes (1949) had been acceded to by only six States. During the present century States had had at their disposal three different systems of inquiry and conciliation - the systems of The Hague Conventions, the League of Nations and the United Nations. In addition, more than 200 treaties providing for inquiry procedures had been concluded between States between 1919 and 1940. In that regard, the following questions arose,

(Mr. Monod, France)

questions which in his view could not be answered without further thorough study. Why were the existing means inadequate for the needs of the world community? To the extent that they had not provided satisfactory results, what were the reasons for their failure? What grounds were there for thinking that a specialized organization to which recourse would be optional would succeed where previous attempts had failed or given insufficient results? Was the method of fact-finding possible without the simultaneous determination of the political content of the facts, and was it reconcilable with the almost universal refusal of States to submit their political disputes to judgement? The further study recommended in the Netherlands draft resolution should provide answers to those questions, and to others which would emerge from the present discussion. He would vote in favour of the draft resolution.

Mr. SALCEDO (Venezuela) said that both the United Nations and the Organization of American States had provided in their respective Charters for inquiry as a means of settling disputes, and both had at various times made successful use of commissions of inquiry. In the light of that experience, his delegation was in favour of exploring possibilities for developing fact-finding procedures, and considered that the establishment of a fact-finding system would be most useful in the settlement of international disputes. He endorsed the ideas expressed in paragraphs 1, 2 and 3 of the Netherlands working paper (A/AC.119/L.9). The success of an international fact-finding body would depend on its receiving unanimous or nearly unanimous support from the Members of the United Nations. There would of course be difficulties to overcome in reaching agreement on the procedure for establishing the body and on its relationship to the United Nations, its terms of reference and its membership. Those matters required further study and discussion, and in that regard the ideas and suggestions put forward in

(Mr. Salcedo, Venezuela)

paragraph 4 of the Netherlands working paper would be most helpful. His delegation would support the Netherlands draft resolution (A/AC.119/L.29).

Mr. CHARPENTIER (Canada) said that at the last session of the General Assembly his delegation had joined in sponsoring the draft resolution adopted as resolution 1967 (XVIII) because it had believed that a study of methods of fact-finding would be valuable and timely. The support that resolution had won and the comments so far received from Governments bore out that view. The recent partial test-ban agreement and the peace-keeping and observations operations of the United Nations had brought to the fore the question of possible non-national agencies for pre-investigation and fact-finding. No proposal advanced for the settlement of international disputes should be rejected out of hand. The International Court of Justice could only benefit from the creation of intermediate machinery adapted to particular situations, for such machinery would help Member States to grow accustomed to procedures for peaceful and lasting settlement, while at the same time giving international law greater flexibility.

His delegation was convinced that the establishment of impartial fact-finding machinery was in the long run inevitable. It was part of the process of the elaboration of rules of international law, and responded to a need of the international community at the present stage of its development.

He endorsed the Netherlands proposal (A/AC.119/L.29), which took into account the fact that means of peaceful settlement must be sufficiently attractive to States to win their confidence and support, and which did not seek to accomplish more than was possible. The fact-finding arrangements set up by the League of Nations had suffered by becoming involved in the sphere of conciliation, and there were no doubt other reasons why The Hague Convention of 1907, the Revised General Act of 1949 and General Assembly resolution 268 D (III) had virtually fallen into

(Mr. Charpentier, Canada)

disuse. A questionnaire to Governments designed to determine those reasons could be the next step in the present study of fact-finding. The replies might show whether existing arrangements should be modified, whether a new body should be established or whether some other solution, such as the use of panels of assessors like those employed in many countries in commercial and maritime law, should be envisaged. The Secretariat should also study the question of international fact-finding as envisaged in some treaties, which it had so far been unable to do for lack of time (see A/5694, para. 7). Such research would help Governments not only to decide on the institutional questions involved but also to form a better idea of the role of fact-finding in the matter of compliance with treaty commitments. That was a particularly important aspect of the subject, in view of the fact that the International Law Commission was soon to complete its formulation of the law of treaties.

He would be prepared to support the Netherlands draft resolution if the Netherlands delegation would find place in it for the two suggestions he had put forward.

Mr. KHALIL (United Arab Republic) said that since the Committee had not had time to consider the report of the Secretary-General on the question of methods of fact-finding (A/5694), he would confine his remarks to the Netherlands draft resolution (A/AC.119/L.29) on that subject. First, with regard to the second preambular paragraph, the Committee could not possibly claim to have "studied" the report of the Secretary-General; the most it could say was that it had received the report. Operative paragraph 1 of the draft resolution went beyond the Special Committee's mandate under General Assembly resolution 1967 (XVIII), which clearly referred to fact-finding in its relation to the peaceful settlement of disputes under Article 33 of the Charter.

Mr. ARANGIO RUIZ (Italy) supported the Netherlands proposal (A/AC.119/L.29) and commended the Secretariat for its excellent report. The development of methods of fact-finding, with the development of all United Nations enforcement and settlement procedures, was among the few real answers to the problem of making the Charter and its principles more effective with a view to ensuring friendly relations among States. It was therefore regrettable that while the Special Committee had been able to debate at relative length the formulation of mere principles, or rules of conduct, it was not to have an opportunity to devote itself seriously to the study of fact-finding methods along the lines indicated by the Netherlands delegation. However much they might need clarification and development, the basic rules of the Charter were already available for Member States and United Nations bodies to apply; it was in the field of institutions that improvements were most urgently needed. The adoption of more adequate methods of fact-finding would be an important part of that process of improvement. His delegation therefore looked forward to early positive action on the Netherlands proposal. It believed that the attitude of Governments towards the institutionalization of fact-finding procedures would in the long run prove a far more decisive test of goodwill in international relations than any degree of enthusiasm for the proliferation of general principles or rules of conduct. It was very easy to formulate rules; the difficulty lay in their application, and only international organs could effectively deal with that problem.

The meeting rose at 6.45 p.m.