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SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. AZZAROUK (Libyan Arab Jamahiriya)

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The meeting was called to order at 10.15 a.m.

WELCOME TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, THE JUDGES OF THE COURT AND THE REGISTRAR OF THE COURT

1. The CHAIRMAN welcomed, on behalf of the Committee, the President of the International Court of Justice, three of the Judges of the Court and its Registrar, and thanked them for the interest which the Court consistently showed in the work of the Sixth Committee.

2. Mr. SINGH (President of the International Court of Justice) thanked the Chairman and members of the Sixth Committee for their welcome.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued) (A/42/41; A/C.6/42/L.1)

3. Mr. BATH (Brazil) said that, with the adoption of the draft Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, the General Assembly would be closing a chapter that it should endeavour not to repeat in the future. Responsible participation in efforts such as that undertaken by the Special Committee must be based on the search for common ground and constructive dialogue. The Special Committee's task had not been to restate the principle of non-use of force but to examine the possibility of strengthening it. Although the Special Committee could have provided an institutional framework for a very useful exercise in that regard, it had unfortunately fallen a prey to a confrontation between different groups of delegations. Only after the idea of drafting a world treaty had been dropped had there been a real possibility of progress in the Special Committee's work.

4. At its most recent session the Special Committee had dedicated itself earnestly to finalizing the draft Declaration, but regrettably, it had not been possible to give more consideration to many of the provisions included in the draft. The text in question was a document of a declaratory nature listing generally accepted principles and norms, which did not seem to justify the 10 years that had been dedicated to the matter. Brazil did not have any objections to the content of parts I and II of the draft but believed that an additional effort could have been made to produce a more progressive document. As it stood, the draft Declaration would not have any effect on the behaviour of States or on the quality of the law governing relations between them. However, the draft Declaration had the merit of representing the expression by all States of the permanent validity of a number of important principles.

5. Part III of the text was an essential part of the draft Declaration, because it was not enough simply to reaffirm the principle of non-use of force in international relations and other related norms; attention must also be given to concrete means of making the implementation of such norms effective. That aspect of the question could not be separated from the discussions on the improvement of

(Mr. Bath, Brazil)

the functioning of the Organization in the field of the maintenance of international peace and security. Unfortunately, to a great extent the provisions of part III represented little more than a repetition of the terms of the Charter of the United Nations. A more significant contribution could have been made in that respect if a more open and imaginative discussion of possible ways of strengthening the mechanisms laid down in the Charter and of the practice that had evolved at the United Nations in the field of the maintenance of international peace and security had been undertaken.

6. Although it was limited, the contribution made by the Special Committee in relation to one of the fundamental principles laid down in the Charter should not be dismissed. The draft Declaration shed light on the relationship between the principle laid down in Article 2, paragraph 4, of the Charter and a number of other important principles and norms. However, the true significance of the draft Declaration would be confirmed only if in the future a renewed effort was made to build upon the Special Committee's work. Any such initiative presupposed greater confidence in the legislative power of the United Nations and in its capacity to develop respect for rules of general international law. With those considerations in mind, his delegation would support the adoption of the draft Declaration.

7. Mr. FRANCIS (Jamaica) said that the draft Declaration, which represented the fruition of the Special Committee's endeavours over the past 10 years, was of profound significance for international relations. The provisions of the draft Declaration, which were linked to those of important existing instruments, set forth simple truths and irrefutable tenets of the Organization based on the Charter, the jurisprudential practice of the United Nations, generally recognized principles of international law, and practice accepted by States. The draft Declaration contained the quintessential elements that should regulate international relations, in conformity with the Charter.

8. Turning to the three issues of the settlement of disputes, development and disarmament, he said that paragraphs 16, 17, 26 and 32 of the draft were all relevant to the first of those issues. It was particularly important that the permanent members of the Security Council should move in unison where the maintenance of international peace and security was concerned. The Security Council had often been crippled by the veto, which should be used as infrequently as possible in the crucial area of the maintenance of international peace and security. There had recently been evidence of a greater willingness on the part of the permanent members to act in unison, which should be encouraged by States Members. The important issue of development was dealt with in paragraph 24, which highlighted both the need for economic growth and the developing countries' special requirements. Lastly, in connection with the issue of disarmament, which was dealt with in paragraph 18, it must be recognized that there was an inextricable link between development and disarmament. With regard to disarmament, it was encouraging to note the recent agreement achieved between the two super-Powers on certain categories of nuclear weapons in Europe. Jamaica wished to congratulate the leaders of the two countries concerned for their courage in taking that step. It was particularly significant that they had taken account of confidence-building measures.

(Mr. Francis, Jamaica)

9. He wished to suggest that, once it had been adopted, the Declaration should be issued in the form of a booklet that would also contain an annex setting forth other relevant instruments and material.

10. Mr. PETROVSKY (Union of Soviet Socialist Republics) said that statements made at the current session of the General Assembly as well as significant developments in the world at large bore witness to the ever-increasing importance attached by the international community to the principle of non-use of force in international relations. Universal security presupposed the demilitarization, democratization and humanization of international relations and could be achieved only on the basis of an all-embracing rule of law predicated upon the absolute primacy of international law in political affairs. The establishment of legal security guarantees was of particular importance in that respect. The draft Declaration, arrived at as a result of many years of collective effort by the world community as a whole, was called upon to play an important role in achieving that end.

11. While it did not contain everything that any State or group of States might have wished it to contain, the draft Declaration was nevertheless a substantial political document which covered its subject-matter at many levels and outlined clearly the main aspects of the principle of non-use of force. Its adoption by consensus in the Special Committee was in itself a manifestation of the new political thinking which sought to meet the interests of all States in a balanced manner on the basis of compromise and mutual interest. Documents adopted by consensus deserved to occupy a special place among United Nations decisions, provided of course that the consensus was maintained not only at the adoption but also at the implementation stage. His delegation was accordingly in favour of enhancing the morally and politically binding nature of documents adopted on a consensus basis.

12. In supporting the draft Declaration, his delegation noted with satisfaction that its essential tenor was consistent with the ideas set forth in the Lenin Decree on Peace of 1917, the Soviet State's first foreign policy act. By adopting the draft, the United Nations would make a major contribution to eliminating the existing discrepancy between the political practice of States and universal moral and ethical standards, which, in a world where the very survival of mankind was not assured, demanded to be given priority. The adoption of the draft Declaration would represent a major step towards international relations based on the same standards of justice which governed relations between individual human beings.

13. Mr. TANOH (Ghana) stressed the importance of the issue under consideration to the conduct of relations between States and the maintenance of international peace and security and commended the clarity of purpose and spirit of co-operation with which the members of the Special Committee had addressed their difficult task. His delegation attached particular importance to paragraphs 1, 2, 3, 5, 6, 17, 23 and 24 of the draft Declaration and noted that many of its provisions reflected findings of the International Court of Justice, in particular in the case concerning Military and Paramilitary Activities in and against Nicaragua. Guided by the concept of international law embodied in those findings, his delegation

(Mr. Tanoh, Ghana)

welcomed the draft Declaration as a necessary first step towards the eventual codification of rules prohibiting the use of force in international relations and governing the exceptions thereto. It was to be feared, however, that in the absence of a definite and precise elaboration of the content of those rules, military force would continue to be used to enforce capricious interpretations of international law in the interest of national policies. On the other hand, the fact that the draft Declaration had been adopted by consensus in the Special Committee could be viewed as a hopeful sign of the renewed will of States to observe the peremptory requirements of international law and to use the institutional mechanisms provided by the Charter for the peaceful settlement of disputes. Accordingly, and without prejudice to its desire to see comprehensive rules and procedures on the subject of the non-use of force in international relations formulated in an appropriate document in the near future, his delegation would support the draft's adoption by consensus in the Committee.

14. Mr. KERNOGA (Byelorussian Soviet Socialist Republic) said that the draft Declaration was an important political and legal document. Current conditions required a fundamentally new approach to international problems because it was absurd to try to solve them by force in the space age. The behaviour of States and Governments had to be brought into line with the realities of the nuclear era.

15. Serious efforts should be made to build up peaceful coexistence on the basis of disarmament and equal security for all. But equal security could only be guaranteed by renunciation of the idea of promoting peace from a position of strength. The Soviet idea of establishing a comprehensive system of international security was intended to make peaceful coexistence the highest universal principle of inter-State relations.

16. It was important that the military doctrines of all States and alliances should be defensive in nature and based on the idea that the military way of solving disputes was inadmissible. The Warsaw Treaty States had already declared that they would never begin military operations unless they themselves were attacked and would never be the first to use nuclear weapons. Real hopes of reaching an understanding to eliminate whole categories of nuclear missiles from Europe had materialized and that, if achieved, would be a significant step towards nuclear disarmament.

17. People were becoming increasingly aware of the futility of the policy of strength, militarism and confrontation. In current conditions, the principle of the non-use of force was of paramount importance for avoiding confrontations between States because it enabled international security to be seen as the result of their mutual renunciation of war and other aggressive actions. It also established the responsibilities of States towards the international system as a whole. Affirmation of a more comprehensive principle prohibiting the threat or use of force would represent a historic achievement and a new stage in the development of international law.

(Mr. Kernoga, Byelorussian SSR)

18. His delegation welcomed the completion of the Special Committee's work on the draft Declaration as a collective demonstration of good will and co-operation. It was gratifying that a number of factors had been identified that had achieved general recognition as essential components of the future declaration. In particular, the draft devoted a separate article to the fundamental significance of disarmament for strengthening peace and security. Other important provisions concerned the peaceful settlement of crisis situations and regional conflicts and the responsibility of States to refrain from various hostile activities. The inclusion of a paragraph on inter-State co-operation against international terrorism was also a reflection of current realities.

19. The Special Committee's agreement by consensus on the text of the draft Declaration had once again proved the possibility of finding mutually acceptable solutions. His delegation hoped that the General Assembly would adopt the draft Declaration, because that would strengthen the growth of new political thinking based on the clear realization that universal security could only be guaranteed by political means and not by force.

20. Ms. XUE Hanqin (China) said that the draft Declaration contained various elements favouring application of the principle of non-use of force, such as the provision stating that the unlawful use of force entailed international responsibility and the emphasis on the universal character of the principle, which meant that no excuse could be invoked to justify its violation. The draft also sought to strengthen the effectiveness of the principle in all aspects of international relations on the basis of the experience of the United Nations.

21. Her delegation believed that aggression was the most serious and dangerous form of the illegal use of force. It was therefore important to affirm that aggression constituted an international crime and thus gave rise to consequential rights and obligations of the international community and countries concerned to resist it.

22. The problem of distinguishing between the legal and illegal use of force was a difficult one that deeply concerned the international community. International practice, the codification of international law, and the decisions of the International Court of Justice had provided useful guidance in that respect, but codification of the principle of non-use of force would be advanced if the draft Declaration also addressed the issue.

23. The principles of the non-use of force and the peaceful settlement of disputes were mutually related. Her delegation therefore held that if an international dispute involved a violation of the former, the country that had resorted to the illegal use of force should cease to do so in the interest of achieving a solution.

24. China consistently maintained that States should strictly observe the five principles of mutual respect for sovereignty and territorial integrity, non-aggression, non-interference in internal affairs, equality and mutual benefit, and peaceful coexistence. It invariably opposed the use or threat of force in

(Ms. Xue Hanqin, China)

international relations and advocated the peaceful settlement of international disputes. Being in favour of the drafting of legal documents to promote the principle of the non-use of force, her delegation supported the draft Declaration and hoped that it would be adopted by consensus.

25. Mr. CULLEN (Argentina) said that his delegation was pleased that the Special Committee had had a productive session, and it reiterated its support for the recommendation that the General Assembly should adopt the draft Declaration. The satisfaction of the moment, however, could not hide the fact that after so many years a better outcome might have been expected. Argentina shared the view expressed the previous day by Mexico that the hurried drafting of the Declaration had been the result of an express agreement to bring the work of the Special Committee to an end rather than a solution to the substantive problem of the use of force in international relations.

26. His delegation agreed with Mr. Treves, Chairman of the Special Committee, that many delegations had joined in the consensus because the draft Declaration, as a whole, had appeared to be the best possible compromise. Of the three positive sides of the new instrument noted by Mr. Treves, his delegation hoped that the third one in particular - the Declaration's practical impact on the conduct of States - would take concrete form. In comparison to previous declarations, the draft Declaration placed more emphasis on the interrelationship between the general principles of international law and the non-use of force. Many delegations, including that of Argentina, had maintained at the Special Committee's session that certain generally accepted areas very closely linked with the non-use of force and the peaceful settlement of disputes, deserved to be included in the new instrument. He referred in particular to what could be considered the positive or active side of the non-use of force, such as international co-operation and economic development, situations involving political and economic coercion and the principle of non-interference or non-intervention, to which the Latin American countries had given major emphasis. Although the Special Committee's fulfilment of its last mandate was a positive development, his delegation could only feel that, in the rush to conclude the work, important ideas had been omitted and the cost in terms of the Organization's resources and the time and work of delegations had not been justified.

27. Ms. VOLOCHINSKY (Chile) said that Article 2, paragraph 4, of the Charter prohibited the threat or use of force in international relations, including the prohibition not only of war but also, in general, of any threat or use of force; the scope of the prohibition excluded force for whatever purpose it might be used. Under the Charter, there were only two express exceptions to that general rule: self-defence in the case of an armed attack and coercive measures ordered or authorized by the Security Council. Her delegation had suggested in the past that the development of the principles, procedures, institutions and machinery enshrined in the Charter should be emphasized in order to create the conditions for the full effectiveness of the principle which the Special Committee was called upon to enhance.

(Ms. Volochinsky, Chile)

28. Chile had co-sponsored an initiative to add a topic to the list of headings proposed by the Chairman of the Special Committee at its fifth session, dealing with the respect and fulfilment in good faith of international obligations, to which paragraph 12 of the draft Declaration referred. That principle had also been enshrined in the preamble to the Charter and in earlier declarations. The due fulfilment of international obligations was obviously a necessary prerequisite to the maintenance of international peace and security.

29. Her delegation had on previous occasions drawn attention to the interrelationship between the principle of non-use of force and that of the peaceful settlement of disputes. However, although the two principles were complementary, the evolution of their respective legal rules had not been parallel; although the legal codification of the principle on non-use of force had culminated in the ultimate adoption of a strict norm, the obligation to settle disputes peacefully had not been the subject of such a highly developed and definitive set of rules. That was partly the result of the difficulties arising from the very nature of an obligation of result, whose subjects were free to choose the form and means by which the result constituting the objective of the obligation was to be reached, pursuant to Article 33 of the Charter. The possibilities for disagreement about the means of achieving the peaceful settlement of disputes should be reduced. The strengthening of the role of the International Court of Justice was both an urgent and an important task, as was the promotion of the compulsory settlement of disputes.

30. It was unfortunate that the spiralling technological and scientific progress in recent decades had not been accompanied by similar progress in morals and ethics. On the positive side, however, the prohibition of the threat or use of force in international relations was now part of customary international law and therefore applied to all States, whether or not they were Members of the United Nations. Her delegation therefore felt that the draft Declaration, although imperfect, should be adopted by the Sixth Committee and the General Assembly. It should be borne in mind, however, that the importance of the draft Declaration would be gauged by its practical impact on the conduct of States.

31. Mr. RAZMI (Afghanistan) said that his delegation strongly supported the idea that the future Declaration should contain provisions on the efforts to achieve a new international economic order and disarmament, the prevention of terrorism, the strengthening of the role of the United Nations system of collective security and the strengthening of international co-operation. The operative part of the draft Declaration contained the most important principles of international law, constituting a logical and scientific foundation for the principle of non-use of force. The peaceful settlement of disputes was the most relevant and inseparable element of that principle.

32. Afghanistan, as a peace-loving country, had resorted to the principle of peaceful settlement of disputes in order to find a political solution to the situation in respect of Afghanistan. To that end, his Government had put forward proposals on 14 May 1980 and 24 August 1981 aimed at settling the issue through

(Mr. Razmi, Afghanistan)

negotiation. Although Afghanistan was a victim of an undeclared war waged by the enemies of the April revolution of 1978, it had taken a constructive position at the Geneva talks between Afghanistan and Pakistan.

33. The adoption of the draft Declaration could be a substantial contribution to safeguarding a peaceful future for mankind. Although his delegation supported the draft Declaration as a whole, it felt that every normative instrument should regulate its subject matter clearly and objectively in order to prevent misunderstanding and misinterpretation. Paragraph 8 covered only one side when it declared that "no State may use or encourage the use of economic, political or any other type of measures to coerce another State". To make the provision more comprehensive, States should also be required, as they were under Article 2, paragraph 5, of the Charter, to "refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action".

34. His delegation was strongly in favour of the adoption of the draft Declaration by consensus and would therefore not insist on amending that paragraph. However, if his suggestion was supported in general by all members of the Sixth Committee, paragraph 8 could be revised in an appropriate and constructive way.

35. With regard to paragraph 22, it was noteworthy that the Democratic Republic of Afghanistan had already become a party to the majority of international human rights instruments and was faithful to its commitments. It would in future consider becoming a party to all international instruments in that field except those that were in gross contradiction with the Islamic Shariah.

36. Lastly, his delegation hoped that the draft Declaration would lay a firm foundation for a world treaty on the non-use of force in international relations, as proposed by the Soviet Union in 1976.

OTHER MATTERS

37. Mr. ROSENSTOCK (United States of America) said that he wished to raise two points unconnected with the substance of the item under discussion but prompted by the importance of some of the statements that had been made. The first concerned the disturbance caused by members of the Committee rushing to obtain copies of statements that had just been delivered and distracting attention from what following speakers had to say. He wondered if a better way could not be devised for members to obtain copies of texts if they so wished. The second concerned the inaccuracy of some press releases on the Committee's proceedings, on which members often relied because of the unavoidable delay in issuing summary records. While he sympathized with those who had the difficult task of producing such releases, the degree of inaccuracy in reporting one statement by his delegation had been seriously misleading. He therefore hoped that those responsible for preparing press releases would, in case of need, consult with the Office of Legal Affairs or the speaker concerned in order to maintain the necessary standard of accuracy.

38. The CHAIRMAN said that the first of the problems mentioned by the United States representative could be solved by speakers making copies of their texts available at the entrance to the conference room.

39. Mr. XALINKIN (Secretary of the Committee) said that the attention of the Department of Public Information would be drawn to the point made by the United States representative concerning the need to ensure the accuracy of press releases on statements made in the Committee.

The meeting rose at 12.25 p.m.