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at 10 a.m.

New York

SUMMARY RECORD OF THE 25th MEETING

Chairman: Mr. AZZAROUK (Libyan Arab Jamahiriya)

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

AGENDA ITEM 137: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/42/33)

AGENDA ITEM 129: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)

1. Mr. VOORE (Canada) said that the work of the Special Committee on the Charter was twofold: on the one hand, to make the United Nations more attractive as a forum for the development of practical solutions to international problems and, on the other, to improve and rationalize the internal functioning of the organization. Although the General Assembly had initially mandated the Special Committee to provide an ongoing review of the Charter, subsequent sessions had demonstrated that the more modest goal of making improvements within the framework of that instrument was preferable.

2. His delegation was pleased to learn that an understanding among key protagonists had finally produced progress on a number of fronts, and expressed the hope not to see return to the time when the Special Committee appeared symptomatic of the very illness for which it was supposed to propose a cure.

3. The Special Committee's work had focused in 1987 on three interrelated questions. With regard to the first, the peaceful settlement of disputes, Canada whole-heartedly supported the preparation by the Secretariat of a draft handbook on the peaceful settlement of disputes between States, which would be a concrete step in promoting the peaceful settlement thereof. His delegation, although it appreciated the constraints under which the Secretariat was operating, was concerned at the apparent lack of progress in the production of that document.

4. Canada drew attention to revised working paper A/AC.182/L.52/Rev.1 on resort to a commission of good offices, mediation or conciliation within the United Nations, submitted by the Romanian delegation, and expressed its appreciation for the attempt to facilitate the production of a more widely acceptable document. While his delegation supported in principle the development of innovative methods for the peaceful settlement of disputes, it was not convinced that the proposed commission would be able to find solutions where existing institutions, including the International Court of Justice, had been unable to do so. The fact that such institutions had not been utilized more extensively probably indicated a lack of willingness by States to subject themselves to potentially unfavourable solutions rather than a lack of flexibility in those institutions themselves. He cited article 26 of the Statute of the International Court of Justice as an example of one way in which procedural concerns of disputants could be met satisfactorily by existing institutions. The effectiveness of the Court would be increased if all States were to make the declaration under article 36 of its Statute. In that context, his delegation was pleased to note the recent interest expressed by the Soviet Union in enhancing the role of the Court in international relations.

(Mr. Voore, Canada)

5. Chapter VI of the United Nations Charter also contained broad and flexible provisions regarding the peaceful settlement of disputes. Canada also felt that the Permanent Court of Arbitration at The Hague should become better known, and to that end suggested that, in the relevant resolution, the General Assembly should request the Secretary-General to ask the Permanent Court of Arbitration to provide copies of its annual report to members of the Sixth Committee.

6. His delegation felt that the continued separation, in the General Assembly agenda, of the item concerning the peaceful settlement of disputes from the item concerning the Special Committee on the Charter in no way contributed to its effective treatment, and represented instead the kind of duplication of effort which the Special Committee should avoid.

7. With regard to the rationalization of United Nations procedures, his delegation noted that little could be achieved without political will on the part of the Members of the Organization. Canada hoped, however, that substantive progress could be made at the Special Committee's next session on consideration of working paper A/AC.182/L.43/Rev.2. Canada felt that the Special Committee, by virtue of its mandate and underlying purpose, was an appropriate venue for discussions on rationalization of United Nations procedures. As a subsidiary body of the Sixth Committee, the Special Committee could draw upon the legal expertise of its members. His delegation expressed interest in the recommendations made by the Asian-African Legal Consultative Committee. Rather than restricting the ambit of the Special Committee's work on rationalization, it would be better to extend that effort to other United Nations bodies, notably the Security Council. It was in the interest of all Member States that the Security Council should be able to react effectively to situations and disputes requiring its attention. Review of Security Council procedures might begin with the proposals made at the ministerial-level Security Council meeting held on the occasion of the fortieth anniversary of the Organization. His delegation also welcomed the suggestions made by the Deputy Minister for Foreign Affairs of the Soviet Union concerning the more effective use by the Security Council of its powers under the Charter. Security Council resolution 598 (1987) demonstrated that body's renewed capacity for common action. Rationalization of Security Council procedures would constitute a formal counterpart to the substantive improvement in the operation of United Nations organs proposed in document A/AC.182/L.38/Rev.3.

8. With regard to the maintenance of international peace and security, his delegation was heartened by the progress made at the 1987 session of the Special Committee on revised working paper A/AC.182/L.38/Rev.3. One of the primary virtues of that document was the very characteristic for which some delegations had criticized it, namely, its limited and pragmatic ambitions.

9. His delegation, while noting the order of priority assigned by resolution 41/83 to the consideration of that working paper and working paper A/AC.182/L.48, trusted that the consideration of the latter working paper would no longer be an obstacle to completion of the work on working paper L.38/Rev.3 at the next session of the Special Committee. Canada continued to feel that document L.48 was too broad and general.

(Mr. Voore, Canada)

10. In conclusion, he noted that the greater the efficiency of United Nations procedures, the greater would be the Organization's ability to assume a paramount role in the maintenance of international peace and security, its prime raison d'être.
11. Mr. KANDIE (Kenya) said that his delegation attached great importance to the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which was concerned with the very raison d'être of the Organization.
12. Resolution 41/83 requested the Special Committee to accord priority to the question of the maintenance of international peace and security. The third revision of the working paper (A/AC.182/L.38/Rev.3), which contained a draft declaration on the prevention and removal of disputes, situations which might lead to international friction or give rise to a dispute and matters which might threaten the maintenance of peace and security, had been considered in a more constructive atmosphere than in previous years and contained some very useful elements, which his delegation would find little difficulty in accepting. The provisions relating to measures that the Security Council should take in that regard would strengthen its efficiency. Operative paragraphs 1 to 11 of the draft declaration, which related to the Security Council, would lend themselves to general agreement.
13. The role of the Secretary-General in the maintenance of international peace and security had grown in leaps and bounds over the years. Even though in recent times the Secretary-General had played a constructive role, the Charter did not specifically attribute to him powers of mediation, conciliation and good offices, and that role had been established through practice. The draft declaration would strengthen the Secretary-General's role further, and the Kenyan delegation therefore supported the relevant provisions of the draft declaration, particularly paragraphs 15 and 16, which had been provisionally accepted by the Special Committee.
14. With regard to the proposals contained in document A/AC.182/L.48 on the role of States Members of the Organization in the maintenance of international peace and security, his delegation was glad that a constructive atmosphere had replaced the acrimonious debate of the previous year. Part IV of the working paper, which had some common elements with the draft declaration contained in document L.38/Rev.3, could serve as an additional basis for reaching consensus.
15. Turning to the proposal on the resort to a commission of good offices, mediation or conciliation within the United Nations, submitted by the Romanian delegation, he said that his delegation was in full agreement with the view stated in paragraph 18 of the report that the paper had now become something of a collective work. It totally supported the proposal and stressed that, if at times certain institutions or procedures might seem forgotten, it was not because of lack of political will but because States were not sufficiently aware of their existence. In that connection he drew the Committee's attention to the important

(Mr. Kandie, Kenya)

reminder by the President of the International Court of Justice about the chamber of summary procedure which the Court might set up under Article 29 of its Statute. According to the report of the International Court of Justice (A/42/4), there was increasing interest in that procedure, which, in his delegation's view, was an excellent illustration of the role which existing institutions might play. In order to buttress a system of peaceful settlement of disputes, it would be logical to give States as many options as possible.

16. His delegation was aware of certain conceptual difficulties, as illustrated in paragraphs 17 and 18 of the report. Nevertheless, it believed that an agreement would be reached and, as recommended in paragraph 19 of the report, it supported the continued inclusion of the item in the Special Committee's agenda.

17. Mr. TREVES (Italy) welcomed the fact that in 1987 the outlook for the work of the Special Committee on the Charter seemed less grim. Although it was not likely that the work on the rationalization of United Nations procedures would make much progress, it nevertheless seemed possible to wind it up by making some useful, though modest, recommendations. Nor did it seem that the work on the proposal to establish a commission of good offices, mediation or conciliation within the United Nations would produce spectacular results. The discussion of the proposal seemed to have reached the end of the road, and the important thing was that it was now possible to envisage new and more interesting subjects to consider with respect to the peaceful settlement of disputes.

18. With regard to the part of the Special Committee's mandate to which the General Assembly attributed priority, namely the maintenance of international peace and security, it had embarked on the negotiation and drafting of a text on prevention of disputes and had abandoned more abstract discussions. The result of that exercise had been twofold. On the one hand, provisional approval had been given to 15 paragraphs of a document (A/AC.182/L.38/Rev.3) on subjects of particular importance, ranging from the first approaches to the Security Council by States to the roles of the International Court of Justice, the General Assembly and the Secretary-General, and including various steps that the Security Council might take. On the other hand, the debates had given sufficient indication of the structure and general content required by a document capable of commanding consensus in the Special Committee and the General Assembly. Such a document would complete the nucleus of the provisionally approved paragraphs with a group of paragraphs concerning the role of States and a group of final paragraphs which would include the qualification that the new document was accepted without prejudice to the Charter, the rights and duties of States, the right to self-determination, the principle of domestic jurisdiction, and the right of States to resort to peaceful means of their choice for the prevention and removal of disputes. That was a remarkable achievement which seemed to indicate that the Committee could finalize the document at its 1988 session.

19. His delegation was encouraged by the indications that some of the basic ideas contained in the document under discussion in the Sixth Committee, in the drafting of which Italy had participated, were gaining wider currency. After citing several

(Mr. Treves, Italy)

paragraphs of the report of the Secretary-General on the work of the Organization in 1987, he compared those ideas with the proposals which the Special Committee on the Charter was in the process of approving and noted that there was a wide area of overlap. It was also significant that the highest political authority in the country whose objections had slowed the debate on the document up to 1986 had made similar ideas public. Moreover, Part III of the draft Declaration on Enhancing the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, which the Special Committee on that subject had recommended to the General Assembly for adoption, included several similar concepts.

20. It seemed clear that the Special Committee on the Charter was coming to a turning-point in its history. For the first time it was on the verge of achieving results on its priority item, namely the maintenance of peace and security. It was important to bear that in mind, in order to avoid undue haste in the consideration of the Special Committee's future. It seemed to his delegation that there were two things which should not be done. The first was to wind up the Special Committee, for it had been one of the main forums for serious debate on the legal aspects of United Nations activities and it should remain so, especially when efforts were being made to restructure the Organization and the unprecedented co-operation among the permanent members of the Security Council seemed to be paving the way for fuller use of the possibilities offered by the Charter. The second was to keep the Committee occupied with irrelevant matters.

21. The Special Committee should continue to consider, to the extent of its capacity, the general subjects of the maintenance of peace and security and peaceful settlement of disputes. Within that general area of work it could choose specific subjects which might bear concrete results useful to all and likely to gain consensus. His delegation was ready to participate in that work.

22. Mr. KATEKA (United Republic of Tanzania) said that the report of the Special Committee on the Charter (A/42/33) which was before the Sixth Committee was no better than previous reports. It had defects of presentation: for example, the failure to mention that the report had been adopted, although the Special Committee's agenda included an item entitled "Adoption of the report". Moreover, although Parts II, III and IV were the report of the Working Group, that was not explicitly stated. Since the Special Committee dealt with complex and intractable issues, at least the formal aspects of its work should be properly handled. His delegation had made these criticisms on several occasions.

23. When introducing the report, the Chairman of the Special Committee had informed the Sixth Committee that pre-session consultations had proved an effective way of settling procedural matters, since the time thus saved could be spent on substantive work. However, in a letter to the Chairman of the Committee on Conferences (A/AC.172/96/Add.4), the Chairman of the Special Committee had written that on more than one occasion at its 1987 session the Special Committee had been faced with procedural issues and he had often found it more cost-efficient to delay the start of a meeting in order to informally reach generally acceptable solutions, rather than utilize the conference services at the Special Committee's disposal for

(Mr. Kateka, United Republic  
of Tanzania)

the coverage of protracted and potentially counter-productive discussions. Those two irreconcilable statements spoke for themselves.

24. In resolution 41/83 the General Assembly had expressed concern that the Special Committee had not yet submitted any conclusions to it on the question of the maintenance of international peace and security, and had requested the Special Committee to accord priority to the question by devoting more time to the matter and to work with the aim of submitting its conclusions to the General Assembly. Unfortunately, as in the past, there were no conclusions to be submitted to the General Assembly. Nevertheless, the Special Committee's report gave extensive consideration to the working paper submitted by the six Western Powers (A/AC.182/L.38/Rev.3) and indicated that several paragraphs of the draft in question had been provisionally accepted. However, his delegation noted that some of the important paragraphs of the paper had not commanded support and discussion on them had been suspended. On the other hand, paragraph 38 of the Special Committee's report indicated that the working paper was a valuable basis for further work and that some delegations had indicated that they could accept it. In the end nothing had been accepted. There was nothing new in the draft in document A/AC.182/L.38/Rev.3, which had been before the Sixth Committee for several years. It was not clear why 65 paragraphs of the Special Committee's report had been devoted to consideration of that draft, whereas only 13 paragraphs had been devoted to document A/AC.182/L.48, which had been submitted by three East European socialist countries.

25. Nowhere in the Special Committee's report was there any indication that progress had been made on the issue of the maintenance of international peace and security. Paragraph 103 indicated that the proposal submitted by China (A/AC.182/L.54) had met with a favourable response and had been viewed as a useful addition but had not been considered in detail for lack of time. Yet the Special Committee had been among the subsidiary bodies of the General Assembly that had been cited by the Chairman of the Committee on Conferences for not utilizing conference resources adequately, which meant that lack of time had never been a problem in the Special Committee. What had been lacking had been the necessary political will.

26. Even from the procedural viewpoint, the issue of the maintenance of international peace and security had not been considered as the first item in the Special Committee's report but had been relegated to the last chapter. Moreover, the issue of the Charter, which formed part of the Special Committee's title, had been deliberately ignored. Instead, working paper A/AC.182/L.38/Rev.3 reaffirmed ad nauseam such instruments as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Manila Declaration the Peaceful Settlement of International Disputes. The Sixth Committee had adopted many declarations. It was time for it to consider amending substantive provisions of the Charter, especially those concerning the maintenance of international peace and security.

(Mr. Kateka, United Republic  
of Tanzania)

27. On the issue of the rationalization of existing procedures of the United Nations, at the forty-first session of the General Assembly two similar resolutions had been adopted on the peaceful settlement of disputes: paragraph 9 of resolution 41/83 requested the Secretary-General to continue the preparation of a draft handbook on the peaceful settlement of disputes, and in resolution 41/74 an identical request was made to the Secretary-General. The Sixth Committee should start the rationalization exercise by eliminating duplication of work.

28. Paragraph 11 of the report under consideration indicated that the Secretariat had felt it preferable to defer the convening of the Consultative Group until the four sections of the draft handbook on the peaceful settlement of disputes between States had been completed. However, paragraph 19 of the report under consideration indicated that the consensus in the Working Group had been that tangible progress on the topic had been achieved in the course of the most recent session and that concrete work on the proposal should continue at the Special Committee's following session on the basis of document A/AC.182/L.52/Rev.1, with a view to reaching a general agreement on appropriate conclusions. His delegation is thus at a loss to know what stage had been reached in the consideration of the topic of the peaceful settlement of disputes between States.

29. The Special Committee had had document A/AC.182/L.43/Rev.1 on the rationalization of existing United Nations procedures before it for several years. That draft contained nothing that was new. At the previous session of the General Assembly his delegation had indicated that that question should no longer be considered and it now wished to reaffirm its position on the matter. Indeed, some delegations had expressed doubt as to the advisability of pursuing in the framework of the Special Committee an activity that was being carried on elsewhere.

30. In connection with document A/42/620 concerning the text of the final report adopted by an international panel convened by the United Nations Association of the United States entitled "A successor vision: the United Nations of tomorrow", he wished to state that, even although the Permanent Representative of the United Republic of Tanzania to the United Nations had signed a letter requesting circulation of the report, the Government of the United Republic of Tanzania was not a party to the report and did not accept most of its conclusions and recommendations. Co-sponsorship of circulation of the report had been merely a routine matter, because one of the eminent personalities of the United Republic of Tanzania had been a member of the panel in an individual capacity. That point was being underscored in order to make it clear that the United Republic of Tanzania had not changed its position and could never be a party to a document that would change the balance of power in the Charter of the United Nations to the detriment of the United Republic of Tanzania, which was already disadvantaged by certain provisions of the Charter that had been adopted at a time when it had not yet become a sovereign nation. It could not subscribe to recommendations that would confer privileges and power to those who were already favoured by the Charter.



(Mr. Kateka, United Republic  
of Tanzania)

31. The Special Committee had been in existence, under different names, since the 1950s and should justify its existence by adopting meaningful recommendations, rather than making its sessions a mere ritual. The United Republic of Tanzania was willing to participate in a constructive dialogue on the Special Committee's mandate.

32. Mr. AL-ATTAR (Syrian Arab Republic) said that the two components of the Special Committee's mandate fell into two different spheres but converged on a single objective: review of the Charter and strengthening of the role of the Organization. That dual operation should be encouraged by the international community, which was facing a worsening of international tension, the nuclear threat and the aggressive, expansionist and hegemonic policies of certain racist régimes. The origin of the problem lay in the weakening of the machinery of the United Nations Charter. The inclusion of sanctions in the Charter had served the purpose of achieving a certain balance among its provisions and giving the Organization enough authority to implement them. The Charter was a constitutional document and its provisions were interrelated. Non-implementation of any particular provision and implementation of others therefore implied an imbalance. When an imbalance developed, the international community had to resort to other means to fill the gap. For that reason, many proposals had been formulated in order to strengthen the Charter and its provisions. Without such an imbalance, there would be no need for the Definition of Aggression, the Manila Declaration and other similar declarations relating to one and the same question, namely, how to overcome the non-implementation of the Charter caused by undue use of the veto in the Security Council in order to avoid imposition of the sanctions provided for in the Charter. That situation was the result of certain policies that showed a lack of responsibility towards the collective security system. The imbalance arose from the fact that some States imposed their will and hegemony on smaller States through the threat or use of military force or through economic and political pressures that reduced their peoples to starvation.

33. The Special Committee had also considered whether the General Assembly should rationalize its procedures and examine means of adopting resolutions by consensus. It was clear that the current divisions in the world were a constant obstacle to general consensus. Insistence on applying that rule therefore implied the weakening of every initiative for renewal and drowned the voice of the majority, which was often composed of small States.

34. The recommendations made for the rationalization of existing United Nations procedures did not mention the need to make major improvements in the functioning of United Nations organs, and that at a time when the world was facing a very serious financial crisis that demanded an improvement in existing procedures. The Sixth Committee should concentrate on rationalizing its own procedures, because certain items recurred at every session despite the fact that some of them were in a state of stagnation.

(Mr. Al-Attar, Syrian Arab Republic)

35. Implementation of the principle of the peaceful settlement of disputes between States should be in accordance with the principles of the United Nations Charter and the basic norms of international law, including the principle of not granting legal recognition to results achieved by the threat or use of force. Consequently, territories occupied by force should be returned. Peaceful settlements should be just and equitable, and the independence of States that were the victims of foreign invasion or intervention should be maintained and defended. It was the lack of political will on the part of certain States which used invasion and occupation to extend their own territories that prevented the peaceful settlement of disputes, not a lack of suitable machinery. He therefore believed that the handbook on the peaceful settlement of disputes between States would be no more effective than the Manila Declaration or other such instruments.

36. It was wrong to suppose that the principle of the peaceful settlement of disputes simply meant the holding of direct negotiations between the parties concerned. Often, one of the parties was the victim, while the other was the aggressor that gathered the fruits of its aggression by means of such negotiations. A fait accompli was thus legitimized behind a semblance of negotiations. Those who insisted on direct negotiations intended in reality to avoid United Nations control over the settlement of disputes, which weakened the Organization. His delegation would welcome any constructive initiative designed to strengthen the role of the United Nations. It therefore considered the relative progress achieved by the Special Committee to represent a positive trend. For that reason, it supported renewal of the Special Committee's mandate, as the only course of action to be taken in the existing climate in international relations. His delegation hoped that the climate would improve and that all States would recognize the need to respect both the letter and the spirit of the United Nations Charter.

37. Mr. LIU Liyang (China) said that the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had continued its deliberations on the item on the peaceful settlement of disputes between States and had conducted an in-depth discussion on the working paper submitted by Romania on the resort to a commission of good offices, mediation or conciliation within the United Nations (A/AC.182/L.52/Rev.1).

38. The peaceful settlement of international disputes was a basic principle of international law. States would be able to achieve development and prosperity only in conditions where peaceful coexistence, peace and friendship prevailed. Regrettably, however, there had been repeated violations of the principle of the peaceful settlement of international disputes in contemporary international relations. That not only endangered regional peace and security but also undermined the stability and development of the world as a whole. It was therefore necessary to explore how the United Nations might play a greater role in the peaceful settlement of disputes between States. In past years, the United Nations had done a great deal of useful work in that regard by adopting the Manila Declaration on the Peaceful Settlement of International Disputes and by reaching agreement on the draft handbook on the peaceful settlement of disputes between States. The Special Committee was also making progress in its consideration of the

(Mr. Liu Liyang, China)

question relating to resort to a commission of good offices, mediation or conciliation within the United Nations.

39. The aim of the working paper submitted by Romania was to prevail on States to make greater use of United Nations institutions in the peaceful settlement of their differences and disputes. In principle, the peaceful settlement of international disputes should be fully in keeping with the purposes and principles of the United Nations Charter and must not be contrary to the basic norms governing international relations. Use of a commission of good offices, mediation and conciliation should help to strengthen co-operation and co-ordination among the General Assembly, the Security Council and the Secretary-General, taking account of the division between and balance of their functions in the maintenance of international peace and security under the Charter.

40. China had fully discharged the responsibilities that it had assumed under the Charter and had participated in the efforts made by the United Nations to resolve regional conflicts and international disputes. In that spirit, the Chinese Government had concluded an agreement with the Government of Portugal on the question of Macao in 1987, following the conclusion of the Sino-British negotiations on the question of Hong Kong, thereby satisfactorily resolving two territorial issues bequeathed by history and setting new precedents for the settlement of international disputes by peaceful means. As the Secretary-General had pointed out in his current report, that was an example of the benefits for the international community which could come from that approach.

The meeting rose at 11.25 a.m.