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SIXTH COMMITTEE
10th meeting
held on
Tuesday, 8 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 10th MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. SANDOVAL (Ecuador)
(Vice-Chairman)

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

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/46/33 and Corr.1, A/46/335 and 383)

1. Mrs. BELLAMINE-DLIMI (Tunisia) said that, in completing its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, the Special Committee had made a substantial contribution to the Organization's efforts in that field. She drew attention to paragraph 7 of the draft Declaration, which gave the Security Council, the General Assembly and the Secretary-General a mandate to undertake fact-finding missions in the context of their respective responsibilities, and to paragraph 28, which called upon the Secretary-General to monitor the state of international peace and security regularly and systematically.

2. Her delegation noted with satisfaction the importance which the draft Declaration attached to preventive diplomacy, as reflected in paragraph 12, which provided for United Nations fact-finding capabilities to be used at an early stage of disputes, since the main purpose of a fact-finding mission was to defuse a crisis.

3. Tunisia agreed with the stipulation in paragraph 6 that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State.

4. Turning to the peaceful settlement of disputes, she said that her delegation welcomed the completion of the draft handbook on that subject. The handbook would be useful as a basis for the elaboration of a general convention on the peaceful settlement of disputes within the framework of the United Nations Decade of International Law. It would also be of assistance to law professors and to diplomats, since it outlined the full range of peaceful means of settling disputes between States.

5. Her country had always endeavoured to promote such means, including conciliation, arbitration and recourse to the International Court of Justice; for example, the dispute between Tunisia and the Libyan Arab Jamahiriya concerning the delimitation of the continental shelf had been submitted to the Court long before the proclamation of the Decade. Accordingly, Tunisia hoped that the handbook would be widely disseminated.

6. With regard to the working paper submitted by the Soviet Union (A/AC.182/L.65), her delegation felt that it offered a good basis for the future work of the Special Committee in the field of the maintenance of international peace and security. She welcomed the paper's recognition of the vital role which regional organizations could play in the prevention of conflicts. It was essential that the efforts of those organizations should be

(Mrs. Bellamine-Dlimi, Tunisia)

integrated with those of the United Nations so as to strengthen collective security arrangements. Likewise, the Security Council should encourage the peaceful resolution of local disputes with the assistance of regional groups. Her delegation believed, however, that greater emphasis should be placed on the role of the General Assembly in the maintenance of peace and security, as mandated by the Charter.

7. With regard to the proposal by Guatemala concerning the draft conciliation rules of the United Nations (A/C.6/45/L.2), her delegation felt that it had two main advantages: first, the model rules which it proposed were readily acceptable to a number of States, and secondly, none of its provisions were binding, as reflected in draft article 1, paragraph 2.

8. Mr. ARROSPIDE (Peru) said that his delegation agreed with others that the title of the draft Declaration should be maintained, although it continued to have doubts concerning the use of the term "solemnly". As shown by the debate on draft articles 6, 20 and 21 there was general agreement that the consent of the State concerned was a prerequisite for the sending of fact-finding missions. In addition, the document appeared to have struck the proper balance with regard to the role of various United Nations organs in the sending and the conduct of such missions.

9. The end of the cold war offered an opportunity to re-examine the role of the United Nations in a more open atmosphere. However, power was increasingly concentrated in the hands of very few countries, while the Security Council and its permanent members were assuming a preponderant role. In view of the persistence and the aggravation of poverty, especially in the developing countries, and the exacerbation of nationalist rivalries, the possibilities for the United Nations to achieve its objectives depended on its capacity to act and to be perceived as an inherently democratic organization, not as the institutional machinery of a unipolar system. Respect for the principles laid down in the Charter, especially the sovereign rights of all States, must be the basis for multilateral action if the Organization was to preserve its capacity for collective action.

10. His delegation welcomed the adoption by the Special Committee of the draft handbook on the peaceful settlement of disputes and hoped that it would be widely disseminated.

11. With regard to the future work of the Special Committee, the Gulf crisis had highlighted the need to give thorough consideration to the respective roles of the organs of the United Nations. The proposals by the Libyan Arab Jamahiriya (A/46/33, para. 14), the Soviet Union and Guatemala could serve as a basis for future deliberations. Peru also believed that the membership of the Special Committee should be expanded so as to reflect more accurately the membership of the United Nations.

12. Mr. TREVES (Italy) said that the draft Declaration was an important contribution to the field of preventive diplomacy and that it should be further elaborated. He drew attention to draft paragraph 15 which recommended that preference should be given to the Secretary-General in the conduct of fact-finding missions, and to paragraph 21, which provided that States should endeavour to follow a policy of admitting United Nations fact-finding missions to their territory. The latter paragraph did not contradict the provision in paragraph 6 that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State. His delegation was of the view that the sending of United Nations fact-finding missions, as provided for in the draft Declaration, did not constitute intervention as envisaged in Article 2, paragraph 7, of the Charter.

13. Turning to the draft handbook on the peaceful settlement of disputes between States, he said that it represented the first concrete contribution to the United Nations Decade of International Law. The handbook would not only be useful in the teaching of international law, but would also assist diplomats in assessing the advantages and the disadvantages of the various peaceful means of dispute settlement available to States. Accordingly, his delegation believed that the handbook should be given the widest possible dissemination.

14. In that connection, he noted that the Secretary-General, in his report on the work of the Organization (A/46/1) had again raised the question of the authority being given to him to submit requests to the International Court of Justice for advisory opinions. While controversial, that proposal deserved consideration.

15. While the Guatemalan proposal concerning the draft conciliation rules of the United Nations should be examined, his delegation would prefer that it be considered together with the proposal to enhance the role of conciliation and to develop "compulsory" conciliation, as outlined in paragraph 155 of the handbook.

16. In addition, careful consideration should be given to the future work of the Special Committee, particularly early in the Decade.

17. In the field of the maintenance of international peace and security, Italy shared the Secretary-General's view that preventive diplomacy should be further explored. Attention should be given to the proposals concerning measures for the prevention of future threats to international peace and security which might take the form either of armed conflicts or of environmental disasters.

18. The Soviet proposal (A/AC.182/L.65) could be considered in connection with further work on Chapter VIII of the Charter, particularly in the light of Security Council resolution 713 (1991) on the role of the United Nations in the crisis in Yugoslavia. However, the Secretary-General's comments in document A/46/1 concerning the need for cooperation and coordination between regional organizations and United Nations agencies should be borne in mind.

(Mr. Treves, Italy)

19. Italy shared the view expressed by the representatives of Finland and the United Kingdom that it was no longer appropriate for the Special Committee to confine itself to exercises which merely repeated existing provisions of the Charter. The time had come to undertake efforts capable of meeting the new challenges confronting the international community.

20. As outlined in his Government's recent statement to the General Assembly, Italy sought the following goals: the elimination of all discriminatory language from the Charter, especially that deriving from the Second World War; the expansion of the Security Council, with an increase in the number of both permanent and non-permanent members and with the selection of the former being made on the basis of objective criteria; the revision of some Chapters of the Charter, such as Chapter VII, on the basis of the principle of active intervention for humanitarian purposes; and the introduction of the system of weighted voting in the General Assembly and the Security Council.

21. Mr. MIKULKA (Czechoslovakia) said that the most recent session of the Special Committee had been one of the most fruitful in that Committee's history and had shown once more that in an atmosphere of enhanced international trust consensus could be achieved even on the most sensitive matters. International events had shown that the choice of the topic of fact-finding had been a judicious one. The draft declaration on the subject followed on logically from a previous declaration by the Special Committee, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, and, likewise, sought above all to make the best use of United Nations capabilities in that area.

22. At the heart of the draft Declaration was the idea of encouraging the competent United Nations organs to carry out fact-finding activities so as to be in a better position to help maintain international peace and security. Fact-finding missions were emphasized, but fact-finding could take other forms if that seemed advisable.

23. In the course of the preparation of the Draft Declaration, the complex problem of the competence of the various United Nations bodies had been considered; a compromise recommendation had been made (draft para. 16), namely, that in considering the possibility of undertaking a fact-finding mission, the competent United Nations organ should bear in mind other relevant fact-finding efforts, so as to avoid any duplication. His delegation had accepted that compromise even though it would have preferred a clear statement giving preference to the Security Council in such cases.

24. The problem of prior consent of States to which missions were being sent had finally been satisfactorily resolved. Such consent was not always necessary, for instance when the Security Council, acting under Chapter VII of the Charter, decided to send a fact-finding mission. It was particularly gratifying that the Special Committee had reached a consensus on several

(Mr. Mikulka, Czechoslovakia)

paragraphs designed to encourage States to give their consent to the sending of such missions.

25. He noted that draft paragraph 26 provided that the States directly concerned should be given an opportunity, at all stages of the fact-finding process, to express their views in respect of the facts the fact-finding mission had been entrusted to obtain.

26. The use of fact-finding missions was justified by the fact that the means at the disposal of the Secretary-General for gathering information did not always meet the needs of the competent organ of the United Nations. It was therefore logical that section IV of the draft should stress the need to make full use of and improve the Secretariat's information-gathering capabilities.

27. Although the draft Declaration represented a compromise, it was a balanced one that retained the positive elements of the original idea.

28. Mr. NEUHAUS (Australia) said that his delegation took particular interest in the work being done on the maintenance of international peace and security. It was logical to anticipate an expanded role for the United Nations in peacemaking or preventive diplomacy: the United Nations must be able to identify potential conflicts, analyse their cause and bring the parties to see how their differences could be resolved while still at the dispute stage.

29. The draft Declaration on Fact-Finding was the product of much thought and debate and set out clearly some important guidelines for United Nations fact-finding missions, while also offering very practical suggestions on how such missions should be accomplished. His delegation hoped that the implementation of the draft Declaration would be of great assistance in identifying potential crises and ensuring that preventive diplomacy was tried before more extreme measures were resorted to. There was room for further exploration of the Secretary-General's powers under the Charter so as to make his mandate more widely understood.

30. The Committee had also produced a most useful handbook on the peaceful settlement of disputes between States. Its enumeration and amplification of the various means of dispute settlement were complementary to the growing importance of the role of the International Court of Justice. Australia hoped that other countries would follow its lead in accepting the compulsory jurisdiction of the Court.

31. His delegation supported further study of Guatemala's proposals concerning conciliation rules. It would be appropriate for the United Nations, and the Sixth Committee in particular, to become a repository of skills in international conciliation.

(Mr. Neuhaus, Australia)

32. The Secretary-General had noted in his report on the work of the Organization that the Charter could not be regarded as immutable. Even within the strictures of the Charter, however, there was considerable scope for allowing the United Nations to carry out its mandate for promoting international peace and security in a responsive manner, without having to engage in potentially divisive amendments to the Charter.

33. Mr. Sandoval (Ecuador), Vice-Chairman, took the Chair.

34. Mr. MOLNAR (Hungary) said that his delegation saw the most significant result of the most recent session of the Special Committee as the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. Hungary supported the provisions in which it was suggested that States should admit United Nations fact-finding missions to their territory and cooperate with them in every way possible. United Nations fact-finding activities could not pose a threat to the sovereignty of States; indeed, by presenting the facts impartially, they could be used to protect States' legitimate interests.

35. His delegation hoped that the draft Declaration would be adopted at the current session of the General Assembly and expected that wide use of the fact-finding mechanism would help strengthen the role of the United Nations in the maintenance of international peace and security.

36. With regard to the peaceful settlement of disputes, Hungary had consistently advocated strengthening that cardinal principle of international law. His delegation was pleased that States were increasingly willing to take advantage of third-party dispute settlement mechanisms and supported the efforts of the international community to enhance the effectiveness of the International Court of Justice, the principal judicial organ of the United Nations.

37. The draft handbook on the peaceful settlement of disputes between States would help increase compliance with international law by providing States with a guide to settling their disputes. It would also provide valuable reference material for researchers and academic institutions.

38. The working paper submitted by the Soviet Union on new issues for consideration in the Special Committee deserved attention, and some of the issues might become topics for discussion. At the same time, any new item should not lead to duplication of effort or interference with the work of other United Nations bodies.

39. Ms. KOFLER (Austria) said that, in times of growing global interdependence, local or regional conflicts might develop into serious threats to international peace and security; the completion of the draft Declaration was therefore most welcome. Her delegation particularly welcomed paragraph 21 of the draft, appealing to States to follow a policy of admitting United Nations fact-finding missions to their territory.

(Ms. Kofler, Austria)

40. Her delegation noted with satisfaction the completion of the handbook on the peaceful settlement of disputes between States, which would undoubtedly prove useful to scholars and practitioners alike; it certainly also constituted a valuable contribution to the United Nations Decade of International Law.

41. With respect to the proposal on United Nations rules for the conciliation of disputes between States, Austria welcomed any proposal intended to strengthen the principle of the peaceful settlement of disputes. As conciliation was the procedure most likely to be accepted by the parties to a dispute, it seemed appropriate to elaborate United Nations conciliation rules which could easily be integrated into individual conciliation agreements.

42. The draft rules differentiated between the functions of a sole conciliator and those of a conciliation commission. That approach should be reconsidered in the framework of the Sixth Committee.

43. The question of the tasks to be assigned to the Committee in the future deserved careful consideration. With respect to the criteria for such assignment, her delegation fully supported the ideas recently put forward by the representative of the United Kingdom. It would be counter-productive to include items that could never be agreed on within an acceptable time-frame. That did not mean that the Committee should shun difficult, even controversial issues, provided that the political circumstances indicated that the majority of States were willing to embark upon a meaningful negotiating exercise at the end of which an appropriate result could be achieved. In that regard the ideas brought forward by the delegation of the Soviet Union merited careful attention and consideration.

44. Her delegation believed that consideration of all issues related to peaceful settlement of disputes should be left to the Working Group on the Decade of International Law. The Special Committee should concentrate on proposals which had a direct bearing on the role of the United Nations in the maintenance of international peace and security and would strengthen its role in that respect. The proposal to study the role of regional organizations in the maintenance of international peace and security, taking into account the provisions of Chapter VIII of the Charter, seemed to her delegation to be of great practical significance and suited for an in-depth analysis by the Special Committee.

45. Mr. ELARABY (Egypt) said that the General Assembly should adopt the draft Declaration. His delegation was also in favour of the publication and immediate dissemination of the draft handbook on the peaceful settlement of disputes between States.

46. With regard to the Special Committee's future role and undertakings, that Committee must examine new proposals for inclusion in its agenda. The substantive proposals made by the Soviet Union could form the basis of a

(Mr. Elaraby, Egypt)

long-term programme of work for the Special Committee. The Special Committee had, however, been unable to pursue the matter further owing to lack of time. The Soviet proposal regarding the relationship between the United Nations and regional organizations was an issue of vital concern, as world events in recent years had demonstrated. Mindful of the importance of cooperation, Egypt felt that regional organizations should be encouraged to play a more active role in maintaining international peace and security, an issue which the Special Committee was qualified to tackle. Furthermore, Egypt believed that the Special Committee's poor record in enhancing implementation of the United Nations Charter and the rules of international law merited special attention, and emphasized the fruitful lessons to be drawn from the recent experiences in the Gulf.

47. Egypt also advocated a re-examination of the United Nations Charter with a view to strengthening the role of the Secretary-General and encouraging more preventive diplomacy, so as to avoid the escalation of disputes which could ultimately threaten world peace and security. In that connection, consideration should be given to the Secretary-General's suggestion that his authority to request advisory opinions from the International Court of Justice should be extended. The Soviet working paper again formed a good basis for discussion of the issue. Egypt also endorsed the consideration of any proposal, such as the one made by the Guatemalan delegation in 1990, which reinforced the principle of the peaceful settlement of disputes. The Special Committee was uniquely qualified to play an important role in restructuring the United Nations and discussing the issues of international security and the peaceful settlement of disputes. In so doing, it should avail itself of the opportunities provided by current developments in order to serve the purposes of the United Nations.

48. Mr. VOICU (Romania) said that the most recent session of the Special Committee had been productive and had provided further encouraging evidence that, since the end of 1989, the world at large, and the United Nations in particular, had entered a new phase of their history. The language of the cold war had already been superseded, and new and promising notions, such as that of a "new world order" had become a familiar part of political vocabulary. The renaissance of the United Nations was convincing proof of a genuine qualitative change in the attitudes and perceptions of Member States, and the effectiveness of the Organization was no longer in doubt.

49. As part of its intensive work, the Special Committee had completed its mandate in an important sector of preventive diplomacy by producing a draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, a project which his delegation had supported from the outset and to whose preparation it had contributed. The resulting draft was balanced and realistic in that it subscribed to the requirements of comprehensiveness, objectivity, impartiality and timeliness. It should be emphasized that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent

(Mr. Voicu, Romania)

of that State, subject to the relevant provisions of the Charter. Those requirements should be interpreted in their proper context, which was cogently recalled in the preambular part of the draft by the clear recognition of "the need for States, in exercising their sovereignty, to cooperate with the relevant organs of the United Nations in regard to fact-finding missions undertaken by them".

50. Particularly important and topical provisions were to be found in paragraphs 15, 28 and 29. The functions of the Secretary-General which were so clearly formulated in those paragraphs should not be isolated from the actual practice to be followed in their performance. In that connection, the Secretary-General himself, in his report on the work of the Organization (A/46/1), recalled that the main problem with regard to preventive diplomacy was the lack of means at the disposal of the United Nations to maintain an impartial and effective global watch over situations of potential or incipient conflict. That being the case, he agreed with the Secretary-General's conclusion that it was hard to visualize how the Secretariat could monitor potential conflict situations from a clearly impartial standpoint. The General Assembly and the Security Council must recognize the importance of translating preventive diplomacy into "a working reality", as the Secretary-General had put it. In order to enhance the Secretary-General's capacity and authority in that regard, it would be advisable to designate, within the Executive Office of the Secretary-General, an appropriate focal point for fact-finding in the field of the maintenance of international peace and security. Such a practical step would be fully consistent with the draft Declaration on Fact-finding, which would be adopted by the General Assembly at the current session, and with the Secretary-General's legitimate request for renewed emphasis on the need for preventive diplomacy. In that connection, he concurred with the remarks made by the representative of Japan at the 9th meeting of the Sixth Committee.

51. His delegation welcomed the completion of the draft handbook on the peaceful settlement of disputes between States, which represented an important and concrete contribution to the United Nations Decade of International Law. He reiterated his delegation's suggestion that General Assembly decision 44/415 on the resort to a commission of good offices, mediation or conciliation within the United Nations should be more clearly reflected in the final version of the handbook. That decision contained a set of useful guidelines which would be relevant for various chapters of the handbook and should not be reduced merely to a footnote buried in the body of the text. He shared the view that, after appropriate updating, the handbook should be published and distributed as widely as possible.

52. As to the agenda of the Special Committee for 1992, his delegation believed that that Committee should concentrate on two major issues: the maintenance of international peace and security, and the peaceful settlement of disputes. That task had been facilitated by a proposal put forward at the Special Committee's most recent session by the delegation of the Soviet Union,

(Mr. Voicu, Romania)

which was reproduced in paragraph 46 of the report. The proposal, which related to the enhancement of cooperation between the United Nations and regional organizations, deserved careful consideration.

53. He drew attention to the very timely proposal put forward in the Sixth Committee by the delegation of Finland in connection with the implementation of Article 50 of the Charter of the United Nations. The issue was a matter of priority for a number of countries, and 21 Member States, including Romania, had submitted an aide-mémoire to the Security Council explaining their situation as countries seriously affected by the imposition of sanctions against Iraq under Security Council resolution 661 (1990). As the Secretary-General had rightly emphasized, in today's conditions of economic interdependence, the effect of the imposition of comprehensive economic sanctions on third States that were economic partners of the offender State required that Article 50 of the Charter should be supplemented by appropriate agreements creating obligations to assist concretely the disadvantaged third State or States. The subject could not be neglected in the context of the implementation of economic sanctions and in planning the future work of the Special Committee.

54. The Guatemalan proposal regarding the draft rules for the conciliation of disputes between States would constitute an appropriate subject for consideration within the framework of the United Nations Decade of International Law, and could also be discussed by the Special Committee if there was general agreement to do so. However, his delegation favoured a clear-cut mandate for the 1992 session of the Special Committee and expressed the hope that, through informal consultations, the Sixth Committee would find a consensus solution which would enable the Special Committee to continue its valuable work on strengthening the role of the United Nations, in full consonance with the current requirements of the members of the international community.

55. Mr. ADANK (New Zealand) said that progress within the Special Committee had always tended to be subject to the vagaries of the prevailing international climate. While there had been important achievements in the first decade of the Special Committee's existence, progress had too often been slow. However, in recent years the Committee's work had been greatly facilitated by the renewed spirit of cooperation in international relations, and his delegation was particularly pleased with the positive results achieved at its most recent session. In particular, both the draft Declaration on Fact-finding and the draft handbook on the peaceful settlement of disputes between States constituted timely and positive contributions to the United Nations Decade of International Law.

56. In the aftermath of the Gulf conflict there was a greater recognition of the need for the United Nations to play an enhanced role in the field of preventive diplomacy, and the draft Declaration on Fact-finding represented an important development in that area, providing general principles and guidance

(Mr. Adams, New Zealand)

on United Nations fact-finding activities. Adoption of the draft Declaration by the General Assembly would thus be a positive step.

57. His delegation welcomed the finalisation of the handbook on the peaceful settlement of disputes between States, and in particular the fact that the views of Member States had been taken into account in the drafting and revision of the handbook. The information it contained demonstrated strikingly the wide range of dispute settlement procedures available to States, and its comprehensive nature should ensure that it became an important reference point for States and for international lawyers and students.

58. With regard to the future work of the Special Committee, he said that he agreed with the suggestion that the Special Committee should concentrate on two focal points, namely the maintenance of international peace and security, and the peaceful settlement of disputes. In the case of the latter topic, it would seem logical for the Special Committee to devote detailed consideration to the Guatemalan proposals concerning the United Nations rules for the conciliation of disputes between States, availing itself of the useful general comments by Member States set out in the Secretary-General's report on the subject (A/46/383).

59. New Zealand strongly supported increased adherence to the compulsory jurisdiction of the International Court of Justice, and took the view that the topic of ways and means of enhancing the effectiveness of the Court would merit study by the Special Committee in the future. In recent years there had been a growing number of States adhering to the compulsory jurisdiction of the Court, and the establishment by the Secretary-General of a Trust Fund to enable States to settle disputes through the Court was a further valuable development. Nevertheless, as the Secretary-General noted in his report, recourse to the Court was still regrettably infrequent.

60. The proposals submitted by the Soviet Union in the area of the maintenance of international peace and security warranted further reflection, and in some cases seemed to flow naturally from the Committee's recent achievements in the field of fact-finding. A more developed proposal put forward by the Soviet Union at the most recent session with regard to the enhancement of cooperation between the United Nations and regional organizations also raised a number of interesting issues. Although his delegation did not underestimate the difficulties in achieving a useful document which struck an appropriate balance between the complementary roles of the United Nations and regional bodies established in accordance with Chapter VIII of the Charter, it would be constructive to consider that subject further, particularly in the light of the Security Council's recent action to restore peace in Yugoslavia.

61. In general, while the Special Committee offered an opportunity for both large and small States to contribute to enhancing the implementation of the Charter and the role of the United Nations, it was a particularly important

(Mr. Adank, New Zealand)

body for smaller States, who were more susceptible to threats to their security than were their larger and more powerful partners within the Organization.

62. In setting the agenda for the Special Committee's future work, Member States must bear in mind both practical and realistic objectives. Experience suggested that topics on which no consensus existed at the outset were unlikely to benefit from discussion within the Special Committee.

63. Mr. ROSENSTOCK (United States of America) said that in the period of almost two decades since the Special Committee had begun its work there had been a growing recognition that the transition from confrontation to cooperation might not prove lasting unless the rule of law upheld by the Charter of the United Nations was strengthened. The activity of the Security Council in the previous 15 months in adopting resolutions and promoting peace in the Middle East, South-East Asia, North Africa, Central America, Europe and, most recently, the Caribbean has established precedents which strengthened the Council's capacity to respond to problems of peace and security. Those developments had been so positive and significant that it seemed odd indeed to hear voices from another era referring to the unanimity rule in the Security Council as an obstacle to progress or urging that the Charter should be re-examined with a view to eliminating provisions that had never been used by the Organization and had clearly lost whatever force they might have had. To lend credibility to some of those arguments, it had been suggested that there had been no changes since 1945, a claim so clearly false that it was unlikely to carry conviction.

64. In fact, the Charter had stood the test of time and had been as flexibly interpreted as its status as a constitutional document required. The main immediately relevant change that had occurred in the world since 1945, namely the emergence of new nations, was reflected, inter alia, in the contemporary composition of the Security Council. In the first 20 years of the Council's existence, the countries of the Western Group and the Eastern European Group had held an automatic majority, and it had not been possible to adopt a resolution without the affirmative vote of at least one of the permanent members. In the Council of today, however, the countries of the so-called third world had a de facto collective veto, and it was possible for the Council to adopt resolutions and even decisions without the affirmative vote of a single permanent member. Proposals either to amend the Charter fundamentally or to tinker with it ignored the significance both of those developments and of the Council's efforts over the previous 15 months.

65. Welcoming the fact that the Security Council had not been alone in its contribution to institution-building, he noted that the Special Committee had produced a draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. The draft was a worthwhile contribution, although not perfect in all respects. While some perplexity might be caused by the fact that the draft referred to three organs

(Mr. Rosenstock, United States)

without more explicit recognition of the primary role of the Security Council in all matters of peace and security, reassurance was provided in paragraph 7 by the phrase "in the context of their respective responsibilities". Similarly, a careful reading of paragraph 6 was necessary in order to recognize that the powers of the Security Council under Chapter VII of the Charter were adequately acknowledged, as they were, by the phrase "subject to the relevant provisions of the Charter". While those points could have been made more clearly and directly, the determination of the international community to strengthen the institution of fact-finding came through loud and clear in the substantive part of the draft Declaration, notably in part III, and especially paragraphs 21, 22 and 23. Equally evident was the recognition that the crucial factor was the will of States to make the system work. The draft Declaration thus constituted a worthwhile contribution to the United Nations Decade of International Law.

66. He joined other speakers in expressing confidence in the usefulness of the handbook on the peaceful settlement of disputes between States, a further noteworthy contribution made by the Special Committee, and supported its publication and dissemination.

67. His delegation was confident that the Special Committee would remain productive by continuing to exchange ideas on a wide range of issues, concentrating on areas in which general agreement was possible, such as conciliation. In that connection, he expressed his delegation's appreciation to the Government of Guatemala for proposing the issue and for making a helpful and detailed proposal which shed considerable light on various aspects of the issue. There were a number of questions which the Guatemalan proposal merited which should be raised in the course of the detailed consideration. For example, aspects of the process suggested for situations in which more than one conciliator was involved might be more complex than was necessary or desirable, and seemed to represent the replacement of traditional conciliation by "fact-finding". The traditional role of the Secretariat seemed to be expanded to a point at which questions of human and financial resources, among others, arose: such questions did not detract from the appeal of the Guatemalan proposal, although they might highlight the number of detailed issues which must be considered. One possible way to proceed might be a general discussion in the Special Committee, possibly followed up by a request to the International Law Commission to carry out a short-term project on draft conciliation rules. Alternatively, the Special Committee could remain seized with the issue until its consideration, if that was the prevailing view. Another related area which it might be productive to examine was the procedure elaborated by the Conference on Security and Cooperation in Europe at its Meeting of Experts on Peaceful Settlement of Disputes, held in Valletta from 15 January to 8 February 1991. That procedure recognized that a wealth of means and methods, ranging from negotiation to judicial settlement, was available for resolving disputes, and that what was needed was to persuade the parties to agree to a particular method and to pursue it. That was a fairly modest approach which, although it might require a certain infrastructure,

(Mr. Rosenstock, United States)

might be suitable not only for Europe but at the global level as well. The Special Committee was an entirely suitable forum for examining the question of the wider utility of the procedure.

68. With regard to the proposal by the Soviet Union on enhancing cooperation between the United Nations and regional organizations, while the relevance of the proposal had been recognized by the Security Council, it remained vague, despite its potential interest, and the time might not be ripe to accord it priority.

69. Mr. CHADWICK (Chile) welcomed the fact that nothing in the draft Declaration on Fact-finding was to be construed as prejudicing in any manner the provisions of the Charter. The sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State, subject to the relevant provisions of the Charter. Such a mission could signal the concern of the Organization and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it. His delegation agreed that the Secretary-General, in preparing and updating lists of experts in various fields who would be available for fact-finding missions, should seek the broadest possible geographical representation.

70. The rigorously prepared draft handbook on the peaceful settlement of disputes between States, for its part, would be of great value in both official and academic circles and was a significant and concrete contribution of the Special Committee to the United Nations Decade of International Law. The Government of Chile wished to reiterate its firm resolve to maintain as one of the main pillars of its foreign policy the peaceful settlement of disputes between States in accordance with the Charter, particularly Article 33. The history of Chile demonstrated his country's peaceful vocation, and potential conflicts with sister countries in Latin America had happily been defused. For example, in 1979 the Governments of Chile and Argentina had invited the Holy See to mediate in a territorial dispute concerning the delimitation of their common boundary. The successful papal mediation had culminated in the Treaty of Peace and Friendship signed in 1984. Twenty-three of the 24 disagreements that had arisen between the parties subsequent to 1984 had been resolved by negotiation and consultation, while the one outstanding issue had been taken to arbitration as had been provided for in the 1984 Treaty. Chile and Argentina, which shared one of the longest and most difficult frontiers in the world, had thus offered to the international community an eloquent example of the peaceful settlement of disputes, thereby reinforcing the climate of mutual confidence in the region.

71. With regard to the means of peaceful settlement of disputes, the Government of Chile employed both diplomatic and juridical means of resolving international disputes and respected decisions on specific means agreed upon in particular cases. Article 33 of the Charter and section H of the draft

(Mr. Chadwick, Chile)

handbook provided also for resort to regional agencies or arrangements. In conformity with those provisions, the Organization of American States had promptly implemented the mechanisms agreed upon at the most recent session of its General Assembly with a view to restoring the democratically elected Government of Haiti, following the tragic situation that had developed in that country. Latin America had a long tradition of peaceful settlement of disputes, which had prevented the spread of various foci of political and social instability.

72. The Government of Chile wished to pay tribute to the Secretary-General and his staff for the outstanding work accomplished during his two terms of office. The agreement recently signed between the Government of El Salvador and the Frente Farabundo Martí marked an important milestone in the efforts that were being made by the Secretary-General to achieve a peaceful, just and lasting solution to the tragic conflict in El Salvador. He wished to appeal to the international community to grant the Secretary-General all the assistance necessary for him to accomplish his tasks in the area of the peaceful settlement of disputes.

73. His delegation hoped that the handbook would be widely disseminated in all the official languages of the United Nations since the peaceful settlement of disputes was the foundation on which both domestic and international stability could be built in an increasingly interdependent world. In Chile old antagonisms had yielded to cooperation based on a spirit of national reconciliation in which disputes were settled first and foremost by peaceful means. He hoped that the provisions of the handbook reflected the political will of Governments and peoples to resort to peaceful means of settlement of disputes.

74. Mr. ACHARYA (Nepal) welcomed the fact that paragraph 12 of the draft Declaration on Fact-finding enjoined the Secretary-General to pay special attention to using the United Nations fact-finding capabilities at an early stage in order to contribute to the prevention of disputes and situations. The draft Declaration sought to establish a balance of power between the Security Council, the General Assembly and the Secretary-General in the spirit of the Charter, by entrusting them with different responsibilities at different stages of disputes. Fact-finding missions would be more effective, however, if the areas of cooperation among the three organs were better defined. His delegation did not support the inclusion of paragraph 6 in the draft Declaration since the requirement to obtain prior consent could jeopardize the fact-finding mission itself. While Article 2, paragraph 7 of the Charter prohibited the United Nations from intervening in matters which were essentially within the domestic jurisdiction of a State, the issue of human rights had moved from the domestic to the international level. In the current situation in Haiti, for example, the United Nations might never receive permission to send a fact-finding mission or might be able to do so only after the original situation that needed to be ascertained no longer existed.

(Mr. Acharya, Nepal)

75. In view of the recent sweeping changes in international politics, particularly in the Soviet Union and the countries of Eastern Europe, the working paper submitted by the Soviet Union, which dealt not only with international peace and security and the peaceful settlement of disputes but also with improving cooperation between the United Nations and regional organizations, could be discussed at the following session.

76. In its constructive draft handbook on the peaceful settlement of disputes between States, the Special Committee had combined traditional modes of settlement of disputes with customary and conventional rules of international law. While the developing countries would find the handbook very useful, further progress could still be made towards satisfying the interests of all Members of the United Nations.

77. In conclusion, he wished to reaffirm the commitment of the newly elected Government of Nepal to the peaceful settlement of disputes. Moreover, the new Constitution of Nepal explicitly incorporated a commitment to abide by the provisions of the United Nations Charter and international law.

78. Mr. BELLOUKI (Morocco), reviewing the Secretary-General's comments on the topic before the Sixth Committee in his report on the work of the Organization (A/46/1), stressed the importance of cooperation among States in meeting all challenges, including the perennial problem of poverty and destitution, which could threaten international peace and stability and the new world order. Preventive diplomacy allowing prompt intervention in disputes would ensure that international bodies played a more effective role in maintaining international peace and security.

79. His delegation, which advocated peaceful settlement of disputes in accordance with the rules of international law and the principles of justice and equity, believed that the draft handbook on the peaceful settlement of disputes between States should be disseminated as widely as possible to all interested parties. Furthermore, it welcomed the suggestion that the Secretary-General's authority to settle and prevent disputes should be extended. It noted with interest that the Libyan delegation had echoed the Secretary-General's calls for reform. He reaffirmed his delegation's support for the Soviet proposals and re-emphasized the importance of strengthening collective security and considering the relationship between the United Nations and regional organizations in that connection. The Soviet proposals, in fact, embodied the future work of the Special Committee with regard to international peace and security.

The meeting rose at 1.05 p.m.