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## SUMMARY RECORD OF THE 34th MEETING

Chairman:

Mr. LEHMANN

(Denmark)

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The meeting was called to order at 10.25 a.m.

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)  
(A/50/33, A/50/361 and A/50/403)

1. Mr. ROSENSTOCK (United States of America) commended the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and welcomed in particular the completion of the work on the draft United Nations Model Rules for the Conciliation of Disputes between States. The Model Rules would make a useful addition to existing mechanisms for the peaceful settlement of disputes, and his delegation was prepared to join in a consensus to adopt a resolution bringing the text to the attention of States.

2. His Government appreciated the clarification by Sierra Leone of the proposal entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes". The proposed service was voluntary and its introduction would not disrupt the balance among United Nations organs. The proposal thus merited further consideration.

3. Although substantial amount of assistance had been made available through various channels to third States affected by the application of sanctions under Chapter VII of the Charter, additional options ought to be explored. His country shared the concern for those States which had been specially affected, and it had contributed to efforts to provide assistance in particular cases.

4. While a number of questions remained unresolved, substantial agreement had been reached on key issues relating to the topic of assistance to third States. In that connection, it was to be hoped that the informal working group on sanctions would be able to arrive at a consensus on a number of issues, in particular on ways of increasing the flow of information between affected States, international bodies and States in a position to provide assistance, and ways of providing greater assistance to affected States, either through international funding institutions or by means of trade and investment preferences. His delegation had listened with particular interest to the statement made in that connection by the representative of Spain on behalf of the European Union.

5. Whatever success the informal working group might have, it should not in future duplicate the work of the Informal Open-ended Working Group on An Agenda for Peace. Ongoing inter-sessional work should take place in either the Working Group or the Special Committee on the Charter, but not in both. Forum-shopping and duplication of work, which were among the most deleterious practices of the United Nations system, benefited no one and harmed everyone.

6. His Government welcomed the draft resolution proposed by the Special Committee concerning deletion of the "enemy State" clauses from the Charter of the United Nations because it agreed that those references were anachronistic and that the contribution of former "enemy States" as full Members of the United Nations should be recognized.

7. The Trusteeship Council had served its purpose well and had completed its work. It did no credit to the successful past of the Council or to the United Nations in general to continue to support the existence of a main organ which no longer had a role to play. The Special Committee should consider the question of the elimination of the Trusteeship Council, and a draft resolution similar to the one concerning the deletion of the "enemy State" clauses would be an appropriate first step. In any event, the Trusteeship Council would have to be dismantled before any new principal organ could be established. The Special Committee was uniquely suited to consider the matter of whether such an organ should be established and what its nature might be. In that connection, his delegation looked forward to the presentation by Malta to the General Assembly in plenary meeting of a proposal to create a main organ having responsibilities in the area of the environment.

8. The Special Committee would remain productive as long as it continued to direct its energies to proposals on which general agreement was likely to be reached.

9. Mr. LEGAL (France) said that his delegation endorsed the bulk of the recommendations contained in the report of the Special Committee on its most recent session and fully supported the statement made on the item by Spain on behalf of the European Union.

10. Like its partners in the European Union, France attached particular importance to the matter of assistance to third States affected by sanctions. It was time to dispense with lengthy discussions and move towards concrete results in order to meet the expectations of the States and peoples adversely affected by sanctions, which were the price that had to be paid to maintain international peace and security. The draft resolution on that matter which the European Union had submitted to the open-ended working group on that question endeavoured to meet those expectations in a practical manner without changing the institutional balance established by the Charter. The draft text suggested the creation of a number of mechanisms and instruments aimed at minimizing the collateral effects of sanctions and facilitating assistance to affected States.

11. However, the draft resolution put forward three ideas which were, in the view of his delegation, erroneous and unacceptable. First, it suggested that the power of the Security Council to impose sanctions should be limited. Any mechanism which might impede or even block the action of the Security Council in that area was not only contrary to the Charter but also a threat to international peace and security. Naturally, the Council would make every effort to use the limited time available to it to consider the situation of third States, with a view to minimizing, to the extent possible, any negative impact the proposed sanctions might have on them.

12. Secondly, the draft resolution endorsed the general and absolute recognition of a right of States to compensation. Such recognition, which was not provided for under the Charter, failed to take into account the overall circumstances, the situation of the States concerned or the fact that sanctions, while having an economic cost, also contributed to political stability and thus to the economic stability of the region in crisis.

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13. Thirdly, the draft called for the establishment of a trust fund. Yet, it was hard to imagine how the United Nations, which was facing the worst financial crisis in its history, would be able to find adequate resources for such a fund or how any potential contributions would be distributed. His delegation therefore believed that it would be unwise to establish the proposed trust fund.

14. Notwithstanding the three suggestions just mentioned, the draft resolution did contain a number of concrete and realistic proposals, two of which were particularly noteworthy. The first was the establishment within the Secretariat of a single focal point which would evaluate the effects of sanctions on States and submit its conclusions to the Security Council, with a view to coordinating information on available channels of assistance. The second proposal concerned the preparation of guidelines, as suggested by the Secretary-General in paragraph 41 of his report (A/50/361), which could provide technical guidance for the focal point in its work.

15. Acceptance of those two proposals would ensure that account was taken of the difficulties encountered by States as a result of sanctions and that more effective action was taken to address them. Two other measures should also be taken to that end: the recommendation to the Security Council to enhance the transparency and effectiveness of its sanctions-monitoring bodies, and an appeal to providers of assistance, in particular the international financial institutions, to bear in mind the difficulties encountered by some States as a result of sanctions imposed on their economic partners.

16. The European Union's draft resolution laid the basis for a compromise which reflected the common interests of third States affected by sanctions. Any significant deviation from that compromise would simply impede progress and leave those States in their current predicament.

17. The positions of his delegation with regard to the proposals by the Libyan Arab Jamahiriya and Cuba concerning the Security Council were well known and had not changed. Indeed, current efforts to restructure the United Nations and increase the membership of the Security Council significantly reduced the relevance of those proposals.

18. The draft United Nations Model Rules for the Conciliation of Disputes between States was a praiseworthy initiative. Model rules could, in certain cases, facilitate the search for peaceful settlements to disputes, provided that the recommended procedures remained optional.

19. The proposal by Sierra Leone to establish a dispute settlement service merited further consideration. Clarification was needed as to how the proposed mechanism could be distinguished from existing mechanisms in the field of dispute settlement.

20. His delegation welcomed the initiative to delete the "enemy State" clauses from Articles 53, 77 and 107 of the Charter of the United Nations. Emphasizing the positive contributions of former "enemy States" would help heal the wounds of the Second World War. The initiative was also relevant to the proposed increase in the membership of the Security Council, which his delegation hoped would take place in the near future.

21. His delegation had reservations about the proposal to open the Special Committee to all States Members of the United Nations. The Special Committee, as currently constituted, was not an elite circle where a small group of influential States took decisions behind closed doors about the Charter on behalf of the entire international community. Basically, it was a technical rather than a decision-making body and was composed of 47 States, selected according to well-established rules. Furthermore, any delegation that so desired could participate in the meetings of the Special Committee as an observer.

22. The purpose of the Special Committee was not to reflect the controversies of larger bodies but rather to move beyond debate and find theoretical and practical solutions to institutional problems, in the interest of all States. The establishment of open membership would not, in his view, lead to the attainment of that goal, and he had the unfortunate impression that the proposal was based on ideological considerations - an opposition in principle to the very idea of a restricted group. The absence of opposition to the proposal implied, regrettably, a general belief that the Special Committee was no longer a useful forum for negotiations. Expert committees and negotiating and technical bodies often had limited membership and still operated for the common good. The point was not to exclude members but to facilitate compromise. However, if the majority was convinced that the Special Committee no longer served that purpose, the question arose as to whether its existence was justified.

23. If the General Assembly did ultimately decide to open the membership of the Special Committee, then the new mandate should expressly state that the Committee would continue to operate on the basis of consensus. Without that clarification, his delegation could not endorse a proposal to alter the Committee's composition.

24. In respect of the proposal to include a new item on the Trusteeship Council in the agenda of the General Assembly his delegation had serious reservations about any modification, for the time being, of the provisions of Chapters XI, XII and XIII of the Charter. The question of the administration of Territories under United Nations control was highly complex and merited thorough consideration. In any event, the provisions relating to trusteeship, although inoperative in practice, gave rise to no costs and presented no other disadvantages for the Organization.

25. Mr. MUBARAK (Egypt), after reviewing the progress achieved in the work of the Special Committee, welcomed the European Union proposal for the adoption of a draft resolution on assistance to third States affected by the imposition of economic sanctions. It was important to base such a resolution on the working paper submitted by the Chairman of the recently established working group, while also taking into consideration the draft resolution that had been submitted to the working group by the European Union on means of implementing Article 50 of the Charter. The number of States currently affected by the non-implementation of that Article was growing as a result of the increasing number of cases in which economic sanctions were imposed by the Security Council, and a prompt solution to the problem must be found. To that end, the proposals contained in the report of the Secretary-General on the subject (A/50/361) should be fully addressed on a non-selective basis. It was also necessary to create an

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appropriate framework for consultations between the Security Council and potentially affected States with a view to enabling the latter to notify the Council of the anticipated effects of sanctions and submit proposals aimed at mitigating those effects. Finally, economic damage to third States should be minimized through measures that took into consideration the type and amount of such damage and provided fair and direct compensation accordingly with a view to ensuring that those States shouldered no extra burdens. In that connection, he supported the establishment of the mechanism proposed in paragraph 9 of the Secretary-General's report (A/50/361).

26. He hoped that the paper submitted by the Libyan Arab Jamahiriya on enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security would receive the discussion which it merited. He also supported the recommendation of the Working Group to annex the United Nations Model Rules for the Conciliation of Disputes between States to a decision or resolution to be adopted by the General Assembly during the current session, since they would serve as a basis for the first actual implementation of Article 33 of the Charter. In that connection, the useful proposal submitted by Sierra Leone on the establishment of a dispute settlement service would help to clarify the role such a mechanism could play under the provisions of the Charter while avoiding duplication of the measures contained in the Model Rules.

27. His delegation had already stressed on several occasions that the "enemy State" clauses of the Charter should be deleted on the grounds of inapplicability. The amendment of the Charter which would be required was currently being considered in the context of the comprehensive review of the role of the Organization, and he believed that the provisions of the Charter should undergo a single review that included all agreed amendments. Despite its mandate, the Special Committee had never reviewed proposals that would entail amendment of the Charter. Measures should therefore be adopted with a view to activating that function, bearing in mind the recent recommendation that membership of the Special Committee should be open to all States Members of the United Nations. He also proposed that the Special Committee should be renamed the "Committee on Review of the Charter of the United Nations and on the Strengthening of the Role of the Organization" in order to reflect both its open membership and the wider mandate that it ought to have.

28. Mr. KHYNE-SAM (Sierra Leone) noted with satisfaction that the Special Committee had made progress on most of the issues mentioned by the General Assembly in its resolution 49/58, in particular the proposal made by his own delegation on the establishment of a dispute settlement service. That proposal was based on the peacemaking provisions contained in paragraph 1 of Article 33 of the Charter of the United Nations and had been submitted to address the lack of a permanent subsidiary mechanism that would take advantage of the options provided for in Article 33. Under the proposal, the parties to a dispute would be able to avail themselves of a service which would attempt to settle the dispute through good offices, conciliation or mediation.

29. The proposal came at a time when calls were being made for reform of the United Nations and for progress in preventive diplomacy and the peaceful settlement of disputes. The slow pace of reform was due to a lack of consensus.

However, dispute settlement was an area in which agreement was likely to be reached, thereby raising the morale of the Organization as a whole.

30. His delegation was confident that with the proper will, a schematic structure for a dispute settlement service could be accepted within a reasonable time, leaving other substantive points to be worked out at a later stage. It would be unfortunate if the proposal were left to be considered briefly by a working group and then to languish over a long interim period before any final decision was taken. He noted in that connection that the Special Committee was mandated to consider not only the matter of the peaceful settlement of disputes but also ways to rationalize existing procedures in the United Nations. Furthermore, General Assembly resolution 47/120 B provided for an optional mechanism to consider the establishment of a dispute settlement service.

31. Mr. RAHMAN (Sudan) said that the Special Committee had gradually shifted away from its essential mandate and had achieved only modest results with regard to strengthening the role of the Organization. In the post-cold-war climate, joint initiatives were required to address common problems.

32. The implementation of Article 50 of the Charter was a complex issue: his country recognized the need for assistance to third States affected by the application of sanctions but also appreciated the need for full compliance with such sanctions. Some of the adverse effects of sanctions could be minimized through the provision of various forms of aid and cooperation or the establishment of appropriate mechanisms. Such States could also benefit from the emergency funding available in those circumstances from the International Monetary Fund, particularly if their balance of payments showed a deficit.

33. Sanctions should not be employed as a principal means of settling international disputes, and the United Nations should act with utmost caution in that regard. Sanctions should affect only their target and should be lifted immediately when circumstances warranted. They should not be imposed on the basis of universal criteria; on the contrary, each case should be considered individually.

34. The role of the Organization could not be strengthened without restructuring, which could be achieved without amending the Charter by striking a balance between the major global and regional Powers represented on the Security Council while urging them to assume joint responsibility. Reform of the Council should also address other shortcomings in the work of that organ, particularly with regard to: determining the nature of the matters submitted to it; expanding the base of its informal consultations; conducting an objective and constructive review of the right of veto, taking into account the democratic principle; and achieving maximum transparency in the work of its bodies.

35. He welcomed the draft United Nations Model Rules for the Conciliation of Disputes between States and expressed the hope that time and effort would not be wasted on drafting new instruments for the settlement of disputes, since those already in existence had surpassed all expectations. Nevertheless, it would be appropriate to review the current rules and the work of the relevant institutions in the field of relations between States with a view to addressing any shortcomings. He agreed that the obsolete term "enemy State" contained in

various Articles of the Charter should be deleted as soon as possible, particularly since it served no purpose and no substantive revision of the text was required.

36. The Special Committee should revert to its essential mandate by intensifying its efforts to strengthen the Organization. The composition of the Special Committee merited special discussion; it was feasible that it should have a wider or open membership, which would provide a suitable framework for the discussion of matters related to the interpretation of the Charter and the application and review of its provisions. It should nevertheless discuss only those matters which fell within its mandate in order to avoid duplicating the work of other United Nations bodies.

37. Ms. GAO Yanping (China) said that the Special Committee had not been able to make much progress during the past year on the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter, owing to the fact that the Secretary-General's report that had been requested in General Assembly resolution 49/58 had not been issued on time. Her Government had consistently opposed the use of sanctions as a means to resolve international disputes. Practice had shown that sanctions were hardly a panacea for the settlement of disputes and could, in certain circumstances, lead to further complications of disputes, possibly hindering their peaceful solution. Her delegation sympathized with those States that had suffered economic and other losses as a result of the application of sanctions under Chapter VII of the Charter. Nevertheless, the evaluation of the effects on those States and the apportionment of expenses was a complex process which required special attention. Her delegation hoped that the Secretary-General would submit his report on the question as soon as possible and supported the establishment of an open-ended working group within the framework of the Sixth Committee to study that question in depth.

38. Her delegation welcomed the latest text of the draft United Nations Model Rules for the Conciliation of Disputes between States, which was greatly improved and gave the States concerned more flexibility.

39. With regard to the proposal by Sierra Leone for the establishment of a dispute settlement service, her delegation believed that it would be appropriate for the Special Committee to hold further discussions the following year based on a detailed explanation to be submitted by Sierra Leone. Her delegation supported the recommendations of the Special Committee with regard to the question of the deletion of the "enemy State" clauses, and endorsed the view that that issue should be linked with other issues related to the revision of the Charter and that a package solution should be found.

40. Finally, with regard to the membership of the Special Committee, her delegation could accept the suggestion that it should be made open-ended. Above all, it was essential that expansion of the membership of the Special Committee should not affect the efficiency of that body's work. Consensus should remain the basis for decision-making in the Special Committee.

41. Mr. VILLAGRAN KRAMER (Guatemala) said his delegation supported the recommendation that the Special Committee should be open to all States Members

of the United Nations. The recommendation was a timely one that would set a new trend toward the broadest possible participation.

42. There were two approaches to the peaceful settlement of disputes. The first was the broader approach found in Article 33 of the Charter; the second dealt with the adoption of special systems to be applied in specific cases, such as the regime set out in the 1969 Vienna Convention on the Law of Treaties for the settlement of disputes arising from the suspension of international treaties. In addition, the International Law Commission had recently issued a number of draft articles concerning a general dispute settlement system as part of its work on State responsibility. He recalled other measures such as General Assembly resolution 2625 (XXVI) on principles of international law concerning friendly relations and cooperation among States, the 1982 Manila Declaration on the Peaceful Settlement of International Disputes and proposals put forth by his delegation and by that of Sierra Leone. His delegation endorsed the proposal by Sierra Leone, regarding the establishment of a dispute settlement service, as a constructive approach, and believed that the appropriate framework for discussing such issues was the Special Committee.

43. Following the recent meetings that had taken place in connection with the commemoration of the fiftieth anniversary of the United Nations, his delegation had been instructed by its Government to seek the common elements of a legal nature that had emerged from the public statements delivered by heads of State. Indeed, those statements had dealt with substantive issues relating to the structure and functions of the United Nations, and it was essential that an expanded Special Committee should define its new agenda by taking into account those views.

44. Lastly, his delegation supported the deletion of the "enemy State" clauses from the Charter of the United Nations.

45. Mr. BELLOUKI (Morocco) said that the United Nations should adopt its structures and methods of work in keeping with the important geopolitical changes taking place in the contemporary world. The Special Committee had a vital role to play in ensuring that the principles set out in the Charter were applied in their entirety.

46. With regard to the question of assistance to third States affected by the application of sanctions under Chapter VII of the Charter, the report of the Secretary-General (A/50/361) and the Special Committee's working paper (A/AC.182/L.79) presented important new ideas that had emerged from the debate on that subject. His delegation supported the view that the solution to the economic difficulties of third States affected by sanctions should in no way undermine the role of the Security Council in the maintenance of international peace and security. Sanctions should, first and foremost, modify the behaviour of a party that represented a threat to international peace and security, rather than inflict punishment.

47. In the Supplement to An Agenda for Peace, the Secretary-General had acknowledged that the increased use of sanctions had brought to light a number of difficulties, relating especially to the objectives of sanctions, the monitoring of their application and impact, and their unintended effects.

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Morocco supported the view that the consultations provided for in Article 50 of the Charter should not be an end in themselves but a way to find real solutions to the problems at hand. Sanctions were adopted collectively by the United Nations in order to maintain or re-establish international peace and security. Therefore, it was only right that the cost of applying those sanctions should be shared equally by all Member States and not be borne exclusively by a few States that happened to be neighbours or major trading partners of the target State.

48. While the Secretary-General's report described the latest measures that had been adopted to alleviate the difficulties of third States affected by the application of sanctions, it had fallen short of his delegation's expectations. His delegation did, however, endorse the Secretary-General's suggestion that a mechanism should be established to assess the potential impact of sanctions, explore ways of assisting Member States that were suffering collateral damage and evaluate claims submitted by such States under Article 50.

49. The establishment of a special trust fund to assist third States affected by the application of sanctions under Chapter VII was, in theory, an ideal solution, provided that financial resources were stable. His delegation also welcomed steps taken by international financial institutions to alleviate the difficulties of third States affected by sanctions. While some bilateral assistance had been provided, his delegation favoured the establishment of a permanent body to deal with that issue which would bear in mind the need to tailor bilateral assistance so as to alleviate the effects of sanctions.

50. His delegation welcomed the completion of the draft United Nations Model Rules for the Conciliation of Disputes between States and commended the delegation of Guatemala for having provided flexibility in its solution. However, Morocco continued to question the usefulness of the proposal submitted by Sierra Leone under the title "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes".

51. Morocco supported the deletion of the "enemy State" clauses from the Charter of the United Nations. With regard to the reform of the Security Council, his delegation believed that the Special Committee had an important role to play in providing legal analysis that would highlight the need to make the Council more representative and efficient. Finally, his delegation welcomed the expansion of the membership of the Special Committee to include all States Members of the United Nations.

52. Ms. ESCARAMELA (Portugal) said that, as an observer to the Special Committee, her delegation wished to thank those delegations that had proposed and endorsed the transformation of what had been a closed committee into an open-ended body, thereby allowing for the large majority of United Nations Members to contribute fully to its important work and deliberations. Her delegation was well aware that it was not easy for any organization to admit that it needed restructuring in order to keep up with the times and therefore appreciated the proof of broad-mindedness and commitment to transparency that the current members of the Special Committee had demonstrated.

53. Her delegation supported the deletion of the "enemy State" clauses from the Charter of the United Nations, not only because those clauses had become

obsolete, but also because of the regime envisaged in the Charter, especially in Articles 53 and 107. Her delegation firmly believed that there had long been a need to revise the Charter on that issue. Amendments, when needed, should be made in compliance with the procedure laid down in Articles 108 and 109 of the Charter and should not be postponed until such a time as a global revision might be carried out.

54. She commended the delegation of Guatemala for its hard work on the draft United Nations Model Rules for the Conciliation of Disputes between States. Her delegation noted with satisfaction that the Special Committee had concluded its consideration of that text and believed that those rules were a valuable addition to existing procedures which would significantly promote the peaceful settlement of disputes. Owing to their nature as a framework for guidance in relations among States, it would be preferable to adopt the rules by a resolution rather than by a decision.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

55. The CHAIRMAN announced that Albania, Bulgaria and Myanmar had become sponsors of draft resolution A/C.6/50/L.4, submitted under agenda item 143.

The meeting rose at 11.55 a.m.