United Nations
GENERAL ASSEMBLY
THIRTY-EIGHTH SESSION
*Official Records**

SIXTH COMMITTEE
18th meeting
held on
Tuesday, 18 October 1983
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. GASTLI (Tunisia)

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7 November 1983
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The meeting was called to order at 10.50 a.m.

AGENDA ITEM 126: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued) (A/38/41, A/38/61-S/15549, A/38/106-S/15628, A/38/135-S/15678, A/38/155-S/15699, A/38/325-S/15905, A/38/327-S/15911, A/38/357 and Add.1, A/38/432-S/15992, A/38/509)

1. Mrs. BERBERI (Sudan) said that, although the Sudan was not a member of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, it had always supported the work of the Special Committee, which was aimed at the elaboration of a world treaty on the non-use of force in international relations, and had voted in favour of the resolution renewing its mandate ever since its establishment in 1977.

2. The climate of political confrontation which prevailed in the Special Committee was a cause of concern and had led to a dangerous state of deadlock. The Committee had been unable to make any tangible progress in carrying out the mandate conferred on it by the General Assembly in a series of resolutions, the latest of which was resolution 37/105. The differences in the Committee continued session after session, despite the fact that there was a consensus on such questions as the importance of the principle of non-use of force, which was the corner-stone of the collective security system created under the aegis of the United Nations, the peremptory character of the norm contained in Article 2, paragraph 4, of the Charter and the gravity of the situation that resulted from violations of the principle of non-use of force.

3. The tendency to use force and interfere in the internal affairs of other States affected not only the great Powers, but also the countries of the third world. The use of force, in addition to creating a threat to peace and security in the regions affected, impeded the attainment of the priority objectives of developing countries and hindered the progress of peoples. In view of the existing state of tension, the Sixth Committee should take the necessary decisions at the current session to enable the Special Committee to complete its mandate.

4. The Special Committee was not faced with an easy task, but it could complete its mandate if the necessary political will was there and if no undue complications were introduced into its work. It was true that the Committee's work was interrelated with the subject of disarmament and with social or human problems, but exaggerating the link between those subjects and the Committee's mandate resulted in deadlock.

5. She supported the Chairman's proposal for dealing with Mr. El-Araby's informal paper, referred to paragraph 59 of the Special Committee's report. The Committee should continue to study the issues raised by the various manifestations of the use of force, leaving aside for the time being the question of the final form of the legal document that would eventually be elaborated. The general debate should also be discontinued in favour of a study of the legal aspects of the Committee's work. With regard to paragraph 13 of the report, she was in favour of renewing the Committee's mandate.

6. Mr. CHAN (Democratic Kampuchea) said that what had been happening in Kampuchea since December 1978 and in Afghanistan since one year later had shaken the foundations of the international order. In both cases, the principles of the Charter, particularly those concerning non-use of force in international relations and peaceful settlement of disputes, had been trampled underfoot with impunity by the super-Power which had taken the initiative of proposing enhancement of the principle of non-use of force in international relations.

7. In Kampuchea, the Socialist Republic of Viet Nam had assumed the right to occupy a small neighbouring country with an army of more than 200,000 men, under the protection and safeguard of the super-Power in question. On 3 November 1978, one month before Viet Nam had opened its attack on Kampuchea, Viet Nam and the USSR had signed in Moscow a treaty of friendship and co-operation which, under the terms of article 6, was in fact a treaty of military alliance. When the Security Council had considered Democratic Kampuchea's complaint against Viet Nam in January 1979, the Soviet Union had vetoed the draft resolution submitted by seven non-aligned members of the Council. The resolution approved by 13 votes to 2, one of the negative votes being that of the Soviet Union, constituted undeniable evidence of the will of the international community to oppose violations of the principles of the Charter and a reproof to Viet Nam's protector.

8. The international community had also been obliged to oppose the manoeuvres aimed at obtaining legitimation by the United Nations of Viet Nam's fait accompli in Kampuchea. For the past five years, the General Assembly had been rejecting the attempts to deprive Democratic Kampuchea of its right to represent the Kampuchean people in the United Nations and calling for an end to the occupation of Kampuchea through the complete and unconditional withdrawal of Vietnamese armed forces. The General Assembly had affirmed the right of the Kampuchean people to determine their own destiny, without outside interference, through free elections under United Nations supervision.

9. The people of Afghanistan had been brutally attacked, oppressed and reduced to servitude by Viet Nam's super-Power ally. In both cases, the same legal fictions and subterfuges - an invitation from the victim to come to its aid, or violations of human rights - had been used as a cover-up for aggression and occupation of a foreign country.

10. The Charter of the United Nations contained principles that were adequate and clearly stated. What was lacking was good faith and political will on the part of certain States, the strongest and most powerful. In his report on the work of the Organization for the thirty-seventh session, the Secretary-General had noted that Governments that believed they could win an international objective by force were often quite ready to do so, and that the Security Council all too often found itself unable to take decisive action to resolve international conflicts (A/37/1, p. 4).

11. His delegation agreed with the view expressed in paragraph 36 of the Special Committee's report that, despite the activities of the Committee, the situation in the real world had not changed much. It therefore believed that the mandate of the Special Committee should be thoroughly reviewed with the aim of adapting it to the existing situation, for the benefit of all concerned.

12. Mrs. RODRIGUEZ (Venezuela) said that the principle of non-use of force was one of the bulwarks of the security of States in their international relations. Strict observance of that principle by all States would have the effect of reducing existing serious conflicts.

13. The constant evolution of international relations necessitated the drafting of treaties and agreements developing the principles laid down in the Charter. In the view of her delegation, even though the principle of non-use of force in international relations was laid down in Article 2, paragraph 4, of the Charter, the Special Committee should elaborate a legal instrument to enhance the implementation of that principle, for which purpose it had significant basic documents at its disposal. Her delegation accordingly supported the renewal of the Committee's mandate. It was also of the view that the principle of non-use of force in international relations could be supplemented by a total prohibition of the use of nuclear weapons and a definition of cases in which the use of force was deemed to have occurred, covering not only the use of military force but also the threat or application of economic, political or other pressures on States.

14. With regard to the "headings" contained in the informal paper submitted by Ambassador El-Araby, in particular "heading" A, he believed that the proposal mentioned in paragraph 63 of the Special Committee's report constituted a positive element in helping to place the problem in its proper context. As to "heading" C, he felt that, in elaborating the text of that "heading", it was important to take into account the evolution of doctrine, as concretized in several of the works produced by the International Law Commission which provided for sanctions and for recognition of the responsibility of States. Referring to "heading" D, he drew attention to the importance his country attached to that issue and reiterated the observations it had made, which were contained in document A/37/375, on cases in which the use of force was legitimate.

15. In accordance with the principles of peace, freedom and democracy on which its foreign policy was based, Venezuela wished to reiterate once again its willingness to co-operate in developing the norms and principles of the United Nations Charter with a view to ensuring their more effective implementation. Accordingly, his country, together with Colombia, Mexico and Panama, had formed the Contadora Group, whose efforts were directed towards finding viable solutions to the Central American conflict.

16. Mr. BERMAN (United Kingdom), referring to the report of the Special Committee, drew attention in particular to the proposal put forward by its Chairman, which was reproduced in paragraph 59. In his opinion, the proposal represented a flexible and imaginative device for allowing the work of the Working Group to proceed without prejudice to the position of any delegation or group of delegations. Moreover, considering the differences of view that divided members of the Special Committee, he expressed appreciation to the members of the Non-Aligned Movement which, recognizing the cardinal importance of the prohibition of the threat or use of force in the Charter of the United Nations, had set themselves the task of rescuing something of value out of the impasse to which the Soviet Union's insistence on drafting a new world treaty had inevitably led.

(Mr. Berman, United Kingdom)

17. Article 1, paragraph 1, of the Charter already established the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace as one of the basic purposes of the United Nations. The essential complement to that statement was found in Article 2 in which a number of obligations assumed by Members, inter alia, to refrain from the threat or use of force against the territorial integrity or political independence of any State, were elevated to the rank of fundamental principle of the Organization. The capstone of the system was provided by Article 103, which stipulated that the obligations assumed under the Charter would prevail over those assumed under any other international agreement. That was particularly true of obligations enunciated as principles of the United Nations and, on that basis, many commentators had stated that the Charter prohibition of the threat or use of force was a rule of jus cogens. Consequently, any treaty which purported to permit or provide for the use of force in a way incompatible with the Charter would be void.

18. As to the argument that the United Nations had benefited greatly from the development of the basic principles of the Charter, while in specific cases it might be necessary to reinterpret or to clarify existing Charter obligations in such a way as to facilitate their application, that was not true of the principle of non-use of force, which had not been changed by changing circumstances. In any case, it was sufficient to have the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which contained an entire section devoted to the principle of non-use of force.

19. It was necessary to enhance the effectiveness of the principle of non-use of force, not to renegotiate it. The very suggestion that there was a need for a new world treaty indicated that there was something inadequate about the existing prohibition contained in the Charter. There was no comparable case in United Nations practice of an attempt being made to renegotiate one of the principles laid down in Article 2. Moreover, there was the danger that, as soon as negotiations were begun on a new treaty dealing with that basic principle of the Charter, it would be necessary to grapple with a whole series of expectations or alleged expectations related to the prohibition of the threat or use of force.

20. Moreover, it was impossible to ignore the fact that the sponsor of that proposal, the Soviet Union, had been guilty of numerous uses of force, both before taking the initiative in question in 1977 and since then. The Soviet Union's attempts to advance the doctrine of limited sovereignty, which would authorize intervention by armed force in the affairs of neighbouring countries, were well known. The international community was well aware of how the Soviet Union put that doctrine into practice, even in a non-aligned country such as Afghanistan. He asked how such behaviour on the part of the Soviet Union could be reconciled with the proposal for a new world treaty. That question gave rise to a whole range of questions, but the answer must come from the Soviet Union itself.

21. In the context of the draft world treaty, what was also surprising was the Soviet Government's response, in connection with the tragic affair of the Korean

(Mr. Berman, United Kingdom)

airliner, that it would do it again. He asked whether it was to be assumed that the Soviet delegation had been instructed to seek formulas which would allow its Government to "do it again".

22. Clearly, Soviet insistence on the negotiation of a world treaty constituted an insurmountable obstacle which prevented the Special Committee from carrying out any constructive work. His Government considered the initiative to be pernicious and thoroughly dangerous. Only if the Soviet Union dropped its insistence on a world treaty would it be possible to examine the prospect of having the Special Committee come up with practical recommendations which might genuinely lead to enhancing the effectiveness of the principle of non-use of force.

23. His Government's attachment to that principle was so strong that it was not prepared to embark on a blind venture. His Government did not find it acceptable to enter into a process of drafting formulas without a clear understanding of the final objective of those formulas. In addition, his Government did not accept, in principle, that the future work of the Special Committee should be artifically constrained within a particular series of seven parameters put forward at a certain time as an effort to facilitate the Special Committee's progress, not to straitjacket it. In the light of the Chairman's statement, contained in paragraph 59 of the report, he found it difficult to accept the rigidity of those delegations which had criticized members of the Special Committee for doing precisely what the consensus understanding in the Working Group had foreseen that they would be permitted to do.

24. His delegation would continue to oppose the renewal of the Special Committee's mandate in the sterile terms of the resolutions passed in 1982 and in previous years. However, if circumstances changed, his delegation would consider the possibility of modifying its position.

25. Mr. KAHALEH (Syrian Arab Republic) said that, although the majority of countries had accepted the idea of drafting a world treaty on the non-use of force in international relations, some insisted that the provisions of Article 2, paragraph 4, of the United Nations Charter were sufficient to guarantee the principle in question. However, the course of political events since the founding of the United Nations had shown that countries did not feel obligated to respect that principle. For example, in the Middle East crisis, the Security Council had not been able to take any measure to prevent the use of force. The observance of Chapter VII of the Charter and of the principle of non-use of force depended on the will of States. Any international agreement would lack validity, unless States consented to implement it.

26. Without mitigating the importance of the draft world treaty, he noted that, in view of the current political circumstances, the study of the form of the principle of non-use of force should be temporarily postponed so that the Special Committee could pursue its work. Moreover, he thanked the Chairman of the Special Committee for his idea of having a discussion of the "headings" contained in the informal paper submitted by Mr. El-Araby in conjunction with the three proposals submitted.

(Mr. Kahaleh, Syrian Arab Republic)

27. With reference to "heading" A, the Syrian Arab Republic supported the proposal in paragraph 63 of the Special Committee's report, particularly the elements relating to a phenomenological analysis of the different forms of use of force and a study of the reasons advanced by States to justify use of force. Concerning "heading" B, he did not favour the idea of reversing the order of "headings" A and B, as non-use of force would be defined under "heading" A and it should therefore come first. With reference to "heading" C, he supported the view expressed in paragraph 95 of the report, because a norm could not be effective unless it was accompanied by sanctions.

28. Concerning "heading" D, he agreed with what was said in paragraph 103 of the report about the legitimate use of force. As for "heading" E, he supported the proposal, referred to in paragraph 106 of the report, that practical measures to strengthen the system for the peaceful settlement of disputes should be considered, and the proposal in paragraph 115 that a new "heading" entitled "Respect for and fulfilment in good faith of international obligations" should be added immediately after "heading" E. In connection with "heading" F, he agreed with the contents of paragraph 119 of the report. With regard to "heading" G, he shared the view that disarmament and confidence-building measures were of cardinal importance.

29. The Syrian Arab Republic had a special interest in enhancing the effectiveness of the principle of non-use of force because part of the Arab homeland was occupied by force. He would not go into detail, since the work of the Sixth Committee involved codification and was not of a political character. He supported the renewal of the Special Committee's mandate.

30. Mr. AL JARMAN (United Arab Emirates) said that since the Second World War there had been numerous crises and wars, particularly in the third world. That had resulted in many violations of international law. The only way to deal with that dangerous situation was to put a stop to the threat or use of force. Intervention in the internal affairs of countries must be condemned and there must be an end to hegemony of every kind.

31. The drafting of a world treaty on the non-use of force in international relations would make it possible to confirm an important principle of international law and would reinforce the Charter of the United Nations. In that way, the declaration of the non-aligned countries would be implemented. The world treaty would strengthen international peace and security and would contribute to the efforts of the United Nations to strengthen international law.

32. He did not agree that such a treaty would be a repetition of the principles contained in the Charter. He supported the drafting of a treaty which would define all uses of force, both legitimate and unlawful. He considered that the treaty should clearly reflect the interrelationship between the principle of non-use of force in international relations and other principles of international law, such as good faith and peaceful settlement of disputes. He therefore favoured renewal of the mandate of the Special Committee so that it could continue its work.

33. Mr. LE KIM CHUNG (Viet Nam) said that between 1945 and 1982 there had been more than 180 armed conflicts, the origins of which must be sought not in the countries of Asia, Africa and Latin America, nor in communist expansionism, nor in East-West rivalry, but in the forces of colonialism, imperialism, racism, expansionism and hegemonism.

34. The Vietnamese people had been the victims of a terrible war and could testify to the international community that those who violated the principle of non-use of force in international relations were the ones who were trying to hinder the progress of the forces of peace, national independence, democracy and social progress and were relying on the use of military and economic superiority to maintain an anachronistic international order.

35. It was understandable that those aggressors should be averse to a world treaty on the non-use of force in international relations, as such a treaty would tie their hands more effectively and, once it was concluded, would isolate them. He recalled what had happened when the United Nations Convention on the Law of the Sea was being drafted and the largest Western industrialized country had attempted, at the eleventh hour, to prevent the conclusion of the draft Convention.

36. The representatives of some Western countries, particularly the major ones, had tried to hinder the progress of the Sixth Committee's work on the drafting of a world treaty, but their negativism and misrepresentations had been denounced and refuted; the majority of the States Members of the United Nations had expressed firm support for the efforts to develop, spell out and concretize the principle of non-use of force through the conclusion of a binding world treaty.

37. His delegation welcomed measures designed to reduce the danger of war, pending the conclusion of a treaty, and it therefore fully supported the proposal of the States parties to the Warsaw Pact for concluding a treaty on mutual non-use of force with the States members of NATO, and the call by the Conference of Heads of State or Government of Non-Aligned Countries in New Delhi for prohibition of the use or threat of use of nuclear weapons and a halt to the production and deployment of such weapons.

38. His delegation supported the new initiatives of the Soviet Union at the current session, particularly that relating to the conclusion of a treaty on the prohibition of the use of force in outer space and from space against the Earth. It also supported the proposal of the Mongolian People's Republic for a mutual non-aggression pact renouncing the use of force between the States of Asia and the Pacific, and reiterated its own proposals to conclude non-aggression pacts with the People's Republic of China and the States members of the Association of South-East Asian Nations.

39. With regard to the analysis of "headings" A, B, C and D in the report of the Special Committee, his delegation considered that the prohibition of the use of force related solely to its unlawful use, thus excluding the right of self-defence provided for in Article 51 of the Charter, the right of States to defend their independence, sovereignty, unity and territorial integrity and the right of all peoples to resort to armed struggle against colonial and racist régimes.

(Mr. Le Kim Chung, Viet Nam)

40. His delegation placed a broad interpretation on the terms of "headings" A and B. From personal experience, it entirely supported the working paper submitted by 10 non-aligned countries and considered that the use of force should be prohibited, regardless of its character or the form it took.

41. In his view, paragraphs 4, 5 and 8 of the non-aligned countries' paper should be included under "heading" C, and he strongly urged non-recognition of the consequences of aggression. Viet Nam, having been the victim of endless acts of aggression and intervention for 30 years, was entitled to reparation, and it was essential that means of guaranteeing that aggressors honoured their obligations to make reparation should be discussed.

42. His delegation supported the renewal of the Special Committee's mandate and hoped that it would focus and redouble its efforts through the activities of the Working Group and that Member States granted observer status in the Special Committee would also be allowed to participate in the work of the Working Group.

43. Ms. MULAMFU (Zambia) said that, in his statement delivered at the thirty-eighth session of the General Assembly, the Minister for Foreign Affairs of Zambia had shared the world's concern over the serious deterioration of the international situation. He had noted that mankind was living in an era of tensions, particularly between the super-Powers, as a result of the suspicion and mistrust which had made it impossible to find peaceful, just and lasting solutions to conflicts.

44. In the view of her delegation, the drafting of a treaty on the non-use of force would enhance, and not undermine, the principle of non-use of force set forth in the Charter. Her delegation welcomed the framework within which the treaty would be contained. It felt that the sociological, political, psychological and economic aspects of the use of force by some States against others needed to be taken into account. The treaty would amplify the situations recognized as constituting use of force. In that respect, the deliberate suppression by force of a people fighting for self-determination and those fighting against the policy of apartheid, and the destabilizing of sovereign States by force of arms and economic pressures, should also be considered under 'heading" A.

45. The restatement of the prohibition of the threat or use of force was acceptable to her delegation and should cover all types of use of force other than those covered under "heading" D. Her delegation supported the views expressed in paragraph 97 of the report regarding the consequences of the threat or use of force. Once the definition of the use of force had been formulated, it would be necessary to include in the treaty situations in which use of force would be considered legitimate. In her view, armed struggle in order to gain self-determination and independence was acceptable, since the principle of self-determination was recognized as the basis upon which universal peace could be strengthened.

(Ms. Mulamfu, Zambia)

46. The "headings" on peaceful settlement of disputes and the role of the United Nations should be related to the practical solutions that might be arrived at while taking into consideration the existing Charter provisions on the subject. By the time the Special Committee completed its task, there might be some revisions of the Charter which might make it possible for certain United Nations institutions to play a more active role in enhancing the principle of non-use of force.

47. Her delegation was convinced of the urgent need for genuine nuclear disarmament and a stop to the production and spread of conventional weapons. It associated disarmament with the issue of non-use of force. It also supported the view that all States should assume an obligation not to use armed force, including nuclear and other types of weapons of mass destruction, since declarations to that effect would promote confidence among States. To reaffirm its commitment to the cause, her delegation supported the extension of the Special Committee's mandate and hoped that more progress would be made to enable that Committee to complete its task.

AGENDA ITEM 120: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (A/38/344)

48. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the item, said that the International Law Commission in the report on the work of its thirtieth session, had submitted to the General Assembly at its thirty-third session its final set of draft articles on most-favoured-nation clauses, in conformity with the recommendation made by the Assembly in resolutions 31/97 and 32/151. In accordance with article 23 of its statute, the Commission had decided to recommend to the General Assembly that the draft articles on most-favoured-nation clauses should be recommended to Member States with a view to the conclusion of a convention on the subject.

49. The comments and observations submitted by States, relevant organs of the United Nations and interested intergovernmental organizations pursuant to General Assembly resolutions 33/139 and 36/161 had been circulated in 1980 and 1981 respectively in documents A/35/203 and Add.1-3 and A/36/145.

50. At the thirty-seventh session of the General Assembly, the Sixth Committee had had before it the report of the United Nations Commission on International Trade Law on the work of its fifteenth session (A/37/17), chapter IX of which related to most-favoured-nation clauses. In that report, it had been indicated that UNCITRAL was divided as to whether it should proceed to formulate comments and observations upon the International Law Commission's draft articles (para. 135). UNCITRAL had noted that in the absence of a consensus no substantive comments on the draft articles could be submitted (para. 138).

51. The report of the Secretary-General contained in document A/38/344 reproduced the comments and observations submitted pursuant to General Assembly resolution 36/111 by Ecuador, Spain and Venezuela and by the World Intellectual Property

(Mr. Fleischhauer)

Organization. The Council for Mutual Economic Assistance had reaffirmed its previous comments (A/35/203/Add.1). The European Free Trade Association had stated that its earlier comments on the draft articles were still valid (A/36/145). The Organisation for Economic Co-operation and Development had indicated that it had no comments or observations to submit on the matter.

The meeting rose at 1 p.m.

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SIXTH COMMITTEE
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SUMMARY RECORD OF THE 19th MEETING

Chairman: Mr. GASTLI (Tunisia)

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The meeting was called to order at 10.45 a.m.

AGENDA ITEM 126: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued) (A/38/41, A/38/61-S/15549, A/38/106-S/15628, A/38/135-S/15678, A/38/155-S/15699, A/38/325-S/15905, A/38/327-S/15911, A/38/357 and Add.1, A/38/432-S/15992, A/38/509)

1. Mr. ACERO (Colombia) said the questions raised by the item under consideration were so diverse that it would be absurd to try to limit the discussion to the strictly legal aspects. It was precisely in order to defend the sacred principle of non-use of force that the system of collective security, which found its highest expression in the United Nations, had been established.

2. For centuries, it had been clear that the law could not keep pace with developments. As far as international relations were concerned, mankind had had to build legislation on the rubble and ruins left by wars, which had occurred one after another throughout the course of history, culminating in the Second World War.

3. It was not irrelevant, let alone foolish, to re-examine in detail the possible means of enhancing the effectiveness of the principle of non-use of force, even though that principle was clearly and categorically enunciated in the Charter. According to a Chinese proverb, in order to teach well, the teacher had to repeat what had been learned the previous day. It was therefore good to hear as often as necessary that, despite the mistakes of the past that had led States to take up arms against one another, the leaders of the respective nations still had some urge to pool their efforts to avert final destruction. It was to be hoped that, as a result of the constant affirmation of the desire for peace and the intention not to use force in international relations, all the peoples of the world, irrespective of race, ideology or religion, would be able to look forward to a more secure and less cloudy future. For those reasons, his delegation believed that the mandate of the Special Committee should be renewed, so that it could continue the excellent work it had done at previous sessions.

4. The Special Committee had clearly made some progress, thanks to the constructive efforts of the developing and non-aligned countries. In 1983, it had carried out a preliminary review of the "headings" contained in Ambassador El-Araby's informal working paper. The purpose of that new initiative was to advance the future deliberations of the Special Committee. As a result of that initiative and the broader approach to the question, new prospects for the Special Committee's work had emerged.

5. It had to be admitted that the Soviet proposal, according to a strictly legal interpretation, would be incompatible with the principles underlying the hierarchy of norms of international law. Once it was recognized that the United Nations Charter was the supreme instrument governing relations between States, it would be ludicrous to claim that inferior norms could have greater legal force than the Charter itself. It was not because of ambiguity or misunderstanding that the sovereignty of States had been violated. A close look at the facts showed that all

(Mr. Acero, Colombia)

types of specious arguments had been used to justify what was definitely and categorically prohibited by Article 2 of the Charter.

6. Colombia supported Ambassador El-Araby's proposal and agreed that the question of the form of the legal instrument to be elaborated should be left for a later stage. Attention should be paid to the Peruvian proposal to include a new "heading" on the fulfilment of international obligations in good faith. As early as 1945, at the San Francisco Conference, Colombia had urged that that important principle should be included in the Charter. It was more necessary than ever to reaffirm the principle of good faith in the fulfilment of obligations created by treaties and other sources of international law.

7. Colombia was deeply committed to all forms of law and to the principle of self-determination of peoples. It was the heir and guardian of a strict democratic tradition of respect for ideological pluralism in its relations with all its neighbours and with the fraternal peoples of the world. It had never sought to sit in judgement and scrupulously respected the laws of others. Faithful to that tradition, Colombia was fully convinced that disputes must be settled by peaceful means. Together with the fraternal countries of Mexico, Panama and Venezuela, it was energetically seeking peace in Central America. The countries of the Contadora Group firmly believed that nothing could be more detrimental to the future of the region than the violation of the tradition of pacifism which, for so many years, had characterized the peoples living south of the Rio Grande.

8. Colombia called on all States to renew their profession of faith in the principles of self-determination of peoples, non-interference in the internal affairs of States, peaceful settlement of disputes and non-use of force in international relations.

9. Mr. TRUCCO (Chile) said that the United Nations Charter, by establishing the obligation to refrain from the threat or use of force in international relations, represented a major milestone in the history of international law. Despite that prohibition, which was expressed in peremptory and absolute terms, and despite the commendable objectives inspiring the authors of the Charter, the dozens of armed conflicts that had broken out since States had met at San Francisco in 1945 to put an end to the scourge of war clearly showed that the use of force had not been eliminated from international relations.

10. The use of force was certainly not due to ambiguities in the relevant Charter provisions, but to the contempt in which some States held the principles of the United Nations. The acts of armed aggression against Kampuchea and Afghanistan were sad examples of the hegemonistic designs of one great Power. The use of force against a defenceless South Korean civilian aircraft, in addition to being a violation of international law, constituted a veritable affront to the conscience of mankind.

(Mr. Trucco, Chile)

11. The system of collective security established by the Charter had not been as effective as expected. The world was witnessing what the Secretary-General had described in his annual report (A/38/1) as the partial paralysis of the United Nations as the guardian of international peace and security.

12. During the general debate, all speakers had reaffirmed the faith of their respective Governments and peoples in the principles of the United Nations Charter. They had all agreed that the maintenance of peace was the inescapable imperative of the day. The time had come to enhance the effectiveness of the United Nations in its basic task of preserving peace. The Special Committee should therefore not confine itself to a mere reiteration of a principle set forth in the Charter over 30 years earlier; it should seek to strengthen the machinery, procedures and institutions to enhance the effectiveness of the principle of non-use of force and should underscore the existing interrelationship between that principle and other principles embodied in the Charter.

13. His delegation rejected the normative approach, which would involve the mere reiteration of well-established obligations. In his opinion, the draft World Treaty submitted by the Soviet Union epitomized the normative approach in the work of the Special Committee. It had to be stressed that the Charter provisions in that area were clear, peremptory and categorical. An additional normative instrument would at best be superfluous.

14. The Special Committee should also stress the relationship between the principle of non-use of force and other principles laid down in the Charter. Emphasis should be placed on the need to reaffirm the principle of non-intervention in the internal affairs of States, since full implementation of that principle would unquestionably enhance the effectiveness of the principle of non-use of force. General Assembly resolution 2625 (XXV) had clearly established the principles upon which States should base their conduct in that connection.

15. His delegation was sponsoring the proposal that the question of respect for and fulfilment in good faith of international obligations should be added to the list of "headings" proposed by Mr. El-Araby. That principle, which was laid down in the Preamble to the Charter, had also been included in 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 was a prerequisite for the maintenance of international peace and security.

16. It was true that there was a link between the principle of the peaceful settlement of disputes and the principle of non-use of force, but his delegation did not believe that the former principle was a corollary of the latter. Those principles were laid down separately in the Charter, and it was recognized that they were in the jus cogens category. The separate status of the two principles in question meant that the obligation to settle a dispute peacefully could not be considered a merely passive obligation that could be regarded as having been fulfilled when a State had simply refrained from using force. Even although, from the point of view of the phenomenology of the international conflict, there was

(Mr. Trucco, Chile)

often a logical relationship between non-fulfilment of the obligation to settle disputes peacefully and the use of force, under international law observance of one of the two principles in question did not in any way justify non-observance of the other. Chile had always maintained, and had done so particularly energetically in recent years, that greater attention should be paid to Chapter VI of the Charter, on the pacific settlement of disputes, and it believed that any dispute that had not been settled through treaties or other binding instruments should be given particularly close consideration by the United Nations.

17. Under existing international law, countries that were not bound by a treaty providing for compulsory settlement of disputes were free to select the procedure that suited them best, taking account of the fact that legal disputes had to be submitted to the International Court of Justice. In practice, that freedom of choice meant not only that the parties entered into the dispute divided by differences of opinion regarding the substance of the matter but also that procedural differences relating to selection of the means of settling the dispute might emerge. Furthermore, even in the cases in which agreement was reached on the means of settling the dispute, the procedure in question might be subject to delays and might meet with obstacles.

18. His delegation would confine itself to drawing attention to two initiatives that it considered feasible and that would have a positive impact on the Organization's ability to guarantee observance of the principle of non-use of force. Firstly, an initiative that had been referred to either directly or indirectly in a number of documents (A/38/1, A/CN.10/38, A/38/271) concerning the need for States Members of the United Nations, particularly the members of the Security Council, to reaffirm their undertaking not to recognize as legitimate any attempt to settle disputes by means of force. The international community should take the necessary steps, through the Security Council, to prevent disputes from degenerating into violence. The enormous destructive capacity of modern weapons and the danger of escalation present in any conflict meant that it was essential that the relevant provisions of the Charter should be firmly applied in respect of those seeking to circumvent peaceful means of settlement and that collective security procedures should be strengthened.

19. A second area of concern to the international community was the prevailing trend in the Security Council to take up consideration of international disputes only once they had become violent. By that time, military events had taken on their own momentum, which was difficult to bring under the political control of the Security Council. The evolution of certain problems must be followed closely, in order to focus on the peaceful means of preventing and settling disputes recognized under international law. In that connection, his delegation attached particular importance to consideration of possible ways of strengthening the Security Council's investigative powers under Article 34 of the Charter and the Secretary-General's investigative and fact-finding powers under Article 99 of the Charter, as well as the functions the Secretary-General could perform under Article 98. Chile was in favour of extending the Special Committee's mandate but believed that it should be formulated in such a way that it commanded general

(Mr. Trucco, Chile)

support, since a body that was rejected by a group of countries could not be expected to produce consensus documents enabling it to complete its work successfully.

20. Mr. TELLEZ (Nicaragua) said that non-observance by certain States of the principle of not threatening to use or not using force in international relations, which was laid down in Article 2, paragraph 4, of the Charter of the United Nations, gave cause for great concern. Since the outset, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations had encountered great difficulty in carrying out its work, owing to some delegations' stubborn opposition to the drafting of a treaty or any other instrument regulating the issue in question. The deadlock was such that there were delegations that believed that the Special Committee's mandate should not be extended. However, Nicaragua believed that it had become more necessary than ever to give impetus to the Special Committee's work and that its mandate should therefore be made more specific.

21. There were many countries and regions that had been and continued to be the victims of the use or threat of force directed against their peoples. Since the revolution in 1979, Nicaragua had been a clear and graphic example of non-compliance with the Charter of the United Nations and non-fulfilment of the obligations flowing from it on the part of a great Power. Nicaragua had been, was being and evidently would continue to be subjected to the threat and use of force, in all possible forms, on the part of United States imperialism, which was trying to prevent it from choosing the style of economic, political, social and cultural development it considered appropriate for its people. As a pretext, the imperialists were asserting that Nicaragua was a security threat both to itself and to the entire region.

22. It would therefore appear to be appropriate to describe in some detail the steps that the Reagan Administration was taking in implementation of its plan to destabilize Nicaragua through that regrettably well-known organization, the Central Intelligence Agency. From late 1981 onwards, the CIA had been successful in gathering together scattered groups of counter-revolutionaries, which it had amalgamated into an organization that it had cynically named the Nicaraguan Democratic Front. In the same period, the CIA had been establishing training camps for counter-revolutionaries at Miami and in Texas and California. In June 1982 the CIA had given the order for the counter-revolutionaries trained in the United States to be transferred to Honduras, where they had the full co-operation of the Honduran army. From that point onwards, there had been constant harassment of Nicaraguan territory, but the counter-revolutionaries were being consistently repulsed by the people and the army. In view of the obvious failure of the plan in question, the CIA was setting up another plan aimed, firstly, at providing the counter-revolutionary forces with rapid logistic support and, secondly, at reorganizing the Nicaraguan Democratic Front.

23. In February 1983, a contingent of 2,000 former Somozist guardsmen, coming from Honduras, had invaded Nicaragua through the Jalapa sector. A large part of that group had remained in the northern mountain areas and another, much smaller part

(Mr. Tellez, Nicaragua)

had penetrated deeper into Nicaraguan territory. It was important to note that at another concentration point, also in Honduras, there were some 2,500 men whose entry had been prevented by the Nicaraguan army. Three months later, those groups had suffered a military defeat and had been forced to retreat to Honduran territory.

24. At the end of July, CIA planning for a further invasion attempt had begun. At the same time, the United States Government had planned and carried out military manoeuvres on an unprecedented scale along the Pacific and Atlantic coasts of Central America, supposedly for purely deterrent purposes.

25. During the past month, the counter-revolution, supplied by the CIA, had made another qualitative escalation: at dawn on 8 September, a Cessna 404 aircraft had bombed Augusto César Sandino International Airport and installations of the Sandinist Air Force. On the same day, another aircraft had attacked the area near Central American College and the residence of the Minister for Foreign Affairs, Miguel D'Escoto.

26. It was important to note, as irrefutable proof of the failure to respect the principle of non-use of force, that the aircraft used in the attack on Nicaragua's international airport was owned by Investair Leasing Corporation, which was headed by a senior official of Intermountain Aviation Inc. In 1975, the latter concern had been identified by Intelligence Committee of the United States Senate as one of the largest properties owned by the CIA.

27. In the following days, attacks on civilian and economic targets had continued, with the use of more aircraft, boats and other equipment donated by the CIA. Only two days previously, CIA-supported terrorists had succeeded in sabotaging the oil delivery and distribution installations at Puerto Sandino, forcing the country to take fuel and energy conservation measures and, in exercise of its right of self-defence, to prepare more effective and better means of national defence.

28. Spokesmen for the United States Government had tried in vain to make the world believe that the war they were waging against Nicaragua was a figment of that country's imagination. Apart from the incidents he had mentioned, some statements by the most senior members of the United States Government were clear proof of disregard for the principle of non-use of force in international relations. All the events and circumstances described constituted open and clear violations of the Charter of the United Nations.

29. As an immediate and direct response, the Government of Nicaragua has made repeated attempts to give practical effect to efforts for peace and to eliminate the danger of a regional war. On four occasions it complained to the Security Council about the acts of aggression, covert and overt, of which it was the target, and as a result, through mass participation of the international community and Council resolution 530 (1983), a very important endorsement of the initiative of the Contadora Group and a kind of barrier to the military options of the United States Government had been achieved.

(Mr. Tellez, Nicaragua)

30. Nicaragua had also requested the inclusion in the agenda of the General Assembly of an item entitled "The situation in Central America: threats to international peace and security and peace initiatives". It firmly believed that war in the region could still be averted, and was therefore sparing and would continue to spare no effort in the search for peace. It also wished to place on record, however, that it would defend itself to the last breath.

31. In conclusion, he said that Nicaragua was hopeful about the future work of the Special Committee and considered that, if that work was to be successful, the Committee's tasks and objectives should be clearly defined.

32. Mr. SANDIGA (Peru) said that Peru's foreign policy was based on the principles of the Charter, specifically on three fundamental principles: peaceful settlement of disputes, respect for and fulfilment in good faith of international obligations, and non-use of force in international relations.

33. Peru also recognized the urgent need to create conditions conducive to the development and strengthening of the principle of non-use of force and firmly supported the initiatives of those Member States which considered that what was most necessary was to develop the fundamental principles set forth in the Charter.

34. It was therefore inadmissible to claim that the Charter was all but immutable, since it had to be adapted to ever-changing international circumstances.

35. The world was witnessing a constant deterioration in the international situation. Open threats were followed by unjustified aggression, thus creating flashpoints of conflict and tension which jeopardized peace in various regions. Peru, as a non-aligned country, considered that international peace and security, which were closely linked to respect for the principle of non-use of force in international relations, were too serious a matter to be left to the self-interested and casual whims of power blocs.

36. Developing and enhancing the Charter did not mean condoning violations of it. The spirit which motivated concerned Member States to encourage the work of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations was the same as that which had caused other Member States to promote the work of other ad hoc bodies or committees of the United Nations system. A major example was the work being done by the Special Committee on the Charter, which, among other important matters, was reviewing and appraising the organs and mechanisms of the system. His delegation was convinced that, if the aim was to strengthen and develop the principle of non-use of force in international relations, support must also be given to the work of other ad hoc committees with similar aims and objectives.

37. A question of great importance for the Special Committee was the prerogatives of observers. It was necessary and urgent to include in the resolution to be adopted on the item an explicit reference to observers, so that they would be expressly empowered to participate fully in the Special Committee's general debate and in its Working Group.

(Mr. Sandiga, Peru)

38. His delegation wished to reiterate its support for the work of the Special Committee and would vote in favour of the renewal of its mandate.

39. Mr. HERRERA CACERES (Honduras) said that he appreciated the importance of the work entrusted to the Special Committee and attached great importance to the granting of observer status to a number of permanent missions and to the Special Committee's practice of accepting any request from a State that was not a member of the Committee. His delegation intended to obtain such status and supported the Peruvian delegation's proposal for the inclusion of a paragraph concerning greater participation of observers in the Special Committee.

40. As a peace-loving country, Honduras favoured the elaboration of instruments providing a legal safeguard that would increasingly strengthen the principle of sovereign equality of States, and his delegation supported any initiative in that direction. It might be worthwhile to leave aside the question of the form or legal status of the instrument to be drafted and concentrate on considering measures which could genuinely enhance the effectiveness of the principle of non-use of force in international relations. It was also important to consider the legal aspects of the Committee's work, instead of becoming involved in sterile political debate.

41. Unfortunately, however, there had been some statements which were quite lacking in the respect and responsibility that ought to mark any participation in a United Nations body and which sought to turn the Organization into a platform for propaganda. Honduras would not descend to those levels.

42. His delegation considered that the outcome of the deliberations on the item was simply a means and not an end in itself, since the real goal was the maintenance of international peace and security, an objective which should never be lost sight of.

43. The Charter and resolutions of the United Nations, the realities of international life and international practice all pointed up the existence of an indissoluble bond between peaceful settlement of disputes, non-use of force and disarmament, which meant that the three elements must be dealt with simultaneously if they were to result in the enhancing of world peace and security.

44. Turning to the informal paper submitted by Mr. El-Araby, he said that, in "heading" A, the term "manifestations" referred to the forms of the use of force and not necessarily to the causes of those manifestations. He therefore believed that case-by-case study, and even phenomenological analysis, though important, were matters to be dealt with in institutions established for that purpose, and not in a forum like the Sixth Committee, since that could impede the Committee's work and also spill over into controversial areas with respect to the competence of other international bodies and organizations.

(Mr. Herrera Caceres, Honduras)

45. It would seem more prudent for the Secretariat to make a study of the reasons advanced by States to justify use of force, including a comparative analysis and a synthesis of the forms or reasons invoked in an attempt to justify externally what was in itself an illegitmate use of force. The proposal that the term "manifestations" should be preceded by the adjective "illegitimate" seemed pertinent, in view of the interrelationship with "heading" D to which attention had been drawn.

46. With respect to "heading" C, he had noted the differing views that had been expressed and thought that a greater effort should be made to be concise, since very little could be done to enhance the effectiveness of the principle of non-use of force unless the consequences that would ensue for those who threatened or used force to unleash conflicts, very often as a solution to internal difficulties, were clearly established.

47. Regarding "heading" D, his delegation felt that the suggested additon of the words "in accordance with the Charter of the United Nations" would be useful, in order to determine both the unanimously accepted exceptions and the direction in which the principle was evolving.

48. In connection with "heading" E, his delegation agreed on the close interrelationship between peaceful settlement of disputes and the principle of non-use of force. That indicated the need for compliance with the provisions of Chapter VIII of the Charter, particularly Article 52, paragraph 2.

49. It was essential that the principle of peaceful settlement of disputes should be made effective, and his delegation would therefore like to point out once again that the efforts to that end reflected in the American Treaty on Pacific Settlements (Bogota Pact) could be helpful in arriving at an agreement on a compulsory mechanism for the peaceful settlement of disputes the prolongation of which could endanger international peace and security. The views set forth in paragraphs 106, 109 and 113 of the report (A/38/41) were useful in that respect.

50. With regard to "heading" G, his delegation considered that both disarmament and confidence-building measures were elements that should be considered in conjunction with the principle of peaceful settlement of disputes, and consequently, with the principle of non-use of force.

51. In view of the imporance of the item, he was in favour of renewing the mandate of the Special Committee and of continuing the Working Group. He recalled that the States of Central America were seeking to attain objectives of international peace, security and stability, with the support of the countries of the Contadora Group. Ratification of the "Document of Objectives" by the five States of Central America laid the foundations for multilateral negotiations leading to the conclusion of simultaneous agreements.

52. Mr. ROMERO (Ecuador) said that Ecuador had consistently supported the principle of non-use of force in international relations and the system for the peaceful settlement of disputes among States.

53. Ecuador was deeply concerned about the problem of Central America, where outside interference was creating victims, spreading destruction and hunger and again introducing the East-West conflict into the region. The interventions in the Malvinas, Lebanon, Afghanistan, Cyprus, Kampuchea, Namibia and Chad, the war between Iran and Iraq, the situation of the Palestinian people and the system of apartheid were further causes of concern.

54. It was essential to re-establish the dialogue between the great Powers, which were largely responsible for peace and justice, since only the exercise of political will on their part would make it possible to guarantee a peaceful prospect for present and future generations.

55. Unfortunately, it had not yet been possible to eradicate the use of force in relations between States; on the contrary, arsenals of war continued to be built up while hunger, ignorance and poverty were rife in every corner of the globe.

56. The non-aligned movement had arisen in reaction to that situation; it was dedicated to the formulation of new concepts and the strengthening of new principles for safeguarding independence, territorial integrity, sovereignty, the development of international relations, world peace, peaceful coexistence and the settlement of disputes between States through the means prescribed by the United Nations Charter.

57. In the Manifesto to the Peoples of America, on the occasion of the bicentenary of the birth of the Liberator, Simón Bolivar, the Presidents of Bolivia, Colombia, Ecuador, Panama, Peru and Venezuela had declared that exaltation of the use of indiscriminate force resulted in a never-ending series of crimes, had confirmed their determination to continue the struggle to establish a new international order, had reiterated the need to reduce spending on armaments and to use the resources involved for the tasks of economic and social development and had reaffirmed the intrinsic equality of States and the principle of respect for the self-determination of peoples.

58. His delegation was in favour of the item which the Special Committee was considering because it strengthened the principles that were conducive to the prohibition of the use or threat of force in international relations. The Special Committee must continue its work and all States must lend it their co-operation; that would result in a strengthening of United Nations organs, particularly the Security Council, which bore primary responsibility for the maintenance of international peace and security.

59. Mr. SOO GIL PARK (Observer for the Republic of Korea) said that the Republic of Korea pursued a policy of peace and co-operation for the reunification of the country and based its foreign policy on the principle of non-use of force, as was clearly stated in article 4 of its Constitution.

(Mr. Soo Gil Park, Observer, Republic of Korea)

60. During the past three weeks, many delegations to the General Assembly had condemned the Soviet Union for shooting down a civilian airliner of the Republic of Korea; many speakers had also referred to the matter in the context of the non-use of force. It was ironic that the principle of non-use of force had been violated so clearly and so often by the principal proponent of a world treaty on the non-use of force in international relations. The destruction of the civilian airliner, with its death toll of 269 innocent victims, not only constituted an attack on the safety of international civil aviation; it had demonstrated to the international community that Soviet peace proposals, whether in the form of a world treaty on the non-use of force or a declaration renouncing the first use of nuclear weapons, were propaganda ploys intended to mislead world public opinion.

61. On 2 September, the Republic of Korea and other countries had called for a meeting of the Security Council to consider the incident. A resolution declaring, inter alia, that the use of arms against international civil aviation was incompatible with the norms governing international behaviour and elementary considerations of humanity had received the support required for adoption but had been vetoed by the Soviet Union. On 16 September 1983, the Council of ICAO, where the veto did not apply, had adopted a resolution reaffirming the principle that States, when intercepting civilian aircraft, should not use weapons against them. The Council of ICAO had also expressed its concern that the Soviet Union had not so far acknowledged the paramount importance of the safety and lives of passengers when dealing with civilian aircraft intercepted in or near its airspace. On 1 October, the Assembly of ICAO had endorsed the Council's resolutions and decisions by an overwhelming majority.

62. It was clear from the statement made on 7 September by the Minister for Foreign Affairs of the USSR, Mr. Gromyko, at the Madrid Conference on Security and Co-operation in Europe, that the Soviet Union maintained its threat to use armed force in similar situations. What was urgently required was not another proposal for a new treaty, but scrupulous adherence to the principle embodied in Article 2 of the United Nations Charter.

63. Mr. GARVALOV (Chairman of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations) expressed satisfaction that an overwhelming majority agreed that the Special Committee had made progress during its 1983 session, as was faithfully reflected in its report. The Sixth Committee had made a constructive contribution to the Special Committee's future work by suggesting specific ways in which that Committee could fulfil its mandate.

64. Some delegations had reiterated the view that, since the principle of non-use of force in international relations was a firmly established peremptory norm of general international law and a fundamental principle reaffirmed in Article 2, paragraph 4 of the United Nations Charter, its effectiveness would not be enhanced by the development of its legal expression. It had been pointed out that the Special Committee's problem was not a legal one since it related to the effectiveness of an existing norm and the lack of political will to apply it.

(Mr. Garvalov)

There was of course no denying the legal character of the task entrusted to the Special Committee. Its mandate had an independent legal justification stemming from Article 13 of the Charter which dealt with the progressive development of international law and its codification.

65. It should be borne in mind that after the First Committee had considered the Soviet proposal for the drafting of a world treaty, the General Assembly had decided to refer the matter to the Sixth Committee. Many principles of international law expressed in general terms in the Charter had subsequently been defined and developed in legal documents, in accordance with Article 13 of the Charter. The need for such action had been reaffirmed in paragraph 2 of General Assembly resolution 1815 (XVII). That had led to approval of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). That Declaration stated that the progressive development and codification of the basic principles of international law enshrined in the Charter (the first one referred to in the Declaration being the principle of non-use of force) would secure their more effective application within the international community and promote the realization of the purposes of the United Nations.

66. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said that his delegation had no objection to the Chairman of the Special Committee making a statement at the end of the discussion of the item, provided he did so in his capacity as Chairman. However, replying to points made during the Sixth Committee's discussion on the advisability or otherwise of a world treaty on the non-use of force and embarking on a dissertation on the codification of international law, were ultra vires for the Chairman of the Special Committee, whose mandate in any case had expired and had not yet been renewed.

67. The CHAIRMAN explained that he had called on the Chairman of the Special Committee, which had a mandate from the General Assembly to consider the item on the Sixth Committee's agenda in order to give him an opportunity to respond to the proposals and suggestions made during the debate.

68. He invited the Chairman of the Special Committee to proceed.

69. Mr. GARVALOV (Chairman of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations) said he would never have thought that the Sixth Committee would witness the interruption of a statement by the chairman of a special committee of the General Assembly.

70. Mr. BERMAN (United Kingdom), speaking on a point of order, said that only the delegations of Member States in the Sixth Committee could speak on the substance of its debates; and he asked that the record of the meeting should ascribe Mr. Garvalov's remarks to the delegation of Bulgaria.

71. The CHAIRMAN said that, in accordance with the Sixth Committee's practice, he had called on Mr. Garvalov in recognition of the work of the Special Committee, which had been praised by the majority of delegations, and to give him an opportunity to address the Sixth Committee at the end of the debate.

72. He again invited the Chairman of the Special Committee to proceed.

73. Mr. GARVALOV (Chairman of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations) said that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations showed that the constant evolution of the system of international relations required a parallel development of the principles of the Charter.

74. There were other clear examples of codification and progressive development of the principles of the Charter in the practice of the United Nations. In accordance with Article 13, paragraph 1, of the Charter, the General Assembly had established a special body whose work had resulted in the adoption of the Definition of Aggression (General Assembly resolution 3314 (XXIX)). There was also a whole system of legal instruments and institutions in the field of human rights, including the Commission on Human Rights.

75. With respect to the principle of non-use of force, it was appropriate to cite other United Nations documents which provided an interpretation of the general principle embodied in Article 2, paragraph 4, such as resolution 2160 (XXI) on the strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination, the Declaration on the Strengthening of International Security (resolution 2734 (XXV), and resolution 2936 (XXVII) on the non-use of force in international relations and permanent prohibition of the use of nuclear weapons. Those and other examples clearly indicated that the elaboration of legal instruments providing an adequate interpretation of the principles of the Charter, and of the principle of non-use of force in particular, was neither useless nor dangerous. The overwhelming majority of States had adduced ample and convincing arguments why the elaboration of a legal document on the non-use of force was necessary and appropriate. He therefore trusted that the Sixth Committee would decide to renew the Special Committee's mandate.

76. Mr. ROSENSTOCK (United States of America) said it was most regrettable that the Chairman of the Special Committee had used his statement purely and simply to set out the Bulgarian Government's position. Comparable abuses were seldom seen.

77. Turning to another matter, he said that, on the previous day, the representative of Cuba had produced a document and claimed it was proof that the United States of America engaged in blackmail. What the document really stated was that the United States wanted the General Assembly's debates and decisions to be reasonable and fair, and was against double standards, excessive rhetoric and automatic bloc voting, since such practices made it impossible for the United Nations to attain constructive objectives; the document also expressed the hope

(Mr. Rosenstock, United States)

that countries which had friendly relations with the United States outside the United Nations would maintain such relations within the United Nations. Such sentiments were in recognition of the importance of the Organization. He was pleased that the United States was being recognized as a country which took the United Nations and other countries seriously.

78. With reference to statements made by the representative of Nicaragua concerning relations between that country and the United States, he said that when the Sandinista Government had been established, the United States had granted economic assistance for the reconstruction of Nicaragua. A detailed account of subsequent developments was given in the report of the Special Committee to the General Assembly at its thirty-sixth session (A/36/41), paragraph 177 of which referred to Nicaragua's attempts to destabilize Governments in the region. What the representative of Nicaragua had said was totally irrelevant to the work of the Sixth Committee.

AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (A/38/43, A/38/106-S/15628, A/38/135-S/15678, A/38/327-S/15911, A/38/371-S/15944, A/38/432-S/15992, A/38/507-S/16044)

79. Mr. SAHNOUN (Chairman of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries) said that the work of the Ad hoc Committee had raised important questions of substance which called for responses and action at the plenary level. In spite of the efforts made, the Ad Hoc Committee had failed to find definitive solutions, although it had considered in depth the basic questions regarding the future convention and had taken full stock of the outstanding problems.

80. Working Group A had been given a mandate to deal with the definition and scope of the convention. To that end, it had had various documents before it, including the draft Convention submitted by Nigeria and the new draft Convention submitted by France.

81. With regard to the scope of a future convention in material terms, there were still differences of opinion. The basic question was whether the emphasis should be on the individual "mercenary", on whom the relevant preventive and punitive measures would be focused, or whether the convention should rather be directed towards prohibiting the recruitment, use, financing and training of mercenaries, and prohibiting any individual from enlisting as a mercenary. Either solution could have many consequences, the most immediate relating to the number of separate offences to be covered by the convention. The question, in other words, was whether persons who used, recruited, financed and trained mercenaries should be regarded as their accomplices or as the perpetrators of criminal offences distinct from those committed by the mercenaries themselves.

82. As for the scope of the convention in temporal terms, the question was whether the convention should deal with both situations of armed conflict and peace-time situations. If the convention was to be applied to a mercenary who took part in an

(Mr. Sahnoun)

international armed conflict, the questions was whether there should be an ab initio determination of criminality or whether punishment should apply only to definite criminal offences committed by the said mercenary. There were also difficulties with regard to the criteria for establishing the criminal nature of mercenary activities. The question in that area was whether an individual who, according to a certain definition, fell into a category that inherently carried with it a degree of criminality would automatically be subject to the provisions of the convention and of national criminal law, or would first have to commit a criminal offence.

83. With respect to the definition of the term "mercenary", Working Group A had proceeded from the fact that a definition existed in article 47, paragraph 2, of additional Protocol I to the Geneva Conventions of 1949. That definition was reproduced in its entirety in the two draft Conventions submitted to the Ad Hoc Committee. However, attitudes diverged when it came to determining the application of that definition: for some delegations, the definition would serve both for international armed conflicts and for non-international armed conflicts; other delegations were of the opinion that the definition could not apply to situations other than those envisaged in the legal instrument which contained it, namely, situations of international armed conflict as defined in the Geneva Conventions of 1949 and Additional Protocol I.

84. A second aspect of the question of definition was the method of identifying a "mercenary" not covered by the definition set out in Additional Protocol I. Some delegations felt that there should not be two different definitions of the same term in international law. In any case the Working Group had attempted to draft a definition that would cover mercenaries not included in Additional Protocol I and, to that end had gone on to consider each of the criteria and elements embodied in the current definition with a view to adopting them. Paragraphs 35 and 43 of the report of the Ad Hoc Committee (A/38/43) gave a succinct account of the exchange of views on that matter. The basic activity for which the person in question had been recruited was a fundamental element to be emphasized. In the context of the new definition, that element would, in fact, be equivalent to the criterion of direct participation in hostilities in an armed conflict, which was covered in article 47, paragraph 2, of Additional Protocol I.

85. Although the draft convention submitted by France limited the activities typical of a mercenary to attempts to "overthrow a Government by armed force", a view also supported by some delegations, other delegations felt that to attempt to overthrow a Government by armed force was only one of the many punishable acts that could be carried out by mercenaries. The idea of a generic concept such as "hostile acts", had therefore been suggested. The definition of that concept would be carefully determined by identifying a set of punishable activities characteristic of mercenaries. Lastly, there was the question of the use of mercenaries to suppress the struggle of a people for self-determination. That question had been approached from two different angles, the first approach was based on the text of Additional Protocol I, in which wars of national liberation were recognized as having the status of an international armed conflict, while

according to the second approach, the emphasis would be in favour of the national liberation movements, as in the case of some General Assembly resolutions, mentioned in the preambular part 2 of resolution 37/109.

86. Working Group A had also considered the important question of the obligations of States under the convention, but no agreement had been reached on the scope of those obligations. Paragraphs 52 to 55 of the report (A/38/43) contained a summary of the discussions on that subject.

87. Working Group B had continued its discussion of preventive measures, damage reparation and the settlement of disputes. Although no delegation had expressed any doubts as to he usefulness of an article on preventive measures, it had not been possible to select any of the existing international legal instruments as a model text. The Chairman of the Working Group, however, had proposed the text of an article F, which was produced in paragraph 69 of the report.

88. Working Group B had also been unable to draft a text on damage reparation, owing to fundamental differences of opinion among delegations, as was reflected in paragraphs 74 and 75 of the report (A/38/43).

89. Some delegations had welcomed the fact that the two proposals under consideration dealt with the question of peaceful settlement of disputes in identical terms. Others felt that no reservation should be made concerning compulsory arbitration or recourse to the International Court of Justice, since that would endanger the settlement machinery within the framework of the convention. Lastly, some delegations preferred to resort to the means provided for in Article 33 of the Charter and, in particular, to the Security Council.

90. Since the work on the convention had reached a decisive phase, it was essential that an action-oriented debate should take place in the Sixth Committee. Participants in the debate should therefore, as far as possible focus on questions whose solution was vital to the conclusion of the convention, and should try to make clear and specific recommendations to the Ad Hoc Committee so that the latter could successfully complete its work on the draft international convention against the recruitment, use, financing and training of mercenaries.

The meeting rose at 1.25 p.m.

United Nations
GENERAL ASSEMBLY
THIRTY-EIGHTH SESSION
*Official Records**

SIXTH COMMITTEE
20th meeting
Thursday, 20 October 1983
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 20th MEETING

Chairman: Mr. GASTLI (Tunisia)

CONTENTS

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The meeting was called to order at 10.45 a.m.

AGENDA ITEM 126: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued) (A/38/41, A/38/61-S/15549, A/38/106-S/15628, A/38/135-S/15678, A/38/155-S/15699, A/38/325-S/15905, A/38/327-S/15911, A/38/357 and Add.1, A/38/432-S/15992, A/38/509)

1. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said he wished to place on record his delegation's understanding that, according to the rules of procedure and the current practice of the General Assembly, the right of reply was to be exercised at the end of the debate on the item in question. He agreed with the Syrian representative's description of the function of the Sixth Committee in terms of harmonization not of confrontation; it was therefore regrettable that statements by that representative's other Arab colleagues compelled Israel to exercise its right of reply.

2. Israel too regretted the existing situation of violence in the Middle East. His delegation wished to emphasize that if and when Israel had had to resort to the use of force, that had only been in exercise of its right of self-defence. It did not accept the superficial analyses which some speakers had made. The kind of debate that had taken place, with its emphasis on confrontation, was another example of the manner in which the General Assembly managed to waste time and money for mere propaganda purposes.

3. Mrs. NUÑEZ (Cuba), speaking in exercise of the right of reply, said that the United States delegation had taken some time to respond. Some questions were so important that they merited a prompt response. The very allies of the United States had been perplexed by its clumsy and unethical approach. Many delegations were in possession of the document in question, the content of which, whatever the United States representative might say, was very far from reflecting a serious attitude towards the United Nations. Such an attitude could not exist when pressure, blackmail and threats were used.

4. The most important aspect of the response made by the United States representative was the acknowledgement before the Sixth Committee of the existence and authenticity of the document. The United States had thus accepted responsibility for the document.

5. Mr. TELLEZ (Nicaragua), speaking in exercise of the right of reply, said that the United States delegation had sought to dismiss Nicaragua's statement by claiming that it did not refer to legal aspects. That was an attempt to deny the existing relationship between those aspects and the reality of the aggression being experienced. Such relationships were precisely the justification for the existence of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations. As for the allegation that Nicaragua was destabilizing the Central American region, he had amply demonstrated just the opposite the previous day. To that statement should be added what President Reagan had said at a press conference held the previous day and the letter from the

(Mr. Tellez, Nicaragua)

Secretary of State addressed to the United States Congress frantically requesting funds to continue aiding to the murderers, the former Somoza guards. It would be useful for the United States representative to indicate whether that was an initiative for peace or for war in the Central American region.

6. Mr. ALAKWAA (Yemen), speaking in exercise of the right of reply, stated that what he had said in the Sixth Committee was relevant to the discussion of the principle of non-use of force in international relations. By using military force in pursuit of illegitimate objectives, Israel was in violation of that principle, which was embodied in Article 2 of the charter, and in violation of resolution 181 (II), adopted at the second session of the General Assembly. The appropriation by Israel of other territories on the pretext of exercising the right of self-defence was unjustifiable.

7. Mr. KAHALEH (Syrian Arab Republic), speaking in exercise of the right of reply, said he doubted that anyone would agree with Israel's statement that the sending of Israeli forces into Lebanon had been in exercise of the right of self-defence under Article 51 of the Charter. The invasion of Lebanon, which had caused the loss of hundreds of lives, could not be justified on that basis. One had only to refer to Security Council resolutions 508 (1982) and 509 (1982), which condemned Israel's actions as unlawful and not constituting self-defence.

8. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said that two Latin words would suffice to respond to the representative of the Syrian Arab Republic: tu quoque.

9. Mr. MAPANGO MA KEMISHANGA (Zaire) said that the corner-stone of Zaire's foreign policy was the non-use of force in international relations and the peaceful settlement of disputes. Accordingly, Zaire devoted a substantial part of its resources to the maintenance and smooth development of relations of frienship and co-operation with its neighbours, on the basis of mutual respect and non-interference in internal affairs. It followed a policy of co-existence within a framework of tolerance with regard to all the peace-loving countries.

10. Zaire believed that world peace was a prerequisite for social development. That belief was behind all its initiatives in the Chad crisis. Zaire, which had twice been obliged to go to the support of Chad, had no other ambition in that country than to defend the legitimate interests of the people and Government of Chad, namely, the territorial integrity and sovereignty of that State. Once those objectives were achieved, the presence of the Zairian troops in Chad would no longer be required.

11. It was in that light that Zaire's condemnation of the attack on a South Korean aircraft by a Soviet combat aircraft was to be interpreted. It was also in that light that Zaire's support for any peace initiative, whatever its origin, was to be viewed. In that connection, it was regrettable that, six years after its establishment, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations was simply speculating on what was the real objective of its mandate.

(Mr. Mapango ma Kemishanga, Zaire)

12. Even if, in the light of all the world's conflicts, a treaty on the non-use of force were more indispensable than ever, his delegation was afraid that a treaty which was of limited scope because some States were unwilling to apply its provisions could weaken the relevant provisions of the United Nations Charter.

13. Instead of concentrating on the form of the future instrument, the Special Committee should first focus on substantive questions. Zaire wished to reiterate its support for the views expressed regarding the definition and scope of the concept of non-use of force. That concept had to be updated and given a broader scope than it had in the Briand-Kellogg Pact of 1928. The concept encompassed all forms of force, not just armed force. The updating of the concept would serve to strengthen the system envisaged in Article 2, paragraph 4, of the Charter, which meant that the Special Committee would not be exceeding its mandate. It would also be important to elaborate a comprehensive text, without omissions that could provide loopholes.

14. His delegation agreed that the international community should categorically reject, on the basis of the principle of ex injuria non jus oritur, the claims of a State which resorted to the use of force. Zaire firmly supported the paragraphs under "heading" D concerning the right of self-defence and the right of self-determination. It welcomed the inclusion in the Working Group's working paper of questions related to the principle of non-use of force, such as disarmament and the peaceful settlement of disputes. It endorsed the general direction taken by the Special Committee at its 1983 session and believed that its mandate should be renewed.

15. The Chairman said that, now that consideration of agenda item 126 had been completed, it was up to the Committee to decide whether the Special Committe's mandate should be extended, what powers it should be given, if any, and what its methods of work should be.

AGENDA ITEM 120: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (A/38/344)

16. Mr. RAMADAN (Egypt) said that the international community was aware of the need to establish a new international economic order so as to remedy the imbalances in the relationship between poor and rich countries, but there had been no adequate response from the developed countries in that regard. There was a lack of political will to implement the programmes and declarations that had been adopted, and it was even being said that those programmes and declarations were no more than recommendations without any binding legal force.

17. His delegation supported the recommendation made by the International Law Commission that an international convention on the question of most-favoured-nation clauses should be concluded. The draft articles prepared by the Commission dealt with the various legal issues that had to be taken into account when such clauses were used in treaties. Moreover, his delegation regarded the draft articles as an acceptable basis for consideration of an agreement on the establishment of the new

(Mr. Ramadan, Egypt)

international economic order. With regard to the draft articles themselves, it believed that draft article 1 should be amended so as to include the draft article on international agreements between States to which other subjects of international law were also parties, since countries were establishing a steadily increasing number of organizations aimed at promoting regional economic interdependence that were being authorized to grant most-favoured-nation treatment.

18. The right of developing countries to enjoy preferential treatment was recognized in many international instruments. That fact could be reflected in the draft articles through the addition of the following sentence at the end of draft article 7: All countries should automatically grant, on a non-reciprocal basis, most-favoured-nation treatment to developing countries periodically designated by the General Assembly of the United Nations in accordance with agreed criteria.

19. His delegation rejected the view expressed in document A/38/344 that there were no objective criteria for establishing whether a State belonged to the group of developing countries. As pointed out in the study prepared by Professor Verway of the Netherlands, which had been submitted to UNITAR, there were in fact many objective criteria. Furthermore, he did not agree with the view that the developing countries had differing and sometimes conflicting aspirations. Those countries had identical aspirations, as they had themselves demonstrated at the Cairo Conference held in 1964. The solidarity among the countries of that group represented their bargaining power in international forums, and any endeavour to divide them or reduce their bargaining power must be countered.

20. He believed that draft article 12, concerning compensation, conflicted with draft article 5 and should therefore be reconsidered. With regard to draft article 14, the agreed provisions, which must not be used for disguised discriminatory purposes, should be retained. The draft articles should incude customs unions and free-trade areas, as well as cases where there was economic complementarity between countries, through the addition of an article encompassing all the régimes in question.

21. As it stood, draft article 29 gave too much freedom to the granting States, which were in a better bargaining position, and it should therefore be deleted. The wording proposed in paragraph 68 of the report for article 28, concerning settlement of disputes, should be adopted, in other words, there should be recourse to compulsory arbitration or to the International Court of Justice.

22. The granting of the most-favoured-nation clause strengthened economic co-operation among countries, since it took account of the particular circumstances of the developing countries.

23. Mr. IDREES (Pakistan) said that the draft articles should recognize and reflect the developing countries' right to preferential treatment. Currently there were only a few specific manifestations of the recognition of that right, except in the form of the generalized system of preferences. The rule laid down in draft article 7 did not reflect that right of the developing countries, although the

(Mr. Idrees, Pakistan)

provisions of other articles, for example, draft article 23, did try to accommodate it to some extent in the context of the generalized system of preferences. However, that endeavour did not suffice, and a new rule should be incorporated into draft article 7, stating that certain categories of States, to be determined by the General Assembly, should be entitled to automatic most-favoured-nation treatment.

24. Draft article 23 was too specific, and the scope was extremely limited, since the generalized system of preferences was neither a system nor generalized. That system consisted solely in the provisional granting of preferences by the developed countries, mainly in the field of tariffs. The current wording of that draft sanctified the temporary granting of specific preferences and fell short of the developing countries' expectations.

25. His delegation endorsed the view expressed by the representative of Egypt that, as it stood, draft article 29 provided a loophole allowing States to nullify the effect of the rules designed to guarantee preferential treatment. It should therefore be deleted, but, if it could not be deleted, adequate safeguards for the developing countries' interests should be incorporated into it. He hoped that the amendments he had proposed would be taken into account in the final codification of the draft articles.

26. Mr. VIÑAL (Spain) said that his delegation attached great importance to any instrument that would facilitate international trade and the promotion of economic co-operation among all States. The draft articles provided a good starting point in that regard, which however, did not mean that the goal that had been set had been achieved. The comments and observations made in that connection by States organs of the Unied Nations and intergovernmental organizations reflected considerable differences of opinion regarding both form and substance.

27. With regard to the substance of the draft articles, his delegation was chiefly concerned at the fact that a number of provisions that ought to be included in the draft were missing. In that connection, he wished to stress the need to establish objective criteria for the inclusion of a State in the group of developing States, since the only system available as yet was an unsatisfactory empirical one. Furthermore, the concepts of the "beneficiary State" and "persons or things in a determined relationship with that State" must be defined clearly, since they were so vague that they would give rise to difficulties when it came to implementation of the draft articles. Moreover, an article specifying that customs unions were exceptions should be included in order to prevent advantages instituted for members of customs unions and free-trade areas from unjustifably being made available to non-member States.

28. With regard to the recommendation made by the International Law Commission concerning the conclusion of a convention on the question under consideration, judging from the comments and observations received so far from States, organs of the United Nations and intergovernmental organizations, it would be premature to convene an international codification conference immediately. It was essential that further preparatory work should be carried out with a view to reaching general

(Mr. Viñal, Spain)

agreement either on the form and substance of the draft articles or on any alternatives that might be proposed.

29. His delegation therefore believed that the existing differences of opinion should be dealt with by means of a process of elimination in order to decide what the most appropriate or most feasible approaches would be. General agreement was a necessary evil; it was an evil because it entailed a protracted process of seeking the consent of all States; and it was necessary because, if that factor was ignored, a consensus decision lacking any real weight would be adopted.

30. Mr. ASTAPKOV (Byelorussian Soviet Socialist Republic) said that the discussion of the system of most-favoured-nation clauses held at the sessions of the General Assembly and the comments made by Governments in accordance with General Assembly resolutions 35/161 and 36/111 showed that many States favoured the speedy completion of the draft articles on most-favoured-nation clauses. The most effective form of codification for the draft articles would be the preparation of an international convention. Adoption of a legal instrument on most-favoured-nation clauses would help to eliminate the inequality and discrimination existing in relations between States, to remove the obstacles to international trade and to facilitate the implementation of the principles of the Charter, for the benefit of the progressive development and codification of international law.

31. The draft articles prepared by the International Law Commission provided a good basis for an international legal instrument, since they took into account the interests of all States, particularly the developing countries, in the sphere of trade. Their adoption would be a step towards implementation of the new international economic order. The draft contained provisions designed to promote frontier trade and took into consideration the interests of land-locked countries. The different approaches adopted by States were reflected in some provisions, but the Byelorussian delegation believed that it was possible to find mutually acceptable solutions.

32. With regard to the question of the appropriate procedure for the completion of the draft articles, his delegation suggested that a working group be established under the auspices of the Sixth Committee, with due consideration for the Committee's work programme and schedule. In addition, the Secretariat should prepare an analytical report based on the comments of Governments, the remarks made in the Committee and the opinions expressed by the competent United Nations organs. The Byelorussian delegation welcomed other constructive proposals designed to achieve that goal, including the proposal that a special conference be convened.

33. Ranking equally in importance with the codification and progressive development of international law were the strengthening of the existing norms of international trade law and their scrupulous observance by all States, since otherwise there could be no development of trade and economic relations between States. Recent practice showed, unfortunately, that international trade was increasingly subject to arbitrary actions and discrimination, boycotts, sanctions and acts of political domination that undermined the norms of international trade law, to the detriment of the interests of States.

(Mr. Astapkov, Byelorussian SSR)

34. The Conference of Heads of State or Government of Non-Aligned Countries, held in New Delhi, had rejected acts of economic aggression, sanctions, blockades, pressure, and measures of blackmail, of political pressure and of interference in the internal affairs of States. The Conference on Security and Co-operation in Europe, held in Madrid, had stressed the need for efforts gradually to reduce or eliminate the obstacles to the development of trade and to expand technological and scientific ties among nations. The United Nations should appose all acts that undermined international trade law, by adopting measures designed to strengthen economic and trade relations among States on a basis of equity.

35. Mr. OUYANG Chuping (China) said that it was regrettable that, because of the divergence of views among Member States, the General Assembly had still not taken a final decision on the recommendation of the International Law Commission concerning the draft articles. It was to be hoped that, at its current session, the Assembly would decide on the procedure to be followed and on the final form to be assumed by the draft articles.

36. The most-favoured-nation clause facilitated co-operation among States, particularly in the economic and trade sphere, and was a means for the promotion of world trade, on the basis of non-discrimination and equality of States, and for the elimination of discriminatory treatement and the lowering of tariffs.

37. The draft articles were generally acceptable, since they reflected State practice, conformed to the existing legal régime and took into account the interests of developing States. For example, draft articles 23 and 24 provided, respectively, that the generalized system of preferences and the trade preferences that developing countries granted to each other should be exceptions to the operation of the most-favoured-nation clause. Those provisions would help to eliminate the inequality existing between developed and developing countries.

38. Some developed countries had opposed the provisions of article 23 on the ground that multilateral trade negotiations were being conducted within the context of GATT. That objection was no longer valid, since the "enabling clause", which was a result of the Tokyo Round negotiations, formally recognized the generalized system of preferences as a legal régime. As the Director-General of GATT had stated, the "enabling clause" marked an historic turning-point in international trade relations by recognizing the preferential treatment granted to developing countries as a permanent legal feature of the world trading system.

39. The greatest shortcoming of the draft was that the text did not clearly reflect the principle of equality and mutual benefit as the basis of the most-favoured-nation clause, although the International Law Commission had stated in its commentaries on the draft articles (document A/33/10) that the most-favoured-nation clause could be considered as a technique or means for promoting the equality of States or non-discrimination. In the past, the Powers had used the most-favoured-nation clause, and particularly the so-called unilateral and most-favoured-nation clause, as a means for seizing political and economic privileges from weak countries, as the Chinese people well knew from experience.

(Mr. Ouyang Chuping, China)

The Chinese delegation suggested that draft article 5, which contained the definition of most-favoured-nation treatment, should explicitly provide that the treatment accorded by the granting State to the beneficiary State should be no less favourable than the treatment extended by the granting State to a third State on a voluntary basis and in accordance with the principle of equality and mutual benefit.

40. Article 7, concerning the legal basis of most-favoured-nation treatment, should be supplemented by a clause to the effect that the international obligations mentioned in the first paragraph should be based on the principles of State sovereignty and equality and mutual benefit and should be interpreted in accordance with those principles. With regard to article 23, the replacement of the words "beneficiary State", in the first line, by the words "developed beneficiary State" would make the article reflect better the original intention of the generalized system of preferences, namely that the preferential treatment should not be discriminatory among the developing countries.

41. With regard to the scope of application of the draft articles, there was no need to make the articles correspond to the Vienna Convention on the Law of Treaties, by restricting their application to most-favoured-nation clauses contained in treaties concluded between States. The draft articles should take into account their application to international organizations, whose member States often conferred on them powers to conclude and apply trade agreements. The Chinese Government had concluded with the European Economic Community a trade agreement that contained the most-favoured-nation clause.

42. With reference to the question of the conditional form of the most-favoured-nation clause, the International Law Commission had admitted in its report (document A/33/10) that the conditional form was largely of historical interest but had added that the possibility could not be excluded for States to agree on clauses subject to conditions of compensation. In the opinion of the Chinese delegation, the draft articles might include provisions on the conditional form of the most-favoured-nation clause, but the relevant article of the draft should explicitly provide that the conditions of compensation might not derogate from the fundamental principles of international law.

43. His delegation was of the view that international commodity agreements were trade arrangements that should benefit developing countries and should therefore constitute an exception to the operation of the most-favoured-nation clause. However, the draft text proposed by the French member of the International Law Commission was unclear, since it made no distinction between developing beneficiary States and developed beneficiary States, or between producer countries and consumer countries.

44. The Chinese delegation approved in principle of the idea that the treatment granted by treaties concluded according to the Charter of Economic Rights and Duties of States constituted an exception to the operation of the most-favoured-nation clause, but doubted whether the idea was realistic. Moreover, draft article 30 left room for the establishment in the future of new rules of international law in favour of developing countries, so that perhaps the proposal should not be included in the draft articles.

(Mr. Ouyang Chuping, China)

45. Customs unions and free trade areas should promote international trade; so long as that principle was respected, the Chinese delegation agreed that the draft articles could allow such unions and areas to constitute an exception to the operation of the clause.

46. The question whether the draft articles should include clauses on the settlement of disputes depended on the final form to be assumed by the draft. There was no point in discussing that question unless the draft articles were to take the form of an international convention. If they were, such clauses could be included in an optional protocol, in accordance with the approach adopted in the case of the Vienna Conventions on Diplomatic Relations and on Consular Relations.

47. With regard to the procedure to be followed and the final form to be assumed by the draft articles, the Chinese delegation adopted a flexible position and would consult with other delegations in order to resolve that question in accordance with the principle of equality and mutual benefit.

48. Mr. ROBINSON (Jamaica) said that, even though the provisions of the draft articles were intended to be of a residual character, the formulation of article 29 was too broad and general. As in the case of the Vienna Convention on the Law of Treaties and its companion instruments, it would be preferable if the residual character related to specific provisions instead of the entire text, since some provisions might be so basic and fundamental that their application was mandatory for the parties and could not be set aside by a contrary agreement. There was therefore a need to separate those articles which were properly residual from those which were not.

49. The Commission was to be commended for not shying away from the economic aspects of the subject, particularly in so far as they affected developing countries. While his delegation sympathized with the substance of article A, it nevertheless believed that in articles 23 and 24 the Commission had taken an important step forward in the progressive development of law for the benefit of developing countries. Article 30, which, strictly speaking, was not necessary, pointed to the possibility of establishing new rules in favour of developing countries.

50. The fact that the draft articles would be limited in their application to most-favoured-nation clauses in treaties between States had its greatest impact in the field of relations with international organizations. Presumably the Commission would, at a later stage, take up the subject of most-favoured-nation clauses in treaties concluded between a State and an international organization or between two or more international organizations.

51. The question of the relationship between the most-favoured-nation clause and international organizations also arose in cases where such organizations constituted customs unions or free trade associations. Although the practice of excepting from the scope of the most-favoured-nation clause benefits which States Members of a free trade association or customs union granted to each other was fairly widespread,

(Mr. Robinson, Jamaica)

there was a legitimate doubt as to whether that practice amounted to a rule of customary international law. The Commission appeared to have gone in the opposite direction in articles 17 and 18. Those articles were bound to be controversial, and those who supported the proposal concerning article 23 bis might wish to amend them. Article 23 bis itself raised the question whether developed States in their relations with developing States should also be entitled to the exception incorporated in that proposal.

52. Paragraphs 5 to 8 of the commentary on article 4 made the point that most-favoured-nation treatment was usually granted by States parties to a treaty on a reciprocal basis. Although he was not in favour of a return to the former capitulatory régimes, he considered that there were situations in which reciprocity was not of real benefit to a developing country in its dealings with a developed country under a treaty. That was the case, for example, if the developing country was not in a position to take advantage of a most-favoured-nation clause owing to the level of its economic development, or if the developed country negotiated concessions from the developing country on the basis of a clause whose reciprocity was nugatory and meaningless for the latter country.

53. Although it was perhaps true that treaties were the only legal foundation of most-favoured-nation treatment, the Commission was correct in drafting the articles in such a manner as to cover the possibility of the development of a rule of customary international law. However, article 7 was perhaps not necessary and could be omitted. Articles 11, 12, 13 and 14 appeared to state rules which followed logically from articles 26, 31 and 32 of the Vienna Convention on the Law of Treaties.

54. Article 20 and the commentary thereon did not satisfactorily resolve the question whether the operation of a most-favoured-nation clause was contingent upon the actual extension of benefits by a granting State to a third State or whether it operated merely upon the existence of a legal obligation on the part of the granting State to extend such benefits. Although the use of the word "extended" suggested that the operation of the clause was set in motion by the actual extension of the benefit rather than the mere existence of the obligation to extend the benefit, the draft would gain in clarity if another word was used in article 20 and other relevant articles.

55. His delegation would support any consensus that might emerge in favour of the adoption of an international convention on the subject.

56. MR. HARDY (Observer, European Economic Community) reaffirmed the written observations submitted by the European Community (A/CN.4/308, A/35/203 and A/36/145) and the statements made by it in the Sixth Committee. He emphasized that any general rules on most-favoured-nation clauses, regardless of their final form and even if they were only of a supplementary nature, could not be accepted by the Community unless they constituted a well-balanced set of rules which as a whole reflected practical realities and took account of the observations and amendments which the Community had submitted in its various communications.

(Mr. Hardy, Observer, EEC)

57. The Community had proposed for insertion in the text of the International Law Commission a new article 23 bis (contained in document A/36/145), which took into account the need for a clear statement of the exemption from the application to third States of a most-favoured-nation clause, or of a clause assuring national treatment to a beneficiary State and its citizens, in respect of a system created by a customs unit or similar arrangement of regional economic integration. Regarding the inclusion of that article, the Commission had stated that the ultimate decision would have to be taken by States at the final stage of the codification of the topic.

58. The fact that the draft articles were restricted to clauses contained in treaties between States greatly limited the value of the draft, which did not take account of the fact that, through the establishment by sovereign States of regional economic integration bodies in various parts of the world, preferential treatment, which might or might not be in the form of a most-favoured-nation clause, might be granted under agreements concluded by such unions or groups of States. It must also be recalled that articles 23, 24 and 30 of the draft provided exceptions to the application of a most-favoured-nation clause in respect of developing countries without giving an objective criterion for deciding which countries would be entitled to benefit from those exceptions.

59. Preferential treatment for developing countries in their commercial dealings with the European Community did not necessarily operate through the inclusion of a most-favoured-nation clause. Inadequately formulated rules on most-favoured-nation treatment could severely damage the preferential treatment which was currently accorded to a beneficiary State in order to facilitate its access to consumer markets.

60. An important mechanism for expanding exports from developing countries into the Community was the Generalized System of Tariff Preferences (GSP), which allowed the entry of imports free of duty either on an unlimited basis or, for specific products, within a specific quota. In the case of imports from the Mediterranean area, goods covered by GSP formed the overwhelming majority of the exports of the countries concerned. It would obviously be against the interests of those countries if a third State, which was perhaps more competitive but less in need of gaining export earnings, were able to take advantage of a most-favoured-nation clause to obtain duty-free access to the Community market.

61. A further example of preferential treatment in the Community's trade arrangements with developing countries was the Stabex system, which had been established to reduce the effect of fluctuations in the prices of commodities. In that instance also it was necessary to avoid disturbing a price stabilization system that included preferential treatment for a group of countries which were in need of such stability in order to develop their economies.

62. The European Community expressed its appreciation to the International Law Commission for the work accomplished. It considered, however, that if a legally binding instrument was to be elaborated on the subject, it would be essential to

(Mr. Hardy, Observer, EEC)

incorporate in the text the important developments which had taken place in the operation of most-favoured-nation clauses in the field of international trade, on the lines which the community had set out in its various statements.

63. Mr. ECONOMIDES (Greece), speaking on behalf of the ten member States of the European Economic Community, said that the States concerned had already had occasion to express their opinions on the draft articles on most-favoured-nation clauses adopted by the International Law Commission, and he again expressed his gratitude to the Commission for the work carried out. In the spirit of constructive dialogue, the ten member States of the European Community had also made some criticisms and drawn attention to some major gaps in the draft articles. In that connection, he endorsed the comments just made by the observer for the European Community and said that similar observations could be made about areas other than that of international trade to which the most-favoured-nation clause was applicable.

64. Bearing in mind that the draft articles as a whole did not in any way reflect the new forms of international co-operation, especially those aimed at according preferential treatment to developing countries, the ten States, in the light of General Assembly resolution 36/111, considered that codification work on the subject should be suspended for the time being and were in favour of the adoption by the General Assembly of a resolution which would merely draw the attention of States to the draft articles of the International Law Commission and the amendments proposed thereto, so that States would be able to take them duly into account when negotiating treaties containing a most-favoured-nation clause or when considering questions concerning the application of that clause. Subsequently, when practice in that area was firmly established, work on the topic could be resumed with a view to completing codification. In that connection, the ten States reserved the right to submit specific proposals at the appropriate time.

The meeting rose at 1 p.m.