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New York

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SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. GASTLI (Tunisia)

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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 artificially 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.