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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.