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SUMMARY RECORD OF THE 10th MEETING

Chairman: Mr. TUERK (Austria)

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

AGENDA ITEM 146: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/44/33, A/44/409 and Corr.1 and 2)

AGENDA ITEM 141: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)
(A/44/460; A/C.6/44/L.1)

1. Mr. CALERO RODRIGUES (Brazil) said that paragraphs 19 to 83 of the Special Committee's report (A/44/33) contained a summary of the animated and important discussions to which the topic of the fact-finding activities of the United Nations had given rise. Those activities were fully in keeping with the provisions of Articles 24, 34 and 99 of the Charter of the United Nations, and their usefulness had been borne out by practical experience. His delegation considered that it was best left to Member States to decide as to the procedures of fact-finding missions, as it was upon those States that prime responsibility for the maintenance of international peace and security devolved. Such decisions would be taken, on a priority basis, by the members of the Security Council, and also by the General Assembly should the circumstances so require. All that the Special Committee might hope to achieve was to arrive at policy prescriptions which would afford guidance to Member States in the discharge of their duties under the Charter. Fact-finding activities should, moreover, be regarded as a useful tool for the detection or, as the case might be, defusing of a conflict deemed likely to endanger international peace and security. It was essentially a mechanism applicable to the early phases of conflict resolution. When recourse to that procedure was being seriously considered, it was also essential to secure the consent of the receiving State or States in which the fact-finding mission was to be carried out. It might sometimes be better to refrain from sending a mission, in cases where that might hinder ongoing efforts aimed at averting the outbreak of conflict.

2. His delegation also believed that any proposal that would significantly derogate from the sovereign right of States freely to choose whether to admit a fact-finding mission into their territory would be inconsistent with political reality.

3. The long discussions in the Special Committee on the issue of the peaceful settlement of disputes had yielded a satisfactory result at the Committee's most recent session. The Special Committee had finally found itself in a position to submit its conclusions on the proposal concerning resort to a commission of good offices, mediation or conciliation within the United Nations system (document A/44/33, para. 123), in fulfilment of the mandate specified in resolution 43/170, and his delegation supported the recommendation in paragraph 123 of the Special Committee's report.

4. Turning to the handbook on the peaceful settlement of disputes, his delegation noted with satisfaction the progress achieved, and looked forward to the conclusion of the Special Committee's work on that topic in the near future. The time was ripe for the Special Committee to conclude its discussion on the rationalization of

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(Mr. Calero Rodrigues, Brazil)

existing United Nations procedures. While the proposals before the Committee were interesting, it seemed unlikely that any further improvements could be added to what had already been achieved. Referring to paragraphs 87 and 106 of the report, his delegation regretted that proposals on which agreement was unlikely continued to appear on the agenda. Resort to consensus might indeed be highly useful, as the deliberations of the Special Committee had themselves amply demonstrated, but it could not be so construed as to apply to any decision-making process without regard to the basic principle of the sovereign equality of States, by which each State had the right to make its positions known through the casting of votes. There were clear instances in which the application of the rule of consensus was neither desirable nor warranted. To claim the opposite was both to ignore political reality and to condone the abrogation of a sovereign right. To wish that the consensus principle should be grafted onto the rules of procedure of a body such as the General Assembly - as had repeatedly been proposed - would be to undermine the very purpose that that body had originally been intended to serve.

5. Mr. PAMBOU TCHIVOUNDA (Gabon) said that it was clear from documents A/44/33 and A/44/460 that progress has been made on the topics to be considered under agenda items 146 and 141 in terms of the anticipated results.

6. While there seemed to be a consensus on the principles underlying the peaceful settlement of disputes, the consensus was modified by a climate of confusion currently surrounding the relationship between the procedures for judicial settlement and those of arbitration. In that connection, his delegation noted the muddled reaction of the parties in dispute to the arbitration award delivered in July 1988 in the case involving delimitation of the maritime frontier between Senegal and Guinea-Bissau.

7. With regard to the Romanian proposal (A/44/33, para. 123), his delegation regretted that the suggestions it had made at previous sessions with the aim of rendering the successive versions more specific in purport had not been accepted in many instances. However, the important consideration was ultimately to recognize the need to establish the procedure for recourse to a commission of good offices, and his delegation would therefore willingly participate in any consensus which might emerge in favour of the adoption of that proposal. At the same time, it wished to reword paragraphs 7, 8 and 12 on the following lines: (a) In the second sentence of paragraph 7, the words "If the States parties to the disputes so request, the Commission will seek to establish ..." should be replaced by "At the request of the States, the Commission will establish ..."; (b) In the first line of paragraph 8, the words "at any time" should be deleted, since they were unhelpfully cumbersome; and (c) The words "the States parties to the dispute may wish that" should be deleted at the beginning of paragraph 12, and the remainder of the paragraph would then be incorporated in paragraph 11 so that paragraph 12 as such would disappear.

8. With regard to the question of peace-keeping and international security, the idealist and maximalist tenor of the wording proposed by Belgium, the Federal Republic of Germany, Italy, Japan and New Zealand (document A/44/33, para. 20) was

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(Mr. Pambou Tchivounda, Gabon)

in contrast to the realism and well-founded prudence of the version proposed by Czechoslovakia and the German Democratic Republic (*ibid.*, para. 51), the essential difference being the parameters to be laid down for the activities of the fact-finding mission because of its operation in the territory of a sovereign State. The role of an international organization could not be strengthened at the expense of its Member States. The United Nations should be careful not to establish machinery whose operation would expose it to insuperable difficulties. To function usefully, the international fact-finding machinery should be backed up by safeguards, collectively agreed by all States, which would ensure its genuine flexibility.

9. Mr. TANG (China) said that his delegation regarded documents A/C.182/L.60 and L.62, which the Special Committee had considered at its 1989 session, as complementary (see also A/44/33, paras. 20 and 51), each text stressing different aspects of the question of dispatching United Nations fact-finding missions.

10. The purpose of a fact-finding mission was first of all to determine the facts impartially in order to trace the origin of the dispute and to report the findings to the relevant United Nations organ. Before the report was submitted, the receiving State should be informed of its content. The State must also be allowed to express its point of view if it did not agree with the report. The mandate of the mission must be limited to fact-finding and not include good offices or arbitration.

11. Secondly, authority to dispatch fact-finding missions should be vested in the relevant United Nations bodies, in conformity with the relevant provisions of the Charter, which differentiated the powers of the Security Council, the General Assembly and the Secretary-General. The Security Council was the main body authorized to send fact-finding missions. Article 24 of the Charter gave the Security Council the primary responsibility for peace-keeping and recognized that, in carrying out that duty the Council acted on behalf of Member States. Articles 33, 34 and 36 stipulated clearly that the Security Council had the authority to investigate any situation that might give rise to a dispute. Under Article 11 of the Charter, the General Assembly also had the authority to send fact-finding missions, subject, of course, to the provisions of Article 12. The competence of the Secretary-General in that matter was still a controversial issue. His delegation believed that the Secretary-General should have a role to play and that he could send fact-finding missions with the consent of the Security Council and the General Assembly. His mandate should be primarily to carry out the tasks entrusted to him by the Security Council or the General Assembly, i.e. to set up and dispatch the mission.

12. Thirdly, prior to sending a mission, consent should be obtained from the country concerned to ensure respect for its sovereign rights and compliance with Article 2, paragraph 7, of the Charter. The fact was that, without the co-operation of the receiving State, the fact-finding mission would not be able to accomplish its task. The country concerned should, needless to say, accept and carry out the decisions of the Security Council, as stipulated in Article 25 of the

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(Mr. Tang, China)

Charter, and extend all necessary assistance to the mission to enable it to fulfil its mandate successfully.

13. The report of the Special Committee had also discussed the streamlining of United Nations procedures. Maximization of the potential of United Nations machinery and raising its efficiency were matters of great concern to China. The divergent views on those questions should be reconciled through patient consultations. He hoped that progress would be made at the current session of the General Assembly in considering the proposals of France and the United Kingdom (*ibid.*, para. 84). The Special Committee had also considered the Romanian proposal (*ibid.*, para. 123) on resort to a commission of good offices, mediation or conciliation within the United Nations. Consideration of that proposal had contributed to a better understanding of the importance of good offices, mediation and conciliation as a means of solving disputes and provided good guidelines for the settlement of international disputes.

14. In conclusion, his delegation welcomed the results obtained by the Secretariat in the preparation of a handbook on the peaceful settlement of disputes and hoped that the draft would soon be completed.

15. Mrs. SINJELA (Zambia) thanked the delegations which had submitted to the Special Committee on the Charter two working papers on fact-finding by the United Nations to assist in the maintenance of international peace and security (A/44/33, paras. 20 and 51). In her view, the two documents were complementary, and she therefore supported the idea that the delegations concerned should hold consultations so as to reach a generally acceptable text. The task of the Special Committee at its next session would be facilitated thereby and such consultations would also promote a spirit of co-operation and understanding among delegations.

16. While supporting the use of fact-finding missions to assist in the maintenance of international peace and security, those missions should not derogate from the principles and norms of the Charter, which in that case should serve as a guideline. For a fact-finding mission to go beyond the task of gathering and elucidating facts would be unacceptable to her delegation. She also felt that a certain flexibility must be maintained in identifying the bodies which might be established for fact-finding impartially. Lastly, those missions should not be undertaken without the consent of the States concerned, whose co-operation would also be necessary.

17. Her delegation, which supported the idea of rationalizing existing United Nations procedures, nevertheless felt that, with regard to the rationalization of the work of the main committees, the most important factor was to establish their agendas so as to avoid duplication and separate discussions on related items. The focus should be on grouping or merging related items.

18. Her delegation supported the idea that subsidiary organs of the General Assembly should not be established without first ascertaining whether the work could be done by existing ones. However, the work of an existing organ should not be suspended or discontinued, especially if there was work still to be done.

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(Mrs. Sinjala, Zambia)

19. Zambia had already expressed its negative view in other committees on the adoption of General Assembly resolutions and decisions without a vote. While consensus was desirable, it should not be imperative because there were issues on which consensus might not always be attained.

20. Her delegation was pleased that the Special Committee's work on the peaceful settlement of disputes between States and on resort to a commission of good offices, mediation or conciliation within the United Nations had completed its work, and supported the idea of submitting the proposal concerning such a commission to the General Assembly. Lastly, she hoped that the draft handbook on the peaceful settlement of disputes between States would soon be completed.

21. Mr. DA COSTA (Angola) said that it was his country's policy to support all proposals aimed at strengthening the effectiveness of the United Nations and its bodies, provided that those proposals were fully in keeping with the provisions of the Charter. All States, whether developed or developing, and regardless of their political or ideological system, should take part in developing a sound basis for making the United Nations a genuine centre in which to harmonize the actions of States for the sake of world peace. Enhancement of the effectiveness of the Organization should proceed as part of the democratization of international relations, which called for renouncing pretensions to military superiority and abandoning national selfishness. It was the lack of political will, among other factors, and not the lack of methods and procedures at the disposal of States, which impeded the peaceful settlement of disputes between States.

22. Angola attached particular importance to 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)) and to the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10). It had provided sufficient proof of its determination to solve the conflict in southern Africa peacefully in submitting realistic proposals that, had they been accepted, would have brought peace to the peoples of southern Africa much earlier and would have enabled them to concentrate on their development.

23. Mediation and conciliation were among the means of peaceful settlement of disputes referred to in Article 33 of the Charter. They were based upon the principle of voluntary acceptance and were to be distinguished from arbitration and judicial settlement, which were also referred to in that article. Negotiation was a separate and independent means of peaceful settlement of disputes.

24. The Protocol of Brazzaville of 13 December 1988, signed by the Governments of Angola, Cuba and South Africa, and the Agreement of 22 December 1988, signed in New York by the same three Governments, were the result of the commitment made in New York on 13 July 1988 to act in accordance with the principles for a peaceful settlement in southern Africa.

25. Mr. AUST (United Kingdom) said that the discussion in the Special Committee of the two working papers on the subject of fact-finding by the United Nations (A/44/33, paras. 20 and 51) had given rise to an intensive debate. It had highlighted a number of key problems, including the need not to treat all fact-finding activities alike. Fact-finding in the context of the settlement of a dispute was not necessarily the same as fact-finding carried out for the purposes of verifying or monitoring compliance with a decision or an award. And those forms of fact-finding should be distinguished from simple information gathering. The Special Committee's work on the new item was at a very early stage, but the United Kingdom looked forward to participating fully in the debate in the Special Committee the following year.

26. The Special Committee had continued to make steady progress in its work on the French and United Kingdom proposals (A/44/33, para. 84) with a view to rationalizing existing United Nations procedures. The sponsors of the proposals would be submitting a further revised paper on the subject to the Special Committee at its following session, when they looked forward to finishing the work in question.

27. His delegation was gratified that the Special Committee had now completed its work on the proposal regarding resort to a commission of good offices, mediation or conciliation within the United Nations (A/44/33, para. 123). It fully supported the recommendation that the General Assembly should bring the proposal to the attention of States by annexing it to a decision to be adopted at the current session.

28. The United Kingdom was pleased that progress had been made in drafting a handbook on the peaceful settlement of disputes between States. It also wished to comment on the proposal, put forward in document A/44/191, concerning a United Nations decade of international law. Such a decade would have several purposes, of which the most important, from the Sixth Committee's point of view, would perhaps be the promotion and enhancement of peaceful methods for the settlement of disputes between States, including resort to the International Court of Justice and compliance with its judgments. Other objectives would be promoting respect for international legal principles against the threat or use of force, and education of the public for a better understanding of international law. The decade could play an important role in the process of building confidence in international law and in existing dispute settlement mechanisms.

29. The most important of the mechanisms in question was, of course, the International Court of Justice, whose role could be enhanced in the following manner. Firstly, more States could accept the compulsory jurisdiction of the Court. The United Kingdom was encouraged to note that since the previous session of the General Assembly two States, both developing countries, had accepted the compulsory jurisdiction of the Court, and that Poland had recently announced its intention of doing so. Secondly, there could be increased adherence to the optional protocols to multilateral conventions that conferred jurisdiction on the Court. Recently, a number of European States had accepted certain of the optional protocols in question, or announced their intention of doing so. Thirdly, more

(Mr. Aust, United Kingdom)

conventions could have articles providing for the compulsory jurisdiction of the Court. The United Kingdom was pleased to note that some European States had recently withdrawn their reservations to some of the provisions in question. Lastly, there could be a general convention providing for the compulsory jurisdiction of the Court, on the lines of The Hague Convention of 1899. The United Kingdom noted the recent Soviet memorandum containing similar suggestions.

30. The United Kingdom wished to express its concern about some aspects of the proposal that had been made about the decade. Firstly, it was proposed that the decade should emphasize disarmament. The United Kingdom believed that the decade should concentrate on general issues of international law and not deal with specialized areas, or with what were essentially political subjects, such as disarmament.

31. Secondly, the United Kingdom believed that it would be premature to decide now that the decade should end with a conference. It would be some years before it became clear what the decade was likely to produce. Thirdly, it was proposed that the decade should be declared at the current session of the General Assembly. The United Kingdom doubted whether that would be desirable, since the idea of a decade had emerged only recently. More work needed to be done before the decade was formally declared. In particular, the written comments of States should be obtained. It had been emphasized that holding a conference in 1999 would provide an opportunity to mark the hundredth anniversary of the 1899 Peace Conference. The United Kingdom believed that if a conference was to be held it might be more appropriate to hold it in the year 2000. A conference in that year on the subject of international law, particularly on the peaceful settlement of disputes, could be one of the most fitting ways for the world community to mark the millenium.

32. Fourthly, it was proposed to establish a commission led by a distinguished international jurist to organize the activities of the decade. If the decade was to produce results that were generally acceptable to all States, its activities should be under the close control of States. The preparatory work for the decade should therefore not be done in a restricted body but should rather be done by the Sixth Committee, or in a working group of the Sixth Committee, or perhaps by the Special Committee.

33. If the decade was to be a success, it was essential that there should be general agreement among States both on substance and on procedure. The United Kingdom looked forward to a full discussion with the sponsors of the proposal in question on the content of the draft resolution on the item to be submitted to the General Assembly.

34. Mr. LEE (Canada) said that the working paper on fact-finding activities submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain (A/44/33, para.20) made a very useful contribution to elucidating the powers of investigation provided for in the Charter, especially in Article 34. The working paper on the same topic submitted by Czechoslovakia and the German Democratic Republic (A/44/33, para. 51) also made a valuable contribution to the

(Mr. Lee, Canada)

debate on that issue. His delegation hoped that further work on the basis of those two texts would contribute to identifying areas on which agreement could be reached.

35. The fact-finding powers provided for in the Charter must be seen in the light of Article 2, paragraph 7, and of the principle of sovereignty. Nevertheless, all States had an interest in effective fact-finding in circumstances where the maintenance of international peace and security was threatened. The Special Committee should continue to work towards a position which clarified the fact-finding provisions of the Charter without rewriting them. The terms of reference of any fact-finding mission to be established under those provisions should be clearly spelled out in order to avoid all possible conflicts between the United Nations and the host State. Canada hoped that the Special Committee would be able to establish in the near future a framework which provided:

(a) flexibility to allow the Security Council, the General Assembly and the Secretary-General to initiate fact-finding missions; (b) broad scope to allow missions to be initiated for any potentially dangerous situation; (c) strong emphasis that the States concerned should accept such missions; and (d) freedom of movement and contact for such missions.

36. With respect to the rationalization of existing United Nations procedures, his delegation hoped that a consensus might be reached on the basis of the working paper submitted by France and the United Kingdom (A/44/33, para. 84). It particularly supported paragraph 8 of the working paper, which called for caution in establishing new subsidiary organs where the function of such organs could be exercised by existing organs, and paragraphs 11 and 12, which urged that United Nations bodies should meet at their established headquarters and that efforts should be made to reduce the number of decisions and resolutions adopted by the General Assembly. In the light of current budgetary constraints, it was important to rationalize the operations of the United Nations and to set priorities. It was also important to monitor carefully the efforts of other United Nations bodies currently involved in the process of procedural reform, in order to maximize the effectiveness of the Special Committee in that area.

37. His delegation welcomed the further elaboration of the draft handbook on the peaceful settlement of disputes between States and hoped that, despite current financial constraints, the handbook would be completed soon.

38. With regard to the proposal on the resort to a commission of good offices, mediation or conciliation within the United Nations (A/44/33, para. 123), his delegation supported the Special Committee's recommendation that the proposal should be annexed to a decision to be adopted by the General Assembly at its current session.

39. With respect to the peaceful settlement of disputes, his delegation noted that a number of encouraging developments had taken place in the past year, including the adoption by the General Assembly of the Declaration on the Prevention and Removal of Disputes (resolution 43/51), the adoption by the Movement of Non-Aligned Countries of The Hague Declaration on Peace and the Rule of Law in International

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(Mr. Lee, Canada)

Affairs, the acceptance by Poland of the compulsory jurisdiction of the International Court of Justice and the acceptance of the Court's jurisdiction by the Soviet Union for disputes concerning the interpretation or application of five human rights instruments. There were also indications that the United States and the Soviet Union would shortly accept the compulsory jurisdiction of the Court in the areas of terrorism and narcotics control. His delegation encouraged all the other permanent members of the Security Council to follow suit and noted the positive remarks on that subject made by the United Kingdom representative earlier in the meeting.

40. His delegation had noted with interest the proposals concerning the environment made in the Sixth Committee by the Minister for Foreign Affairs of Austria (A/C.6/44/SR.7) and looked forward to further discussion of those new ideas and of the many other proposals already put forward by several States for dealing with different aspects of the environment. A range of ideas now existed which required clarification and broader discussion in order to build an international consensus on the response needed to solve global environmental problems.

41. Mr. MATAIRA (New Zealand) said that the adoption in 1988 of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51) had provided concrete evidence that the Special Committee was beginning to fulfil its mandate. The Special Committee's 1989 session had further demonstrated its increasing usefulness.

42. The working paper on fact-finding activities (A/44/33, para. 20) submitted by the same group of countries, including New Zealand, as had sponsored the early drafts of the 1988 Declaration, had been very well received by the Special Committee. The principal goal of that paper, which built on the 1988 Declaration, was to improve access by the United Nations to timely, accurate and unbiased information about international situations which had the potential to pose a threat to international peace and security, thereby assisting in the settlement of differences at the earliest possible stage. The paper did not attempt to restate the rules on fact-finding set forth in the Charter. Rather, it suggested a code of behaviour for countries that would make those rules more effective. For example, it recommended, but did not require, that the conduct of fact-finding missions be entrusted to the Secretary-General. During the debate in the Special Committee, a number of delegations had expressed concern that paragraph 14 implied that a fact-finding mission could enter the territory of a State without that State's consent. That concern had been based on a misunderstanding: the only implication in paragraph 14 was that it would be counter to the atmosphere of goodwill, multilateralism and co-operation embodied in the United Nations if a State refused entry to a fact-finding mission.

43. Although that working paper and the alternative working paper submitted by Czechoslovakia and the German Democratic Republic (A/44/33, para. 51) differed widely in a number of areas, there was sufficient common ground to enable the essential elements of both papers to converge.

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(Mr. Mataira, New Zealand)

44. With respect to the peaceful settlement of disputes, the recent successful interventions by the Secretary-General were to be commended, as were the moves by several States to give wider recognition to the compulsory jurisdiction of the International Court of Justice.

45. The Special Committee had concluded rightly that the Romanian proposal on the resort to a commission of good offices, mediation or conciliation within the United Nations (A/44/33, para. 123) would provide useful guidance to States planning to resort to those procedures.

46. His delegation welcomed the progress of work on the draft handbook on the peaceful settlement of disputes between States and looked forward to early completion of the draft.

The meeting rose at 11:40 a.m.