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REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

Report of the Sixth Committee

Rapporteur: Mr. Guillaume PAMBOU-TCHIVOUNDA (Gabon)

I. INTRODUCTION

1. The item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" was included in the provisional agenda of the forty-fourth session of the General Assembly pursuant to paragraph 10 of resolution 43/170 of 9 December 1988.
2. At its 3rd plenary meeting, on 22 September 1989, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. In connection with the item, the Sixth Committee had before it the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, ^{1/} which was introduced by the Chairman of the Special Committee at the 7th meeting of the Sixth Committee, on 29 September 1989.
4. The Sixth Committee also had before it the following communications:
 - (a) Letter dated 19 July 1989 from the Chargé d'affaires a.i of the Permanent Mission of Zimbabwe to the United Nations addressed to the Secretary-General (A/44/409-S/20743 and Corr.1 and 2);

^{1/} Official Records of the General Assembly, Forty-fourth Session, Supplement No. 33 (A/44/33).

(b) Letters dated 29 September and 2 and 13 October 1989 from the Deputy Head of the Delegation of the Union of Soviet Socialist Republics to the forty-fourth session of the General Assembly addressed to the Secretary-General (A/44/585, A/44/602, A/44/645);

(c) Letter dated 26 October 1989 from the Permanent Representative of Malaysia to the United Nations addressed to the Secretary-General (A/44/689-S/20921);

(d) Letter dated 2 November 1989 from the Permanent Representatives of Finland and the Union of Soviet Socialist Republics to the United Nations addressed to the Secretary-General (A/44/705-S/20940).

5. The Sixth Committee considered the item at its 7th to 15th and 44th meetings, held on 29 September, from 3 to 10 October and on 21 November. The summary records of the meetings (A/C.6/44/SR.7-15 and 44) contain the views of the representatives who spoke on the item.

6. The Sixth Committee considered item 141, entitled "Peaceful settlement of disputes between States", in conjunction with the present item, in accordance with resolution 43/163 of 9 December 1988.

II. CONSIDERATION OF PROPOSALS

A. Draft resolution A/C.6/44/L.12

7. At its 44th meeting, on 21 November, the representative of Egypt introduced a draft resolution entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" (A/C.6/44/L.12), sponsored by Argentina, Belgium, Cyprus, Czechoslovakia, Ecuador, Egypt, the German Democratic Republic, Germany, Federal Republic of, Ghana, Italy, Japan, Morocco, New Zealand, Oman, Romania, Senegal, Spain, Venezuela and Yugoslavia, later joined by Colombia, Gabon, Indonesia, the Libyan Arab Jamahiriya, the Philippines, Poland and Zambia.

8. The Committee had before it a statement by the Secretary-General (A/C.6/44/L.19) on the programme budget implications of the draft resolution.

9. At the same meeting, the Committee adopted draft resolution A/C.6/44/L.12 without a vote (see para. 12, draft resolution).

B. Draft decision A/C.6/44/L.15

10. Also at the 44th meeting, on 21 November, the Chairman submitted a draft resolution entitled "Resort to a Commission of good offices, mediation or conciliation within the United Nations".

11. At the same meeting, the Committee adopted the draft decision without a vote (see para. 13, draft decision).

III. RECOMMENDATIONS OF THE SIXTH COMMITTEE

12. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the Special Committee on the Charter of the
United Nations and on the Strengthening of the Role
of the Organization

The General Assembly,

Recalling its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its relevant resolutions adopted at subsequent sessions, 2/

Taking note of the reports of the Secretary-General on the work of the Organization submitted to the General Assembly at its thirty-seventh, 3/ thirty-ninth, 4/ fortieth, 5/ forty-first, 6/ forty-second, 7/ forty-third 8/ and forty-fourth 9/ sessions, as well as of the views and comments expressed on them by Member States,

2/ Resolutions 31/28 of 29 November 1976, 32/45 of 8 December 1977, 33/94 of 16 December 1978, 34/147 of 17 December 1979, 35/164 of 15 December 1980, 36/122 of 11 December 1981, 37/114 of 16 December 1982, 38/141 of 19 December 1983, 39/88 of 13 December 1984, 40/78 of 11 December 1985, 41/83 of 3 December 1986, 42/157 of 7 December 1987 and 43/170 of 9 December 1988.

3/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 1 (A/37/1).

4/ Ibid., Thirty-ninth Session, Supplement No. 1 (A/39/1).

5/ Ibid., Fortieth Session, Supplement No. 1 (A/40/1).

6/ Ibid., Forty-first Session, Supplement No. 1 (A/41/1).

7/ Ibid., Forty-second Session, Supplement No. 1 (A/42/1).

8/ Ibid., Forty-third Session, Supplement No. 1 (A/43/1).

9/ Ibid., Forty-fourth Session, Supplement No. 1 (A/44/1).

Having considered the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization on the work of its session held in 1989, 10/

Expressing its satisfaction at the completion of the work on the draft document on the resort to a Commission of good offices, mediation or conciliation within the United Nations and for the Special Committee's recommendation that it be annexed to a decision to be adopted by the General Assembly at its present session,

Mindful of the desirability of further work being done by the Special Committee in the field of peaceful settlement of disputes between States,

Noting with appreciation the progress achieved in the elaboration of the draft handbook on the peaceful settlement of disputes between States,

1. Takes note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;

2. Decides that the Special Committee shall hold its next session from 12 February to 3 March 1990;

3. Requests the Special Committee, at its session in 1990, in accordance with the provisions of paragraph 5 below:

(a) To accord priority to the question of maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in this context, to consider:

(i) Primarily, the question of fact-finding activities by the United Nations on the basis of proposals and suggestions before it;

(ii) Other proposals relating to the maintenance of international peace and security that might be submitted to the Special Committee at its session in 1990;

(b) To continue its work on the question of peaceful settlement of disputes between States and, in this context:

(i) To consider proposals relating to this question that might be submitted to the Special Committee;

(ii) To examine the progress report of the Secretary-General on the elaboration of the draft handbook on the peaceful settlement of disputes between States; 11/

10/ Ibid., Supplement No. 33 (A/44/33).

11/ A/AC.182/L.61.

4. Requests the Special Committee to keep the question of the rationalization of the procedures of the United Nations under active review;

5. Also requests the Special Committee to be mindful of the importance of reaching general agreement whenever that has significance for the outcome of its work;

6. Decides that the Special Committee shall accept the participation of observers for Member States, including in the meetings of its working group;

7. Requests the Secretary-General to continue, on a priority basis, the preparation of the draft handbook on the peaceful settlement of disputes between States, on the basis of the outline elaborated by the Special Committee and in the light of the views expressed in the course of the discussions in the Sixth Committee 12/ and in the Special Committee, and to report to the Special Committee at its session in 1990 on the progress of work, before submitting to it the draft handbook in its final form, with a view to its approval at a later stage;

8. Requests the Special Committee to submit a report on its work to the General Assembly at its forty-fifth session;

9. Decides to include in the provisional agenda of its forty-fifth session the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

* * *

13. The Sixth Committee also recommends to the General Assembly the adoption of the following draft decision:

Resort to a Commission of good offices, mediation or
conciliation within the United Nations

The General Assembly,

Commends the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for the completion of the work on the draft document on the resort to a commission of good offices, mediation or conciliation within the United Nations, and decides that the present decision, adopted by the General Assembly, to which that document is annexed, be brought to the attention of States so that it may become generally known.

12/ Ibid., Forty-fourth Session, Sixth Committee, 7th to 15th and 44th meetings.

ANNEX

Resort to a Commission of Good Offices, Mediation
or Conciliation within the United Nations

States parties to disputes may wish to avail themselves of the possibility to resort to third-party assistance in the form of a commission of good offices, mediation or conciliation in order to settle their disputes by peaceful means. In doing so, they may be guided by the following:

1. Resort to a commission of good offices, mediation or conciliation within the United Nations may be considered by States as a procedure at their disposal for the peaceful settlement of international disputes in accordance with the provisions of the Charter of the United Nations.
2. Such a commission may be established for each particular case, in accordance with modalities described below, through the agreement of the States parties to a dispute, or, with their agreement, on the basis of a recommendation of the Security Council, or of the General Assembly or following the contacts of the States parties to a dispute with the Secretary-General. Other modalities and conditions may also be agreed upon by the States parties to a dispute for the establishment of such a commission.
3. When the States parties to a dispute accept to resort to a commission of good offices, mediation or conciliation as described in paragraph 2 above, the designation of members of the commission is proceeded with.
4. For each particular case the commission of good offices, mediation or conciliation may be constituted of persons nominated by up to three States, which are not parties to the dispute concerned.

Such States will be designated by the States parties to the dispute or, with their agreement, as the case may be, by the President of the Security Council or by the President of the General Assembly or by the Secretary-General.

5. Each designated State will appoint, upon approval by the States parties to the dispute, a highly qualified person, with adequate experience, who will act in the commission in his individual capacity.

The chairman of the commission will be selected from among its members by the States parties to the dispute. They may also agree in a particular case that the chairman be appointed by the Secretary-General.

6. The proceedings of the commission may take place at United Nations Headquarters in New York, or in any other place agreed upon by the States parties to the dispute.

7. After taking note of the elements of the respective dispute, on the basis of submissions made by the States parties and, as appropriate, of information provided by the Secretary-General, the commission in performing its good offices functions will seek to bring the parties to enter immediately into direct negotiations for the settlement of the dispute, or to resume such negotiations or to resort to another means of peaceful settlement.

If the States parties to the dispute so request, the commission will seek to establish the aspects on which the States parties agree, as well as their differences of opinion and perception, and to elucidate the elements related to the dispute with a view to making suggestions for the beginning or the resuming of negotiations including their framework and stages as well as problems to solve.

8. If the States parties to the dispute request the commission, at any time, to mediate, the commission will offer to the parties proposals which it deems adequate for facilitating the negotiations and seeking through mediation to bring closer their positions until an agreement is reached.

9. The States parties to the dispute may agree at any moment of the procedure to entrust the commission with functions of conciliation. The States parties to the dispute determine the legal basis on which the commission should perform its functions. If such a basis is not determined, the commission should be guided mainly by the rights and duties of States resulting from the Charter of the United Nations and by the applicable principles of international law. In performing its functions the commission formulates the terms which it deems adequate for the amicable settlement of the dispute and submits them to the parties.

The States parties to the dispute will be requested to pronounce themselves on these terms within a period of time established by the commission, which may be prolonged if the States parties to the dispute deem it necessary.

10. A period of time during which the commission should discharge its mission may be established by the States parties to the dispute or, where appropriate, following their contacts with the Secretary-General.

11. The States parties to the dispute may wish that the commission work in confidentiality. As long as the commission continues its efforts, no statement will be made public on its activity without the agreement of the States parties to the dispute.

12. The States parties to the dispute may wish that, upon conclusion of the commission's activity, the commission prepare a report and communicate it to them. The States parties to the dispute will decide if the report is to be made public.

Where appropriate, the commission may submit a report to the United Nations organ concerned in the form accepted by the States parties to the dispute.

13. Unless otherwise provided, any expenses of the commission shall be borne by the States parties to the dispute. They may request the Secretary-General to provide the commission with reasonable assistance and facilities as it may require.

14. The States parties to the dispute, as well as other States, shall act in accordance with the purposes and principles of the United Nations and shall refrain from any action whatsoever which may aggravate the situation, endanger the maintenance of international peace and security or make more difficult or impede the peaceful settlement of the dispute.

15. Nothing in the present document shall be construed as prejudicing in any manner the provisions of the Charter, in particular those relating to the peaceful settlement of disputes.
