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SUMMARY RECORD OF THE 40th MEETING

Chairman: Mr. AL-QAYSI (Iraq)

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 132: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)
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AGENDA ITEM 141: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED
NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)
(A/40/33, A/40/77, A/40/308, A/40/377, A/40/726 and Corr.1 and A/C.6/40/L.10
and L.13)

1. Mr. AENA (Iraq) said that he was pleased to note the progress achieved by the Special Committee in the preparation of a draft handbook on the peaceful settlement of disputes between States, and the constructive exchange of views on the working paper on the establishment of a commission for good offices, mediation and conciliation. However, experience showed that efforts to enhance the mechanism of the Charter for the peaceful settlement of disputes had not encouraged States to abstain from the use of force. That was because States, which had sovereign rights, continued to be the basic political unit in the international system. Thus, the real problem was not the defects of existing mechanisms, but the lack of political will to settle disputes by peaceful means.

2. Consequently, it was necessary to take two questions into account: firstly, whether the failure to settle a dispute would constitute a threat to international peace and security. That question had been debated at the Dumbarton Oaks and San Francisco Conferences. Using arguments based on practical criteria, it had

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been proposed that the Security Council should determine whether the failure to settle a dispute would constitute a threat to the maintenance of international peace and security. However, the opposite concept, based on theoretical criteria, had prevailed and finally been incorporated in the existing provisions of the Charter. Secondly, the question arose whether the United Nations should adopt measures to force reluctant parties to settle their disputes by peaceful means. That question had already been dealt with by the League of Nations, though only within the framework of preventive measures. The experience of the United Nations showed that States, guided by narrow political interests, were frequently reluctant to settle their disputes peacefully, which in certain cases might jeopardize international peace and security. In all such cases the action of the Security Council had come late. Therefore his delegation considered that the Special Committee should consider the two aforementioned questions in the near future, using the practical criterion as a basis.

3. Referring to the question of the maintenance of international peace and security, he noted with satisfaction the progress achieved on the working paper on the prevention and removal by the United Nations of situations which might lead to international friction or give rise to a dispute and of matters which might threaten the maintenance of international peace and security (A/AC.182/L.38/Rev.1). However, although that document had achieved a certain balance with regard to the preventive functions of the principal United Nations organs, his delegation considered that account should be taken of the lessons of history with regard to that important and delicate question. The efforts of the League of Nations and the United Nations had been limited to the preventive roles of the Council of the League of Nations and of the Security Council of the United Nations, respectively. He thought that the Special Committee should limit itself at the current stage to the preventive role of the Security Council, leaving consideration of the preventive roles of the General Assembly and the Secretary-General until a later stage. The role of the General Assembly in that area was a new subject while that of the Secretary-General related mainly to the preventive role of the Security Council and also to the concept of "quiet diplomacy" and was not included in any legal framework but rather was based on general principles. For those reasons he would only comment at the current stage on the preventive role of the Security Council. After tracing the work of the Special Commission established by the Council of the League of Nations in 1926, he pointed out that that Commission had suggested that the only thing that the Council could have done if a State had not implemented its recommendations was to establish new supplementary measures for the maintenance of peace. The work of that Commission and that of the Committee on Arbitration and Security - which latter had provided for the possibility of the Council exercising preventive functions even after the start of hostilities - had led the Assembly of the League of Nations to adopt a general convention for improving the means of preventing war, which enabled the Council of the League of Nations to suggest non-military measures that States might adopt to prevent the aggravation of a dispute. That convention provided for on-the-spot verification of the military measures recommended by the Council, but did not provide for the Council to take preventive measures in the event of armed conflict.

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4. Referring to the preventive functions of the United Nations Security Council, he said that that organ, which had primary responsibility for the maintenance of international peace and security, had limited and not general responsibilities under the Charter. The powers of the Security Council for the discharge of its duties were not completely specified in the Charter. The powers of the Security Council as specified in the Charter fell into four categories, one of which was preventive and enforcement measures. Nevertheless, the principal difference between the preventive functions of the Council of the League of Nations and those of the Security Council of the United Nations was that while the Council of the League could exercise a preventive role once hostilities had broken out, the Security Council could not do so; at that stage, the only thing it could do was to decide on the use of force. His delegation considered that that interpretation, which derived from certain debates at the San Francisco Conference and subsequent United Nations practice, was not accurate. In fact, measures that the Security Council might adopt after the start of hostilities should be considered only as additional measures to safeguard peace, which might also be taken in cases where force was used legitimately.

5. To sum up, he considered that the Special Committee should now concentrate its efforts on the preventive role of the Security Council. It should also distinguish clearly between three situations in which the Security Council could fulfil its preventive functions, although the three categories were not equal: where there was no threat of use of force, where the use of force was imminent and after hostilities had broken out. The Special Committee should also envisage the preventive measures that the Security Council could recommend to States parties to a dispute.

6. Mr. HUCKE (German Democratic Republic) said that the commemorative session of the fortieth anniversary of the founding of the United Nations had shown that the Organization, whose inception was intrinsically linked with the struggle against nazism, was indispensable in the world-wide efforts for international peace and security, social progress and co-operation. As the General Secretary of the Central Committee of the Socialist Unity Party of Germany and Chairman of the Council of State of the German Democratic Republic, Mr. Erich Honecker, had said, the United Nations was a universal forum for international dialogue, especially in an era in which the issue of war and peace had attained a nuclear dimension. In order to enhance the effectiveness and authority of the United Nations, all States must translate into reality the principles enshrined in the Charter. With that in mind, his country welcomed the statement adopted by the Special Committee at the end of its tenth session (A/40/33, paras. 231 to 233). The Special Committee could give a valuable impulse to the attainment of the purposes of the United Nations by seeking to enhance the Organization's effectiveness, as had been illustrated by the unanimous adoption of the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10 of 15 November 1982).

7. In his delegation's view, the concern should not be to seek certain changes in the competences of the organs or in the decision-making mechanisms. He would therefore make a few remarks on the three main topics which had been discussed in a

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constructive manner at the 1985 session of the Special Committee on the basis of the mandate contained in General Assembly resolution 39/88 A. One of those topics was the "maintenance of international peace and security in all its aspects" (resolution 39/88 A, para. 3 (a), which was considered in document A/AC.182/L.38/Rev.1. He regretted that account had not been taken of the suggestions which the German Democratic Republic and a number of other States had made, for the document limited itself unduly to the activities of United Nations bodies. It had excluded questions relating to the conduct and duties of States which, in his delegation's opinion, should play an important role in that context. As his country had stated during the debate in the Special Committee, document A/AC.182/L.38/Rev.1 included a number of elements at variance with the competences of the principal organs of the United Nations established in the Charter. One of the shortcomings was the inaccurate use of the terms "situation", "matters" and "measures" in relation to the organs concerned. The only United Nations organ entitled to adopt binding measures in the case of situations, disputes or matters which represented a threat to the peace was the Security Council. That competence was established unequivocally in the Charter. It was unacceptable that attempts had been made through the working paper to widen the competence of the Secretary-General and make him independent of the competence of the Security Council. In addition, the premature consideration by the Security Council of situations or disputes, the competence for which rested in principle with States, might produce the opposite result to the one desired by the authors of the document. Furthermore, it must be stressed that the only legitimate source of information for the United Nations was the Member States themselves, at least with regard to problems affecting them. The right which according to the document, would be granted to the Secretary-General to make use of any sources of information and the possibility given to him to use at his discretion any information related to the maintenance of international peace and security reflected insufficiently the balance of competences which, under the Charter, existed among the principal organs of the United Nations.

8. Turning to the peaceful settlement of disputes among States, he said that the discussion of the proposal to establish "a commission for good offices, mediation and conciliation" had clearly shown that in its present version (A/C.6/39/L.2) the proposal contained major problems for some States. The position of the proposed commission within the framework of the United Nations remained unclear. The priority given to the establishment of the commission over other means of peaceful settlement of disputes was in contradiction with the principle of the free choice of such means. Under the envisaged procedures it would be possible for a dispute to be taken up simultaneously in several bodies. His delegation reiterated once again that the prevention of disputes and their peaceful settlement required above all the political will of the States concerned rather than the establishment of new mechanisms. With regard to the preparation of a handbook on the peaceful settlement of disputes between States, his delegation was grateful for the information provided by the Secretariat that some parts of the initial draft had been completed. As the work continued, the need for the handbook to conform with the Charter must be kept in mind; in the last analysis its value would depend on its acceptance and application by all States and groups of States.

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9. With regard to the rationalization of the existing procedures of the United Nations, his delegation noted with interest the submission of document A/AC.182/L.43 and was in favour of discussion of such questions in the Special Committee, although now was not the appropriate moment to analyse the proposals in detail, since that work should be done at the Special Committee's next session. His delegation believed that general agreement could be reached on some of the proposals. Lastly, the Special Committee had to deal with a number of diverse and important questions which required further discussion. If fruitful results were to be achieved, the interests of all States must be taken into account with a view to reaching general agreement.

10. Mr. KHALIK (Egypt) said that since 1975, and particularly since the adoption of General Assembly resolution 3499 (XXX) of 15 December 1975 establishing the Special Committee, that body had achieved only two concrete results: the Manila Declaration on the Peaceful Settlement of International Disputes and the adoption of 12 recommendations out of 85 proposals on the question of rationalization of the procedures of the United Nations. The Special Committee had achieved no concrete results on the question of maintenance of international peace and security, which was the main question entrusted to it.

11. The Special Committee had not satisfied the desires of small and medium-sized States for peace, security and stability, owing to the lack of political will of some of its members, which continued to see the Charter as a holy book which could not be improved or interpreted. The Charter had been signed 40 years earlier in a totally different political atmosphere and there was an absolute need to review it and improve its mechanisms and procedures in order to adapt it to historical changes.

12. His delegation supported the attempt made two years earlier to adopt by consensus a mandate for the Special Committee's working methods. The achievement of concrete results on the question of the maintenance of international peace and security would demonstrate that the collective approach in international relations was still functioning effectively to safeguard the principles and achieve the purposes of the Charter.

13. The Special Committee had devoted much time to consideration of the item on the peaceful settlement of disputes between States and, in particular, to the working paper submitted by Nigeria, the Philippines and Romania on the establishment of a commission for good offices, mediation and conciliation. The proposal was a useful exercise in the attempts to regulate the use of the three means of peaceful settlement through the commission. It was still too early to judge whether the commission would operate in accordance with the provisions of the Charter or to speak about the financial implications of establishing it.

14. Consideration of the proposal showed that the commission would be established by a Security Council or General Assembly decision or upon recommendation by the Secretary-General. The proposal did not jeopardize the balance established in the Charter between the three aforementioned organs. It was not as clear that it did

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not jeopardize the principle of "free choice of means" because it was not apparent that the consent of the parties was an essential condition for the establishment and functioning of the commission. The sponsors should therefore clarify that point.

15. It must be stated clearly whether the commission was meant to be an organ within the constitutional system of the United Nations, which would require an amendment to the Charter, or simply an additional procedure.

16. The sponsors had said that the members of the commission were to be selected from among the Member States, which would designate their representatives and have the right to change them. That procedure could insert political considerations into the appointment of representatives. It would be better to set up the commission with persons proposed by States, who would act in a personal capacity and thus have the necessary independence.

17. It was not clear how the commission would proceed from one means of peaceful settlement of disputes to another - from good offices to mediation to conciliation. Those questions needed to be answered in order to have a clear picture of the functions of the commission.

18. It was gratifying that the Secretariat had made progress on the draft handbook on the peaceful settlement of disputes between States. The Secretariat should take into account pre-Charter documents and procedures that were relevant or still in use, on a selective basis. His delegation supported the point of view expressed in paragraph 55 of the report (A/40/33) as well as the idea, expressed in paragraph 57, that the Secretariat should be able to approach other international organizations to gather information on relevant legal instruments and procedures without going into details. His delegation agreed with the content of paragraph 58 of the report.

19. In accordance with General Assembly resolution 39/88 A, paragraph 3 (a), the Special Committee should accord priority to the question of the maintenance of international peace and security. The Special Committee had had before it the working paper submitted by six States (A/AC.182/L.38/Rev.1), which was an excellent piece of work. In order to achieve concrete results, the step-by-step method should be followed, beginning with the aspect covered by the working paper discussed by the Special Committee.

20. The introduction emphasized the utmost care taken by the sponsors to maintain the balance established between the principal organs by the Charter. As the paper was further elaborated, such an introduction should be deleted in order not to have to deal with theoretical questions. Concerning the structure of the paper, due account must be taken of the view concerning the difficulty of distinguishing between the preparation for preventive action and the preventive action itself, although there was no need to divide the paper into two parts.

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21. It was difficult to understand the approach followed by the sponsors in structuring the role of Member States, the principal organs of the United Nations and the Secretary-General. The sponsors should consider restructuring the working paper. However, those general remarks did not mean that his delegation was dissatisfied with the document. On the contrary, a revised text taking into account the views expressed during the discussion could serve as a sound basis for achieving concrete results at the Special Committee's eleventh session.

22. With regard to the rationalization of procedures of the United Nations, the Special Committee had had before it the working paper submitted by France and the United Kingdom (A/AC.182/L.43). His delegation continued to maintain that rationalization of existing procedures was not the purpose behind the establishment of the Special Committee. Reference should also be made to the paper submitted by the Asian-African Legal Consultative Committee on strengthening the role of the United Nations through the rationalization of functional modalities with special reference to the General Assembly (A/40/726).

23. It was to be hoped that, at its eleventh session, the Special Committee would achieve concrete results to be submitted to the Sixth Committee for its consideration.

24. Mr. RASSOL'KO (Byelorussian Soviet Socialist Republic) said that 1985 was a very important date in history as it marked the fortieth anniversary of the great victory over German fascism and Japanese militarism in the Second World War. It also marked the fortieth anniversary of the United Nations, which had been founded as a result of that victory. In that connection, it was also important to recall the major contribution to that victory made by the Byelorussian Soviet Socialist Republic and 20 million Soviet citizens, including over 2 million from the Byelorussian Soviet Socialist Republic, who had lost their lives in that war. The painful lessons of that war could not be forgotten and all countries must therefore work together in order to avert the outbreak of a third world war.

25. One of the principal objectives of the Charter of the United Nations was to save succeeding generations from the scourge of war. It also reaffirmed the faith of peoples in the equal rights of nations large and small, in the dignity of the human person and in the equal rights of men and women. The Charter had withstood the test of time and peace-loving forces in the United Nations had not only saved mankind from a third world war but had also played an important role in decolonization and the adoption of important instruments on socio-economic, cultural and humanitarian questions and on international law.

26. As the Secretary-General had rightly pointed out at the commemorative meeting, the United Nations enjoyed widespread recognition as the most genuine representative of the international community in all its diversity. However, the Organization's contribution to the strengthening of international peace and security and to the settlement of difficult problems confronting the human race would be more significant if all States systematically complied with the purposes and principles of the Charter. Regrettably, efforts were sometimes made - giving

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various excuses to modify its provisions, which were essential to the activities of the United Nations. Such efforts jeopardized the Organization's very existence.

27. That tendency had also been apparent in the position of some delegations in the Special Committee which had sought the adoption of unacceptable proposals that undermined the provisions of the Charter. In fact, an effort had been made to deal a harsh blow to the Security Council and its subsidiary organs. It was well known that both the Secretary-General and the General Assembly were vested with sufficient powers by the Charter to deal with questions relating to the peace and security of mankind. But the Charter itself was unambiguous in stating that the main responsibility for the maintenance of international peace and security lay with the Security Council. In view of the clear provisions of Chapter VI of the Charter on the pacific settlement of disputes, one might ask if it was necessary to establish other organs or entrust existing organs with new powers. His delegation was convinced that that was not necessary since the powers and the means available to the Security Council made it possible to solve any question concerning the maintenance of international peace and security.

28. The proposals submitted by a number of delegations in document A/AC.182/L.38/Rev.1 designed to place the functions of the Secretary-General and the General Assembly with regard to the maintenance of international peace and security on the same level as those of the Security Council, and in some cases to give them even greater powers, were entirely unacceptable. Any attempt to reduce the powers of the Security Council in that area in order to enhance the role of the Secretary-General and the General Assembly should be rejected because it was contrary to the provisions of the Charter.

29. It was also unacceptable to establish a commission for good offices, mediation and conciliation because that would result in a duplication of functions that were currently the prerogative of the Security Council, including the investigation of conflict situations. The role of the United Nations would not be strengthened by establishing new commissions but by the concerted action of all States to achieve the objectives enshrined in the Charter. The mandate to preserve peace contained in the Charter to preserve peace would not be accomplished by amending its provisions, as some delegations had claimed for years, but through the positive efforts of all Members to implement them.

30. The Soviet Union had always attached great importance to the United Nations as an effective instrument for safeguarding peace and was willing to take all the necessary steps to ensure that the principles of justice and democracy, on which the United Nations had been based upon its establishment 40 years earlier, were implemented in international relations. In its foreign policy, the Soviet Union was also endeavouring to avoid the threat of a nuclear war and the dangers of the arms race and to prevent the arms race from extending to outer space; moreover, it was trying to avoid all grounds for a conflict in the Middle East, Asia, Africa and Latin America.

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31. Furthermore, if the efforts of the United Nations were to be made more effective and productive and understanding among States was to be strengthened, it was essential that all discrimination in trade relations and all vestiges of colonialism should be eliminated. It was also essential that all States Members of the United Nations should participate actively in the work of the Organization so that it could attain its lofty goal of safeguarding international peace and security. That was the policy pursued by the Byelorussian SSR, as indicated in the message sent by the Chairman of the Supreme Soviet marking the occasion of the fortieth anniversary of the establishment of the United Nations; as a founding Member of the United Nations the Byelorussian SSR would do everything within its power to ensure observance of the principles laid down in the Charter. It wished to urge all other States to do their utmost to strengthen the role of the United Nations, which would facilitate the settlement of many conflicts that represented a threat to peace.

32. Mr. CULLEN (Argentina) said that the problems with which the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had to cope were well known and he therefore regarded the approach that had facilitated progress in the work of the Special Committee over the past two years as being extremely positive. However, he was somewhat disappointed that, when it had met for the tenth time, the Special Committee had been unable to produce any tangible conclusions on the questions before it for presentation on the occasion of the fortieth anniversary of the United Nations.

33. Also on the occasion of that anniversary, the non-aligned countries members of the Special Committee had brought about the adoption of a statement (chap. V of the report) stressing the importance of continuing the work of the Special Committee, the validity and vitality of the purposes and principles of the Charter of the United Nations and the duty of all Member States to fulfil in good faith their obligations under the Charter, particularly those relating to the peaceful settlement of disputes and the maintenance of international peace and security.

34. His delegation regarded as unwarranted the discussion of whether it was fitting and opportune to consider in the Special Committee certain issues relating to the maintenance of international peace and security, particularly in view of the adoption of the Manila Declaration on the Peaceful Settlement of Disputes, since it was precisely in that area that a valuable contribution could be made to the strengthening of the Organization, through recommendations that had the support of all States.

35. Moreover, his delegation did not share the concern expressed by some States that regarded consideration of such matters in the Special Committee as unjustifiable interference in the affairs of the Security Council. In any event, since it was aware of the importance of general agreement on the work carried out, it endorsed the suggestion that at the current stage consideration of such matters should be focused on the issue of the prevention of conflicts; it noted with interest that a paper on the matter (A/AC.182/L.38/Rev.1) prepared by a group of countries had been submitted. That paper represented a compromise between on the one hand, the position of those who believed that a liberal approach could be taken

(Mr. Cullen, Argentina)

to the issue and that all aspects, including the functioning of the Security Council, could be studied and, on the other hand, the position of those who believed that any recommendation made by the General Assembly would be an encroachment on the competence of the Council. The paper did not contain any proposals that violated the provisions of the Charter or upset the balance achieved in the Charter between the various organs in question. On the contrary, his delegation would have liked the paper to have been broader in scope, in conformity with the recommendation made by the General Assembly to the Special Committee that it should study the question of the maintenance of international peace and security "in all its aspects".

36. He therefore wished to urge the Special Committee to complete its analysis of the paper at its following session and to prepare constructive recommendations relating to its main points. On the other hand, he believed that the explanatory note reflected only the opinion of the drafters of the paper and would have no role to play as part of the text of the proposals.

37. With regard to the competence of the various United Nations organs in the area of the prevention and removal of situations that might lead to friction, his delegation believed that the Secretary-General and the Assembly should have powers in that connection, particularly in cases where they had to intervene because the Security Council was unable to act as a result of either structural problems or lack of the necessary will on the part of one of its members. The Secretary-General and the Assembly should be able to act on their own initiative, without a mandate from the Council.

38. With regard to section I, paragraph 2, concerning the possibility of the Secretary-General's sending representatives to areas where there was a conflict, his delegation believed that the part of the sentence referring to the consent of the receiving State should also provide for cases where the territory in question was occupied by a foreign Power.

39. With regard to the proposal that States should be encouraged to exercise their right to bring certain situations or matters to the attention of the Security Council at an early stage (sect. I, para. 6), his delegation believed that that right should be exercised in accordance with a certain logic and not in a manner determined by the course taken by the conflict. In recent years, experience had shown that States requested the Council to intervene at an initial stage of the dispute but subsequently opposed such intervention when they believed that the situation was favourable to them, even when the conflict had become more serious.

40. With regard to section I, paragraph 7, his delegation believed that when informal consultations were held in the Security Council the States directly concerned must be guaranteed an equal opportunity to present their views. Recent situations in which informal consultations had been used in order to block access for one of the parties to the dispute in question to the debates held in the Council, and in order to ban that party from participation in the debates, must not be permitted to recur. If that was allowed to happen, there would be a risk that the Council would adopt decisions that contributed to the deterioration of the conflict, since they lacked an adequate basis.

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41. Moreover, the unwarranted holding of informal consultations could give the permanent members an opportunity to oppose any proposal for a settlement that did not serve their interests, which in fact meant that they would have an opportunity to exercise the right of veto, without paying the political price that such an act entailed in a formal meeting of the Council.
42. With regard to the role of regional bodies, to which reference was made in section II, paragraph 8, of the paper, his delegation believed that such participation should be supported, as should any efforts made at the regional level to "prevent and/or remove a situation or matter in the region concerned".
43. With regard to the peaceful settlement of disputes, which was an issue of particular importance, he wished to draw attention to the fact that Argentina and Chile had given a clear demonstration of their commitment to that fundamental principle and had concluded a definitive agreement settling their territorial dispute.
44. With regard to the proposal concerning the establishment of a commission for good offices, mediation and conciliation, his delegation believed that there was nothing in that proposal that was contrary to the Charter of the United Nations and that, on the contrary, the proposal would be of value in strengthening systems for the settlement of disputes and facilitating negotiations between the parties to a conflict.
45. With regard to the handbook on the peaceful settlement of disputes, his delegation believed that the instruments in question should be included on a selective basis and had confidence in the judgement of the Secretariat, both on that matter and on any consultations that might be held with other international organizations and, in particular, with the group of interested delegations.
46. With regard to the rationalization of procedures, there was no question that in many respects the United Nations had developed practices that were not conducive to productivity. However, the debate on the proposal submitted in that connection had taken up a disproportionate amount of time at recent sessions and the limited amount of agreement achieved did not justify further consideration of the topic, following the adoption of the extremely modest recommendations put forward at the thirty-eighth session. Furthermore, many ideas on the subject were being discussed in other forums, chiefly in the General Committee of the General Assembly and as a result of contacts between the chairmen of the various committees and the President of the Assembly.
47. Lastly, he reiterated the reservations which his delegation had made at the most recent session on the proposal regarding consensus which, in his opinion, went beyond rationalization and affected in an important way the General Assembly's system of adopting decisions. On the other hand, he considered the suggestions of the Asian-African Legal Consultative Committee to be of great usefulness in that connection.

48. Mr. SCHRICKE (France) said that, with regard to the peaceful settlement of disputes between States, the Special Committee had continued its consideration of the proposal on the establishment of a commission for good offices, mediation and conciliation as presented in working paper A/C.6/39/L.2. That document presented difficulties from the standpoint not only of drafting, but also of the principles involved. Its authors seemed not to have made a clear choice between the establishment of a new institution or simply a special procedure, and the role and functions of the commission did not seem to be compatible with the balance established in the Charter between the principal organs of the Organization and, in particular, with the role of the Security Council. Giving preference to certain ways of settling disputes in a peaceful manner meant that States' freedom of choice was restricted. He hoped that the perseverance and imagination of the authors of the proposal would make it possible to overcome those difficulties.

49. With regard to the examination of the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States, he said that the debate on certain questions of content and methods had been constructive, and he hoped that the Secretariat would make sufficient progress in its work so that it would be able in the near future to organize meetings of the "representative group of competent individuals from among the members of the Permanent Missions of the States Members of the United Nations." Likewise, France hoped that there would be progress in the updating of the Repertoire of the Practice of the Security Council and the Repertory of Practice of United Nations Organs, which had been requested by the General Assembly in its resolution 36/123 and had not yet been completed.

50. With regard to the maintenance of international peace and security, the debate had focused on a revised version (A/AC.182/L.38/Rev.1) of the working paper submitted at the previous session and which had been written in a frank and realistic manner. However, the revised version still contained some ambiguities and was incompatible with some provisions of the Charter. Given the problems which remained to be solved and the imperative necessity of proceeding on the basis of consensus, it was not prudent to establish a time-limit for the Special Committee to "finalize its work", as expressed in draft resolution A/AC.6/40/L.10.

51. With regard to the rationalization of existing procedures of the United Nations, France, together with the United Kingdom, had submitted a working document (A/AC.182/L.43) which contained eight proposals. Among the numerous suggestions which had been made with a view to improving the efficiency of the Organization and, consequently, its image in the eyes of the world public opinion, two documents were particularly worthy of note: the recommendations made by the Presidents of the General Assembly concerning the rationalization of the procedures of the Assembly (A/40/377, appendix) and the Asian-African Legal Consultative Committee's study on Strengthening the Role of the United Nations through Rationalization of Functional Modalities with special reference to the General Assembly (A/40/726, annex). France was one of the countries which, in 1984, had expressed regret at the opportunistic position adopted in the Assembly's resolution 39/88 A regarding the rationalization of procedures, and had accepted its wording only in a spirit of compromise. It would be quite irregular if the General Assembly at its current

(Mr. Schricke, France)

session did not request the Special Committee to continue its work on the question and all its previous efforts were thus consigned to oblivion. The rationalization of procedures of the Organization was one way of demonstrating the will to strengthen it in order to ensure the full implementation of the aims of the Charter.

52. For the second consecutive year, the Special Committee had met in conditions which had enabled it to make significant progress, owing to the fact that it had been granted a mandate which was acceptable to all delegations. The Special Committee could contribute to the strengthening of the role of the Organization only on the basis of general agreement, and for that reason it would not be advisable to introduce into its mandate items which might be controversial. France could not agree to a mandate which would result in the revision of the Charter and the system of balances which it embodied. That position should not be confused with immobilism, since the fixity of the provisions of the Charter had not hindered the development of new concepts which met the needs of modern society. Delegations should show realism and discard proposals which might give rise to controversy.

53. Mr. GÖRÖG (Hungary) said that, over the last 40 years and in spite of its well-known problems, the United Nations had given proof of its vitality and the Charter had proved to be an appropriate and flexible framework for a great diversity of activities carried out and still to be carried out by the United Nations. The everyday practical application of the provisions of the Charter to the most varied situations was evidence of its ability to meet the requirements of modern times without any need for revision.

54. With regard to the work of the Special Committee, over the past year the positions of the participants in the debates had not drawn any closer. Hungary continued to maintain that the Special Committee could hope to succeed in its work and win broad approval only if it did not lose sight of the following criteria: first, the proposals to be formulated should serve to strengthen the role of the Organization and should leave no scope for an expansive interpretation of the Charter, which would be tantamount to indirect revision; second, the existing balance of powers and functions of the principal organs of the United Nations, in particular the General Assembly and the Security Council, should be maintained because upsetting that balance would be bound to jeopardize seriously the effective working of the Organization; and third, the United Nations could carry out its responsibilities only if it took the interests of all Member States duly into account.

55. With regard to the peaceful settlement of disputes between States, the proposal submitted had not fulfilled expectations. His delegation maintained its negative position with regard to the proposal to establish a commission for good offices, mediation and conciliation since because, as reflected in paragraphs 15, 17 and 18 of document A/40/33, that proposal in its existing form was in contradiction with the Charter of the United Nations and could not win general approval; it unduly extended the powers of the General Assembly and of the Secretary-General and undermined the exclusive prerogatives of the Security Council concerning the maintenance of international peace and security; it was in conflict

(Mr. Görög, Hungary)

with the principle that the means of dispute settlement was to be chosen primarily by the parties concerned and it over-emphasized the importance of third-party settlement. The establishment of the proposed commission would in fact require revision of the Charter.

56. With regard to the maintenance of international peace and security, the working paper in document A/AC.182/L.38/Rev.1 reflected an unduly narrow approach to the question that was much more limited than the mandate established by the General Assembly for the Special Committee. Such a complex problem could not be viewed from the aspect of prevention alone. It was impossible to equate and lump together the General Assembly, the Security Council and the Secretary-General in describing their preventive role; moreover, some provisions of the working paper might undermine the delicate and important balance of powers established in the Charter and prejudice the prerogatives of the Security Council.

57. Mr. ENKHTSAIKHAN (Mongolia) said that the commendable work of the Special Committee could be appreciated only if account was taken on the one hand, of the background of the international situation, which was characterized by increasing tension, the intensification of the arms race and the danger of a nuclear war and, on the other hand, of the role played by the United Nations and the Charter in ensuring international peace and security. Over the 40 years since its establishment, the most important political achievement of the United Nations had been to avoid a new world war, which demonstrated that the political will of States made it possible to overcome psychological, ideological, historical and other barriers and that the Organization had served as a centre for international peace and security.

58. Unfortunately, the United Nations had not been able to carry out its work fully. That was due not to shortcomings of the Charter but to a lack of political will on the part of some States, including some permanent members of the Security Council. The Charter had not lost its viability; on the contrary, its importance was increasing. The principle of unanimity of the permanent members of the Security Council was not a privilege, but a reflection of the reality of the coexistence of two opposed social and economic systems and of the equality which existed between them. The principle of unanimity had made it possible to avoid the dangerous escalation of certain conflicts and had served to prevent some States from using the United Nations against the interests of others.

59. It was the responsibility of all States, regardless of their social system, to work for the consolidation of international peace and security. That explained the many constructive proposals made by the socialist and non-aligned countries on the subject. Mongolia, whose active policy it was to promote the consolidation of international peace and security, had submitted, inter alia, the proposals regarding the Declaration on the Right of Peoples to Peace (General Assembly resolution 39/11) and the proclamation of Disarmament Week (resolution 33/71 D), and it was participating as actively as possible in the discussions of the Conference on Disarmament. Recognizing the role of regional bodies, Mongolia had also submitted a proposal for a convention on the non-use of force among the

(Mr. Enkhsaikhan, Mongolia)

countries of Asia and the Pacific. In addition, it had put forward numerous initiatives on social and economic matters which were crucial to hastening development and eliminating national factors that could create conflict and tension.

60. In its 10 years of activity, the Special Committee had done very useful work, in particular the adoption of the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10). In the past two years it had adopted its resolutions by consensus, and that had improved the climate of its debates.

61. With regard to the maintenance of international peace and security, the Special Committee's report (A/40/33) gave particular attention to the revised version of working paper A/AC.182/L.38/Rev.1 submitted by six Western countries, which took a very narrow approach and was limited to procedural aspects and to ways of preventing conflicts and disputes. The question should not be considered in isolation and without reference to the realities of the international situation, which was characterized by the threat of nuclear war and the acceleration of the arms race. With regard to the strengthening of the role of the Organization and the Security Council, the principles of the Charter should be strictly observed. During the plenary debate in the General Assembly Mongolia had held that it was imperative, in order to reduce the danger of nuclear catastrophe, for all nuclear Powers to commit themselves not to be the first to use nuclear weapons and for the Security Council to draw up a document acceptable to all the nuclear Powers that would include that obligation.

62. Concerning the peaceful settlement of disputes between States and the rationalization of existing procedures of the United Nations, Mongolia held to its position and insisted that the role and effectiveness of the United Nations should be strengthened on the basis of strict respect for the Charter.

63. Mr. BENNOUNA (Morocco), referring to the proposal on the establishment of a commission for good offices, mediation and conciliation, said that during the deliberations of the Special Committee fundamental differences of opinion had emerged as to the mandate and membership of the proposed commission and its relations with the principal organs of the United Nations. To begin with, a distinction must be made between good offices, mediation and conciliation, since only conciliation presupposed the active intervention of a third party, which could include proposing solutions. Although in practice it was an easy transition from good offices to mediation to conciliation, each of those means of peaceful settlement was quite different from the others, particularly in the procedures and mandate of the organ in question. Yet the document did not indicate how the proposed commission could be transformed from an organ of good offices into an organ of conciliation or mediation without the consent of the States concerned. Moreover, given the diverse means for the peaceful settlement of disputes provided for in the Charter, the effectiveness of a new body was doubtful. If the States concerned lacked political will, the mere existence of settlement machinery would not be enough to bring about a peaceful settlement.

(Mr. Bennouna, Morocco)

64. A safeguard clause had to be included to guarantee the right of States to resort to other methods of peaceful settlement, especially since the proposed text might give the false impression that States could not resort to good offices, mediation or conciliation except through the Security Council, the General Assembly or the United Nations Secretary-General. Furthermore, the position of the proposed commission within the current structure of the United Nations was not clear.

65. Paragraph 1 of document A/C.6/39/L.2 described the commission not as a permanent body but as a procedure permanently at the disposal of States in particular cases. That ambiguity had prompted comments within the Special Committee which the sponsors of the proposal should take into account in drafting the next version of the document. There was also a certain ambiguity where the composition of the Commission was concerned, in that States were to appoint representatives who met the requirements of competence and experience but the sponsors maintained that that did not imply that the members of the commission could not act in their personal capacity. A clear decision must be taken as to whether the commission was to be a body composed of experts or of representatives of States. In the first instance, it would be sufficient to set up a list of independent persons, which the Secretary-General would regularly bring up to date. In the second instance, the commission would be a subsidiary organ of the Security Council or the General Assembly or a body which periodically held informal consultations.

66. The commission's effectiveness would depend on the flexibility of its methods of work and the simplicity of its structure. The commission should have no more than three to five members in order to avoid the likelihood of prolonged discussions such as those which took place in the organs of the United Nations. The commission's effectiveness would be linked to the political will of States. In that connection, working paper A/C.6/39/L.2 did no more than reaffirm in paragraph 18 the obligation of States to act in good faith and to support the activity of the commission.

67. The mandate of the Special Committee centred on the question of the maintenance of international peace and security. The initiative of the sponsors of working paper A/AC.182/L.38/Rev.1 was therefore significant. The United Nations must not be content to react to situations of conflict but must detect their likelihood in order to prevent them.

68. The sponsors of the working paper had endeavoured to maintain the balance established by the Charter between the principal organs of the United Nations, and yet the argument of incompatibility with the Charter had been raised against them. Proposals submitted to the Special Committee were coming under increasing scrutiny to determine their conformity with the letter of the Charter and the effect they would have on the balance between the principal organs of the Organization.

69. When it came to preventing situations that threatened international peace and security, the obligations of States were of fundamental importance. The interaction between the role of the United Nations and the behaviour of States was

(Mr. Bennouna, Morocco)

obvious. In that context, the dispatch by the Security Council of missions of inquiry and good offices to areas where situations of tension or conflict existed could serve to put a timely end to such situations or prevent them from worsening, after which the mission could recommend to the parties one of the means of peaceful settlement provided for in Article 33 of the Charter.

70. The Secretary-General should avail himself more often of Article 99 of the Charter to bring to the attention of the Security Council any situation likely to endanger the maintenance of international peace and security. The Secretary-General was in a position to evaluate situations realistically and avert the adoption of repetitive and ineffective resolutions.

71. His delegation was awaiting with keen interest the results of the Secretariat's work on the draft handbook on the peaceful settlement of disputes between States. In the process, account should be taken not only of international legal instruments and practice but also of the conclusions drawn from case studies.

72. Mr. CALERO-RODRIGUES (Brazil), recalling that the Chairman of the Special Committee had said that at its most recent session it had made important progress on all the topics that the Assembly had asked it to consider, observed that in reality there had been progress only in the very limited field to which the action of the Special Committee had been reduced.

73. As the representative of Jamaica had indicated the previous year, the Special Committee's mandate suffered from inherent contradictions which prevented that Committee from fulfilling its task, because it was being asked to make proposals for strengthening the role of the Organization and at the same time it was forbidden to make proposals which might change the current structure of the Organization. One could not speak of progress unless one forgot the original aim of the Special Committee.

74. His delegation still believed that the Special Committee had an important role to play. As he had said in 1977, efforts towards a review and updating of the Charter should be encouraged despite all the obstacles in the way of any amendment. That was perhaps the only way for the United Nations to win back its prestige, instead of being bypassed in favour of direct negotiations. The Charter could not remain indefinitely as a monument to immobility, resisting the winds of change that had turned the world in other directions during the past four decades. The general approach originally taken by the conservative powers was discouraging and, unfortunately, was gradually suffocating the Special Committee. The thoroughness with which any item on the agenda was studied was sometimes an excuse for forgetting that the Special Committee had been designed for higher purposes.

75. The Special Committee had recently been working on its famous triptych: the maintenance of international peace and security; the peaceful settlement of disputes; and the rationalization of the procedures of the United Nations. The three panels did not have the same importance. The study of the rationalization of procedures should be considered over and done with, and the Secretariat was competent to elaborate the draft handbook on the peaceful settlement of disputes between States.

(Mr. Calero-Rodrigues, Brazil)

76. The Special Committee should deal mainly with the maintenance of international peace and security, on a higher level where the question of settlement of disputes could be treated as one of the elements.

77. In the hope that the Special Committee would really come to life, his delegation supported the renewal of its mandate. That would be the best way to give practical content to the statements made at the current session regarding the importance and significance of the United Nations.

78. Mr. BOUABID (Tunisia) said that although no concrete results had been achieved, it was important to point to the constructive atmosphere and the spirit of co-operation fostered by delegations which had participated in the latest session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Delegations were still somewhat divided on a number of issues; however, the discussion of the most important items would certainly facilitate the submission, at the next session, of revised versions of the documents in response to the concerns expressed by various members of the Special Committee.

79. With respect to the question of peaceful settlement of disputes, the controversial issue was the establishment of a commission for good offices, mediation and conciliation. Some delegations were convinced that the establishment of such a commission would be incompatible with the provisions of the Charter in so far as it would upset the existing balance between the principal organs of the United Nations; other delegations saw some merit in the proposal to establish the commission.

80. His delegation was keeping an open mind. On the one hand, it reaffirmed its commitment to the principle of peaceful settlement of disputes embodied in the Charter; on the other hand, it could not fail to support any initiative to facilitate the application of that principle, even if it led to the establishment of new organs.

81. Inasmuch as the use of force in international relations had virtually become standard practice and a number of conflicts or disputes between States continued to endanger regional and international peace and security, one might well ask what motives would prompt certain members of the Special Committee to object to consideration of a mechanism that could help to improve the situation. The establishment of the commission would not be in violation of the provisions of the Charter. The proposal was not to create a substitute for the Security Council, and the commission was to be established on the initiative of one of the three principal organs of the United Nations. It was not yet time to worry about the financial problems of establishing the new organ. On the other hand, there should be a thorough review of the advantages and disadvantages of the proposal and of the commission's potential contribution to inter-State relations.

82. The nature of the proposed organ was not yet sufficiently clear. Despite the clarifications offered by the sponsors of the proposal, the persisting uncertainties must be dispelled so that there could be a precise assessment of the implications of the establishment of the commission.

(Mr. Bouabid, Tunisia)

83. As to the handbook on the peaceful settlement of disputes between States, his delegation, while wishing the Secretariat success in its work on the draft, hoped that the scheduled consultations with the members of the Special Committee could be held as progress was made. That would facilitate the work of the Secretariat and save time in the preparation of the draft.

84. With regard to the paper submitted on the maintenance of international peace and security (A/AC.182/L.38/Rev.1), his delegation welcomed the proposal to consider in the first stage the preventive aspect of the question. Many conflicts could have been averted if appropriate preventive action had been taken in time. In that connection, a key role could be played by the principal organs of the United Nations, each operating in its sphere of competence.

85. While there was no doubt that the Security Council was the organ responsible for maintaining international peace and security under the Charter, both the General Assembly and the Secretary-General could make an appreciable contribution as far as prevention was concerned. Inasmuch as there was not always unanimity among the permanent members of the Security Council, it would be useful to continue considering the possibility of enhancing the preventive function of the other organs and of the United Nations as a whole. For example, the neutrality which should be the hallmark of the Secretary-General could be invoked in order to exert influence on the parties to a possible conflict, thus giving him a greater preventive role.

86. In that area, however, it was essential not to lose sight of one important element, namely the role of States both in their mutual relations and in their relations with the United Nations. The Secretary-General had noted that the United Nations was in no way a super-State, but was an organization of sovereign independent States. Sovereignty remained entirely vested in the Member States. The Organization's function was to harmonize, to encourage and to initiate. The implementation must come from the Members.

87. His delegation was not unaware of the importance of the question of the rationalization of the procedures of the United Nations, but believed that work should not be resumed on that topic at the moment, especially as the Special Committee had submitted recommendations to the General Assembly at its previous session.

The meeting rose at 6.05 p.m.