

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

GENERAL ASSEMBLY

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NOTE:

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 41/83 of 3 December 1986 and met at United Nations Headquarters from 9 to 27 February 1987. 1/
2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975, the Special Committee was composed of the following member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czechoslovakia, Ecuador, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia.
3. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.
4. Mr. Georgiy F. Kalinkin, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Ms. Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Special Committee and of the Working Group; Mr. Larry D. Johnson, Senior Legal Officer, and Ms. Mahnoush Arsanjani, Mr. Manuel Rama-Montaldo and Mr. Igor G. Fominov, Legal Officers (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Special Committee and its Working Group.
5. At its 105th and 106th meetings, on 9 February 1987, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 2/ agreed upon the composition of the Bureau of the Committee as follows:

 Chairman: Mr. Andrzej W. Kakolecki (Poland)

 Vice-Chairmen: Mr. Carlos Tobar-Zaldumbide (Ecuador)
 Mr. Bengt Broms (Finland)
 Mr. Ridha Bouabid (Tunisia)

 Rapporteur: Mr. Musa Javed Chohan (Pakistan)
6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. At its 105th meeting, on 9 February 1987, the Special Committee adopted the following agenda (A/AC.182/L.50):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolutions 41/74 and 41/83 of 3 December 1986, in accordance with the mandate of the Special Committee as set forth in resolution 41/83.
6. Adoption of the report.

8. In accordance with General Assembly resolution 41/83, the Special Committee agreed to accept the participation of observers of any States Members of the United Nations that so requested. It therefore decided to grant requests to that effect received from the Permanent Missions to the United Nations of Bangladesh, Bulgaria, Cameroon, Canada, Chile, Cuba, Guatemala, Jordan, the Libyan Arab Jamahiriya, Mongolia, Morocco, Oman, Peru, Senegal, Suriname, the Syrian Arab Republic, Uganda, Uruguay and Viet Nam.

9. At its 105th meeting, the Special Committee agreed on the following organization of work for its Working Group: 6 or 7 meetings would be devoted to the question of the peaceful settlement of disputes between States, 2 meetings to the question of the rationalization of existing procedures of the United Nations and 14 or 15 meetings, depending on the progress of work in the Working Group, to the question of the maintenance of international peace and security.

10. The Special Committee had before it the two above-mentioned working papers relating to the maintenance of international peace and security (A/AC.182/L.38/Rev.3 and A/AC.182/L.48), a working paper on the rationalization of existing procedures of the United Nations (A/AC.182/L.43/Rev.1 and Rev.2), a working paper on the resort to a commission of good offices, mediation or conciliation within the United Nations (A/AC.182/L.52 and Rev.1) and a proposal for an addition to the first of the above-mentioned working papers (A/AC.182/L.54). The Special Committee also had before it a progress report by the Secretary-General on the preparation of a draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.51) and a note by the Secretariat on the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council (A/AC.182/L.53).

II. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

A. 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

Statement of the Rapporteur

11. In presenting, on 9 February 1987, the progress report prepared by the Secretary-General pursuant to paragraph 4 of General Assembly resolution 41/74 and paragraph 9 of Assembly resolution 41/83 (A/AC.182/L.51), the Legal Counsel indicated that, under the agreed outline, the four sections of the handbook which were due next related to inquiry, mediation, conciliation and good offices, and that in view of the close links between these four means of settlement, the Secretariat had felt it preferable to defer the convening of the Consultative Group until the corresponding sections had all been finalized. He added that despite acute staff shortage, attributable in part to the current financial situation of the United Nations, the Secretariat would do its utmost to submit the four sections in question to the Consultative Group in the course of the year.

12. Several delegations stressed that they attached importance to the elaboration of the handbook as a technical contribution to the enhancement of the principle of peaceful settlement of disputes. While they were aware of the complexity of the task at hand and of the difficulties of the Secretariat in discharging its responsibilities in this respect, they expressed the hope that the work would proceed on a priority basis and that more progress would be reported at the next session of the Committee.

13. It was suggested that at its next meeting in the course of the year the Consultative Group should receive, together with the new sections that would have been completed, revised versions of the portions of the handbook that had already been reviewed.

14. The Working Group took note of the progress report of the Secretary-General.

B. Consideration of the proposal contained in the working paper on the resort to a commission of good offices, mediation or conciliation within the United Nations, submitted to the Special Committee by Romania

Statement of the Rapporteur

15. The Working Group had before it the above-mentioned proposal (A/AC.182/L.52), which was a revised version of an earlier working paper (A/AC.182/L.47), and proceeded to a paragraph by paragraph discussion of its text. A number of suggestions, observations and drafting points were made. Subsequently, the delegation of Romania introduced a revised version of the proposal (A/AC.182/L.52/Rev.1), which took into account many of the above-mentioned suggestions, observations and drafting points. The text of the revised proposal reads as follows:

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

"1. Resort to a commission of good offices, mediation or conciliation within the United Nations is a procedure at the disposal of States and of the competent organs of the Organization 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. Additional modalities and conditions may also be agreed upon by the States parties to a dispute for the establishment of such a commission.

"3. When a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, is brought to the attention of the Security Council, the Council may consider, inter alia, the possibility of recommending to the States parties to such a dispute to set up a commission of good offices, mediation or conciliation.

"4. When the General Assembly is seized with a dispute, it may consider, inter alia, subject to the provisions of Articles 12 and 14 of the Charter, the possibility of recommending to the States parties to such a dispute to set up a commission of good offices, mediation or conciliation.

"5. When the States parties to a dispute accept the recommendation of the Security Council or of the General Assembly, or agree, on their own, or following their contacts with the Secretary-General, to resort to a commission of good offices, mediation or conciliation, the designation of members of the commission is proceeded with.

"6. For each particular case the commission of good offices, mediation or conciliation is constituted by members nominated by up to three States, which are not parties to the dispute concerned.

"Depending on each particular case, the States are designated by the States parties to the dispute or, with their agreement, by the President of the Security Council or by the President of the General Assembly or by the Secretary-General.

"7. The States designated will nominate highly qualified persons, with adequate experience, who will act in the commission in their individual capacity.

"The chairman of the commission is selected by the States parties to the dispute who may also agree in a particular case that the chairman be appointed by the Secretary-General.

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

"9. After taking note of the elements of the respective dispute, on the basis of submissions made by the States parties, as well as 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.

"In case 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.

"10. If direct negotiations do not begin within a reasonable time and if the States parties to a dispute request it at any time, the commission will offer to the parties proposals which it deems adequate for facilitating the beginning of such negotiations and seeking through mediation to bring closer their positions until an agreement is reached.

"11. The States parties to a dispute may agree at any moment of the procedure to entrust the commission with functions of conciliation. The States parties to a dispute determine the 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. In performing its functions the commission formulates then terms which it deems adequate for the amicable settlement of the dispute and submits them to the parties.

"The States parties to a 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.

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

"13. The Security Council or the General Assembly may, when recommending the setting up of the commission, propose a period of time during which it should act for the solution of the respective dispute. Such period of time may be also established by the States parties to the dispute themselves or following their contacts with the Secretary-General.

"14. The Commission will work in confidentiality.

"As long as the efforts of good offices, mediation or conciliation continue, no statement will be made public on the activity of the commission without the agreement of the States parties to the dispute.

"15. Upon conclusion of its activity, the commission will prepare its report and communicate it to the States parties to the dispute and to the United Nations organ concerned.

"The States parties to the dispute decide if a report is to be made public.

"16. In order to facilitate the exercise by the peoples concerned of the right to self-determination, as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the States concerned, as well as other parties to a dispute involving the exercise of such a right may agree to have recourse to a commission of good offices, mediation or conciliation under the conditions described above.

"17. Nothing in the present document shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes."

16. A brief exchange of preliminary views was held on the revised proposal. The new text was generally considered as an improvement over the previous one and satisfaction was expressed by delegations whose suggestions, observations and drafting points were incorporated into the revised text. These delegations stated that further progress had been achieved in rendering the proposal more acceptable and more suited to the actual needs of strengthening the process of peaceful settlement of disputes among States. The view was expressed to the effect that the provisions of the revised proposal were fully in accordance with the Charter of the United Nations.

17. Some observations were put forward by several delegations regarding particular aspects of the proposal. It was noted that the legal nature of the act establishing the commission, the actual link between the proposed commission and the United Nations system, particularly when established on the sole agreement of the parties, the authority responsible for the designation of the members of the Commission and the kind of financing intended for the commission's activities were not yet clear. In the view of some, the question of the financing of the commission should be dealt with in a separate paragraph. On the additional modalities and conditions which could be agreed upon by the States parties to a dispute for the establishment of the commission (see para. 2 of the proposal above), it was observed that they might blur the link between the commission and the United Nations system and should be clarified. In one view, the question whether the document should deal only with disputes or also with situations and preventive measures would have to be examined at a later stage. It was also observed that the word "negotiation" as presently used might create the impression of being a fourth procedure referred to by the paper. It was observed that the words: "subject to" as applied to the provisions of Article 14 of the Charter referred to in paragraph 4 of the proposal should be replaced by the words: "in accordance with" or "on the basis of". It was suggested to make the drafting of paragraph 5 more precise and to replace the words "the designation of members of the commission is proceeded with" by the words "the commission is established". On the composition of the commission (see paras. 6 and 7 of the proposal), the lack of

a specific mechanism through which States would appoint the commission's members, and the preference for a commission made up exclusively of individuals without State participation, were among the remarks made. Concerning paragraph 9 of the proposal, it was suggested to invert the present drafting of the beginning of the paragraph by the words: "The commission in performing its good offices" ... The remark was made that the way the commission would pass from one procedure to the other should be further clarified. The reinsertion of a reference to international law as a basis for the commission's functioning was suggested. It was suggested that paragraphs 13, 14 and 15 of the proposal dealt with procedural issues and would be better placed before paragraph 8. Some measure of contradiction was noted between paragraphs 14 and 15 and it was wondered how confidentiality could be maintained in a report made to the Security Council or the General Assembly. It was also suggested to invert the order of the first and second subparagraphs of paragraph 15. Reservations were expressed regarding the appropriateness of paragraph 16 of the proposal, as the scope of the proposal under discussion was more restrictive than that of the Manila Declaration on the Peaceful Settlement of International Disputes.

18. In response, the sponsor of the proposal stated that the revised text incorporated so many suggestions made by various delegations that it should be considered as a kind of collective work, even if for lack of time the interested delegations had not been able to take part in its actual drafting. The paper reflected those suggestions and drafting points on which general support seemed to exist. The answers to some preoccupations expressed by a number of delegations were to be found in the new version of the text which intended to infuse still more flexibility in the proposal. As to the link between the proposed commission and the United Nations system, the sponsor stressed that the commission was a procedure and not an organ and thus there was no need to enter into details, as the commission would function only in particular cases as defined in the paper. The commission's financing should pose no difficulties: solutions would vary according to the characteristics of each specific case. The additional modalities and conditions mentioned in paragraph 2 of the proposal increased the options open to the State parties in accordance with the principle of free choice of means. In the sponsor's understanding, the general feeling of the Working Group was a preference for confining the commission's competence to disputes only, since "situations and matters" were being dealt with in document A/AC.182/L.38/Rev.3. There was no need for specific mechanisms for the appointment of commission members as the nominations could be made through various channels depending on the specific case. The reference to the Charter in paragraph 11 was meant to encompass also international law which constitutes a dimension of the proposal as a whole. Confidentiality concerned matters covered by paragraph 14, while paragraph 15 referred to the reporting process. The relevance of paragraph 16 applied to any United Nations document dealing with the implementation of the principle of peaceful settlement of disputes. The meaning of "negotiations" in the proposal was that given by Article 33 of the Charter which is the basis for the whole proposed procedure.

19. The consensus in the Working Group was that tangible progress on the topic had been achieved in the course of the present session and that concrete work on the proposal should continue at the next session of the Special Committee on the basis of document A/AC.182/L.52/Rev.1, with a view to reaching a general agreement on appropriate conclusions to be submitted to the General Assembly.

III. RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS

Statement of the Rapporteur

20. In connection with this topic, the Working Group had before it a revised working paper submitted at the previous session by France and the United Kingdom of Great Britain and Northern Ireland (A/AC.182/L.43/Rev.1).

21. The Working Group focused its attention on paragraphs 6 to 11, which had not been discussed in detail at the previous session. A number of representatives, however, commented on the topic in general and on the working paper as a whole.

22. Several delegations stressed that the impact of the Organization depended in no small measure on the effectiveness of its procedures. It was remarked that, at a time of financial and administrative reforms, the General Assembly had been well advised to mandate the Committee to keep the topic in question under active review.

23. Some delegations, while agreeing that the topic was an important one and although not objecting to a discussion of the paper before the Working Group, expressed doubts as to the advisability of pursuing in the framework of the Special Committee an activity that was being carried on elsewhere. The remark was made in this connection that it was because rationalization started with the elimination of duplication that the States members of the Asian-African Legal Consultative Committee (AALCC) had not wished to have the recommendations made by the AALCC Working Group of the Whole (see A/41/437, annex) discussed in the Committee and recommended its consideration by the General Committee which had before it other documents submitted on the same subject. The question was furthermore raised as to whether, in the light of the past discussions of the topic by the Special Committee, the Committee could be expected to reach general agreement on meaningful recommendations in the area under consideration.

24. Some delegations observed that the working paper dealt only with the procedures of the General Assembly and that its title was, therefore, misleading. The view was expressed that the rationalization effort should extend to other principal organs of the United Nations, including the Security Council, and should encompass such questions as how to promote compliance with the decisions of the International Court of Justice, how to safeguard the independence of the Secretary-General and of the Secretariat and how to enhance the political will of States to give effect to resolutions in the economic and social field.

25. The remark was made on the other hand that, for the most part, the problems referred to above could not be resolved through the rationalization of existing procedures and that it was logical to focus on the procedures of the General Assembly because they were most in need of streamlining. It was added that the Special Committee might at a later stage examine the procedures of other principal organs.

26. It was pointed out that the concern underlying paragraph 6 of the working paper had also found expression in section IV.C of annex V to the rules of procedure of the General Assembly, as well as in one of the recommendations of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations, 3/ established by

the General Assembly in its resolution 40/237 of 18 December 1985. The text of paragraph 6, it was added, aimed at providing a clear guideline while retaining the required degree of flexibility. The proposal was viewed as useful provided that in the distribution of items due account was taken of the nature of each item and of the respective work-loads of the Main Committees.

27. The purpose of paragraph 7, it was stated, was to facilitate the organization of the work of the Main Committees by enabling all regional groups to be represented on the bureau of each Main Committee - which was not at present possible. The remark was made that the idea was not a new one, and that a similar proposal had come close to being adopted at the fortieth session of the General Assembly. The gist, if not the drafting, of paragraph 7 met with the approval of a number of delegations. Other delegations, however, took the view that enlarging the number of officers of Main Committees would not contribute to a rationalization of proceedings, and that the proposal did not take account of the existence of groupings of States other than regional groupings. It was pointed out, on the other hand, that the bureau was empowered to deal with the organization of work and not with substantive questions.

28. With reference to paragraph 8, it was pointed out that the proliferation of subsidiary organs had been a source of concern for a number of years. Paragraph 8, it was added, sought to limit, but not to exclude, the possibility of creating new subsidiary organs. Some delegations supported this proposal, noting in particular that it did not bar the establishment of new organs with reasonable prospect for success and that it contained a useful reminder of the need to make optimum use of finite resources. Other delegations criticized the proposal as being too ambitious, too rigid and difficult to reconcile with Article 22 of the Charter. The proviso "without discontinuing ..." was viewed as vague and unrealistic, and it was suggested that emphasis rather be placed on the importance of the topic and on the measure of progress achieved. The question was raised as to whom would determine whether exceptional circumstances warranted a departure from the proposed rule, and the suggestion was made to redraft the paragraph so as to bar the creation of new organs except where the issue at hand could clearly not be entrusted to an existing body.

29. Paragraph 9, it was pointed out, aimed at drawing the attention of the General Assembly and of the Committee on Conferences to the criteria that should be applied in planning the sessions of intersessional bodies, and to the fact, confirmed by recent experience, that there was no necessary link between the length of a session and its fruitfulness. This proposal was viewed as useful and practically oriented. The suggestion was made to improve the drafting by making it clear that the Committee on Conferences was not on an equal footing with the Assembly, which alone was competent to take the political decision required. The remark was further made that the text should encourage speedy action in the area under consideration and that the role of the Secretary-General should be duly taken into account. Regarding the second part of the sentence, it was suggested that a reference to the degree of efficiency of intersessional bodies in discharging their mandates should be included.

30. An objection was made to the second part of the sentence on the ground that the length of the sessions of subsidiary bodies was a matter for the General Assembly to decide, and that attempts to change the arrangements made by the Assembly could only lead to sterile procedural debate. The remark was made,

however, that it would be unreasonable to compel an intersessional body to meet for the whole duration set by the Assembly if the task at hand could be completed in a shorter period.

31. It was recalled that the holding of informal consultations prior to the start of the session of a subsidiary organ had proved an effective way of settling in advance procedural and organizational issues and that a recommendation along those lines could be included in paragraph 9.

32. The proposal in paragraph 10 was viewed by a number of delegations as particularly opportune in a time of financial constraints. Some delegations, however, objected to the underlying assumption that meetings away from Headquarters were less productive than those held at Headquarters, an assumption which, in their opinion, was not borne out by experience.

33. The concern underlying paragraph 11, it was stated, was that resolutions had become too numerous in recent years to receive the required degree of attention, both at the elaboration stage and at that of implementation. The proposal was not couched in rigid terms and was an appeal to States to exercise restraint so as not to decrease the weight and value of the end-product of the General Assembly's work. Paragraph 11 was viewed by a number of delegations as reflecting a genuine problem which had also been addressed by AALCC. The question was raised as to what its concrete implications would be in the practice of the Assembly. It was pointed out in this connection that resolutions were prompted by the existence of problems and that the solution of problems would eliminate the need for resolutions to deal with them. The suggestion was made that the issue be studied in the future on the basis of an analytical study by the Secretariat. The second sentence of paragraph 11 was viewed by most delegations as reflecting a valid concern that had been expressed by the Secretary-General himself and as containing a useful invitation to make optimum use of limited resources. Some representatives, however, stressed that some flexibility was required and that analytical reports were a helpful tool.

34. At a subsequent stage of the proceedings, a second revised version of the working paper (A/AC.182/L.43/Rev.2), in which revisions were underlined to facilitate comparisons, was introduced on behalf of the co-sponsors. It read as follows:

"Rationalization of existing United Nations procedures

"1. Without prejudice to the provisions of the Charter of the United Nations on voting, resolutions and decisions of the General Assembly should be adopted whenever possible by consensus, on the understanding that such a procedure should not restrict the right of every Member State to make its views fully known. Consultations should be carried out informally, or within subsidiary bodies or ad hoc working groups, with the widest possible participation of Member States, in order to facilitate the adoption by the General Assembly of substantive conclusions and solutions which are generally acceptable, therefore most likely to be implemented and would thus contribute to strengthening the authority of the Organization.

"2. When an electronic voting system is available for recording votes, a roll-call vote should as far as possible not be requested.

"3. Before the end of each General Assembly session, the General Committee should use its experience and expertise to draw up, for the attention of the next General Committee, its observations on the proceedings of the current session in order to facilitate the organization and rationalization of the work of the next session.

"4. The agenda of the General Assembly should, in the light of consultations with interested delegations, be rationalized as much as possible by grouping or merging related items, and by fixing an interval of two or more years for the discussion of certain items. Furthermore, when the discussion of an item has been postponed on several occasions, its removal should be envisaged.

"5. The General Committee should consider, at the beginning of each session of the General Assembly, the possibility of convening certain Main Committees successively, taking into account the foreseeable number of meetings necessary for the consideration of the questions with which they are charged and the organization of the work of the whole session.

"6. In allocating agenda items to the Main Committees of the General Assembly and to the Plenary of the General Assembly, the General Committee should ensure the best use of the expertise of the Committees and of the time and resources available.

"7. Each Main Committee should have one chairman, three vice-chairmen and a rapporteur in order that a member of each regional group might be present on the bureau with a view to facilitating the organization of the work.

"8. Subsidiary organs of the General Assembly should not be established without careful consideration as to whether the subject in question could not be dealt with by existing organs of the General Assembly, including its Main Committees and their Working Groups. If, nevertheless, it is thought necessary to create a new subsidiary organ, the Assembly should then give careful consideration to suspending or discontinuing the work of an existing organ.

"9. The dates and length of the sessions of intersessional bodies of the General Assembly should be determined as soon as possible by the General Assembly or, failing that, by the Committee on Conferences, on the proposal of the Secretary-General, taking fully into account, on the one hand, available facilities and budgetary resources and, on the other hand, past experience, the state of current work in regard of the mandate given to the body in question as well as the priorities defined by the General Assembly.

"10. Consultations between members of intersessional bodies of the General Assembly should be held in advance of the sessions of such bodies in order to facilitate the conduct of their sessions, especially as regards the composition of the bureau and the organization of work.

"11. The General Assembly and Committee on Conferences should adhere strictly to the decision in Assembly resolution 40/243 that United Nations bodies should not meet outside their respective established headquarters except in accordance with the exceptions approved by the Assembly and where there are compelling reasons in the particular case.

"12. Efforts should be made to reduce the number of decisions and resolutions adopted by the General Assembly in order to enhance their authority and to promote adequate consideration of the issues involved, taking into account the grouping of items in the agenda. Resolutions ought not to request observations from States or reports by the Secretary-General except in cases where that would be indispensable for facilitating the implementation of these resolutions or the continued examination of the question."

35. The revised working paper was favourably received by some delegations which found that it contained worthwhile ideas, but was considered by others to be in need of further reflection and study. The hope was expressed that it could serve as a basis for reaching agreement at the next session of the Special Committee.

IV. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Statement of the Rapporteur

36. The Working Group devoted a first series of nine meetings, held between 13 and 20 February 1987, to the consideration of the working paper submitted by Belgium, Germany, Federal Republic of, Italy, Japan, New Zealand and Spain (A/AC.182/L.38/Rev.3). It devoted three meetings, held on 23 and 24 February, to the consideration of the working paper submitted by Czechoslovakia, the German Democratic Republic and Poland (A/AC.182/L.48). It devoted a second series of two meetings held on 25 February to the consideration of the first of the above-mentioned working papers.

37. At the 9th meeting, held on 13 February the third revised version of the working paper was introduced on behalf of the co-sponsors. It reads as follows:

"Draft declaration on the prevention and removal by the United Nations of disputes, situations which may lead to international friction or give rise to a dispute and matters which may threaten the maintenance of peace and security"

"The General Assembly,

"Reaffirming the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Manila Declaration on the Peaceful Settlement of International Disputes,

"Recognizing the fundamental responsibility of States for the prevention and removal of disputes, situations which may lead to international friction or give rise to a dispute (hereafter: "situations") and matters which may threaten the maintenance of peace and security (hereafter: "matters"),

"Recognizing also the important role that the United Nations and its organs can play in the prevention and removal of disputes, situations and matters, within their respective mandates under the Charter of the United Nations,

"Convinced that the strengthening of such a role of the United Nations will enhance its effectiveness in dealing with the questions of the maintenance of international peace and security and in promoting the peaceful settlement of disputes,

"Bearing in mind the obligation of States to conduct their relations with other States in accordance with international law and the purposes and principles of the United Nations so as to prevent disputes, situations and matters,

"Stressing the obligation of Member States to co-operate fully with the relevant organs of the United Nations and to support their actions taken in accordance with the Charter relating to the prevention of disputes, situations and matters,

"Bearing in mind the primary responsibility of the Security Council for the maintenance of international peace and security,

"Solemnly declares that:

"1. States should consider approaching the relevant organs of the United Nations in order to obtain suggestions on preventive means for dealing with disputes, situations and matters.

"2. States directly concerned, particularly if they intend to request a meeting of the Security Council, should approach, directly or indirectly, the Council at an early stage and, if appropriate, on a confidential basis.

"3. The Security Council should consider holding periodic meetings or consultations to review the international situation.

"4. In order to prepare itself for the prevention and removal of particular disputes, situations or matters, the Security Council should consider appointing the Secretary-General as rapporteur for a specified question and employing other means at its disposal in accordance with its provisional rules of procedure.

"5. When a specific dispute, situation or matter is brought to the attention of the Security Council without a meeting being requested, the Council should consider holding consultations, with a view to examining the facts of the dispute, situation or matter and keeping it under review, with the assistance of the Secretary-General. Before recommendations are issued, the States directly concerned should be ensured equal opportunity to present their views.

"6. In such consultations, without prejudice to recommendations and decisions the Security Council might make at a subsequent stage, consideration should be given to employing such informal methods as it deems appropriate, including confidential contacts by its President.

"7. The Security Council should also consider in such consultations:

"(a) Calling upon the States concerned to fulfil their obligations under the Charter;

"(b) Making an appeal to the States concerned to refrain from any action which might lead to the deterioration of the dispute, situation or matter;

"(c) Making an appeal to the States concerned to take an action which might help to prevent the deterioration of the dispute, situation or matter.

"8. Where appropriate, the Security Council should consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence, including observers and peace-keeping operations, as a means of preventing the further deterioration of the dispute, situation or matter in the areas concerned.

"9. The Security Council should consider encouraging and, where appropriate, endorsing efforts at the regional level to prevent or remove a dispute, situation or matter in the region concerned.

"10. Taking into consideration any procedures which have already been adopted by the States directly concerned, the Security Council should consider recommending to them appropriate procedures or methods of adjustment for disputes, situations or matters submitted to it, and such terms of settlement as it deems appropriate.

"11. The Security Council or the General Assembly, if it is appropriate for promoting the prevention and removal of disputes, situations and matters, should consider making early and full use of the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question.

"12. The General Assembly should consider making use of the provisions of the Charter in order to discuss disputes, situations and matters, when appropriate, and, subject to its Article 12, making appropriate recommendations.

"13. The General Assembly should consider encouraging and, where appropriate, endorsing efforts undertaken at the regional level to prevent or remove a dispute, situation or matter in the region concerned.

"14. Whenever appropriate, if a dispute, situation or matter has been brought before it, the General Assembly should consider making more use of fact-finding capabilities, including the sending of fact-finding missions, with the consent of the host State.

"15. The Secretary-General, if approached by a State or States directly concerned with a dispute, situation or matter, should respond swiftly by urging the States to seek a solution or adjustment by peaceful means of their own choice and by offering his good offices or other means at his disposal, as he deems appropriate.

"16. The Secretary-General should consider approaching the States directly concerned in a dispute, situation or matter, in an effort to prevent it from becoming a threat to the maintenance of international peace and security.

"17. The Secretary-General should consider making full use of fact-finding capabilities, including, with the consent of the host State, the sending of a representative or fact-finding missions to areas where a dispute or a situation exists or to which a matter relates.

"18. The Secretary-General should encourage, where appropriate, efforts undertaken at the regional level to prevent or remove a dispute, situation or matter in the region concerned.

"19. Taking into account the needs of confidentiality, the information obtained by the Secretary-General should be conveyed to the Security Council at the request of the Council or on the initiative of the Secretary-General, as well as, when appropriate, to the General Assembly at the request of the Assembly or on the initiative of the Secretary-General.

"20. The Secretary-General should consider making full use of his right to bring, when necessary on a confidential basis, disputes, situations or matters to the attention of the Security Council at as early a stage as he deems appropriate.

"21. The Secretary-General should be encouraged to consider requesting the Security Council to meet on matters within the purview of Article 99 of the Charter."

38. The working paper was generally viewed as a valuable basis for further work and some delegations indicated that they could accept it. Initial comments focused on its title, on the use of the term "matters", on the preamble and on the structure of the operative part.

39. As regards the title, several delegations doubted whether the future document, in view of its practical rather than normative orientation, should take the form of a declaration. The question was furthermore raised as to whether it would be proper for the General Assembly to give a solemn form to a document addressing recommendations to the Security Council. It was also remarked that the words "on the prevention and removal by the United Nations" should be replaced by the words "on the role of the United Nations in the prevention and removal".

40. The distinction between "disputes", "situations which may lead to international friction or give rise to a dispute" and "matters" was objected to by some delegations on the ground that it did not correspond to the approach reflected in the Charter. The remark was made in this connection that the term "matters" in the two Charter provisions where it appeared, namely Article 12, paragraph 2, and Article 99, was used in a broad sense encompassing not only "disputes" and "situations", but also open conflicts, and that only the first two of these three concepts seemed to be relevant to a working paper focused on prevention. In any case it was added, there was no question of placing on the same footing three notions, one of which encompassed the other two. Some delegations, however, pointed out that it was in relation to "matters" that the General Assembly, and the Secretary-General had a role to play, under the Charter, in the maintenance of international peace and security and that, in dealing with their preventive role, the working paper could therefore not avoid the use of the term "matters".

41. As regards the preamble, some delegations welcomed the reference in the second paragraph to the fundamental responsibility of States for the prevention and removal of disputes, stating in particular that the strengthening of the role of the Organization in this area was inextricably linked to the manner in which Member States fulfilled their obligations under the Charter. Other delegations pointed out that the working paper addressed itself to the functioning of organs and that its focus would become blurred if it were to deal with the conduct of States.

42. A number of additions to the preamble were proposed. Thus, a suggestion was made to include therein language borrowed from the opening part of the Preamble to the Charter of the United Nations, as well as the idea that strengthening the preventive role of the United Nations would enhance its role in the maintenance of international peace and security. It was furthermore suggested to add a paragraph reading as follows:

"Recalling that the United Nations should be a centre for harmonizing the actions of nations in the attainment of the common ends."

Other comments included the observation that the importance of the Charter in the maintenance of international peace and security ought to be underlined; the remark that the mention of the Friendly Relations Declaration should be supplemented by a reference to the Definition of Aggression, and the remark that the phrase "international disputes" should be used in this context. It was furthermore suggested to strengthen the sixth preambular paragraph by rewording it as follows:

"Calling upon Member States to co-operate fully with the United Nations and to support the actions taken in accordance with the Charter in relation to the prevention of disputes, situations and matters."

43. The view was furthermore expressed that the working paper should contain a paragraph on the need to ensure the implementation of Security Council resolutions.

44. With respect to the structure of the operative part, some delegations expressed the view that the parallelism maintained throughout the document between the respective roles of the General Assembly, the Security Council and the Secretary-General was not in keeping with the Charter, which assigned different powers and responsibilities to those three principal organs. The remark was also made that, aside from entailing the risk of upsetting the careful balance established by the Charter, the organ-by-organ approach disregarded the fact that in the area of prevention the Security Council and the Secretary-General had a greater potential for rapid and discreet action than the General Assembly.

45. Disagreement was expressed by other delegations regarding the view that the working paper did not respect the balance established by the Charter between the General Assembly, the Security Council and the Secretary-General. Attention was furthermore drawn to the fact that the activity-by-activity approach, which had originally been proposed by the co-sponsors, had proved unworkable and that coming back to it at an advanced stage of the work would be retrogressive.

46. Also, in relation to the structure of the operative part of the working paper, some delegations felt that, in order to deal comprehensively with the issue of prevention, the future document should consist of two sections, one of which would deal with the responsibilities of States in this area, and the other, with the preventive role of United Nations organs. It was furthermore indicated that the proposed section I flowed logically from the recognition, in the second preambular paragraph of the working paper, of the fundamental responsibility of States for the prevention and removal of disputes and that it should be based on the Charter and on generally accepted instruments such as the Friendly Relations Declaration and the Manila Declaration. The following new paragraphs were accordingly proposed for inclusion in the working paper (A/AC.182/L.38/Rev.3):

"1. States shall practice tolerance and live together in peace with one another as good neighbours, and unite their strength to maintain international peace and security;

"2. States shall fulfil their obligations under the Charter, develop friendly relations among nations, refrain in their international relations from the threat or use of force, as well as from intervening in internal or external affairs of any other State;

"3. States shall refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State;

"4. States shall make every effort for the prevention of international disputes and conflicts, to settle their disputes exclusively by peaceful means envisaged in the Charter in such a manner that international peace and security, and justice, are not endangered;

"5. In order to prevent disputes and conflicts, States shall develop their relations on the basis of sovereign equality of States and in such a manner as to ensure security on an equal basis for all States and in all spheres of international relations;

"6. States shall respect the right of other States freely to choose and develop their political, social, economic and cultural systems;

"7. States shall take all possible measures for the prevention of the aggravation of a dispute and its development into a conflict which might endanger international peace and security;

"8. States members of regional arrangements or agencies shall make every effort to achieve the pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. This does not preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter;

"9. Should the States fail to settle any international dispute, situation or matter by any of the above means, they shall continue to seek their prevention or solution by other peaceful means agreed among them, including those set forth below."

The following two additional paragraphs were also proposed:

"1. States should act in their mutual relations so as not to cause the rise of disputes, situations [and matters];

"2. States should consider to use more frequently bilateral or multilateral consultations in order to understand better their views, positions and interests in different areas and so as to prevent the rise of disputes, situations [and matters]."

47. Some delegations objected to the inclusion of the two above-mentioned proposals as they considered that this would amount to a radical change in the orientation of the third revised working paper, which, as its title indicated, dealt with the prevention and removal of disputes "by the United Nations". They held the view that this working paper, inasmuch as it had been formally introduced by a group of States, had been extensively discussed over several sessions and had undergone several revisions aimed at increasing its general acceptability, had achieved a certain status, as duly recognized in paragraph 3 (a) (i) of General Assembly resolution 41/83 of 3 December 1986, and could not be placed on an equal footing with informal proposals. It was also observed that the role of Member States was covered by paragraph 3 (a) (ii) of Assembly resolution 41/83 and should be discussed in the context of the work to be carried out under that provision.

48. Other delegations remarked that in paragraph 3 (a) (i) of its resolution 41/83, the General Assembly had mandated the Special Committee to deal

with the question of the prevention and removal of threats to peace and of situations in an overall perspective and without leaving aside any aspect of that question and that it had furthermore requested the Committee to use as a basis not only the working paper, but also "any other proposals specific to this question". It was added that paragraph 3 (a) (ii) was not concerned with the specific issue of prevention, but with the much broader question of the maintenance of international peace and security.

49. After this exchange of views, the Working Group agreed to consider the above amendments at a later stage and began its consideration of the operative part of the third revised working paper starting with paragraph 2.

50. Concerning paragraph 2, the Working Group agreed to the suggestion that the opening phrase "States directly concerned" should be more precise the first time it is utilized and should therefore be reformulated as follows: "States parties to a dispute and States directly concerned with a situation or matter (hereafter 'States directly concerned')".

51. The text of paragraph 2 as provisionally accepted reads as follows:

"States parties to a dispute and States directly concerned with a situation or matter,* (hereafter 'States directly concerned') particularly if they intend to request a meeting of the Security Council, should approach, directly or indirectly, the Council at an early stage and, if appropriate, on a confidential basis."

52. In the course of the consideration of paragraph 2, one representative proposed the inclusion of a new paragraph, to be placed immediately after paragraph 2 as new paragraph 2 bis, or placed elsewhere. That proposal reads as follows:

"With a view to the prevention or removal of international disputes, situations or matters, every effort should be made to use fully the provisions of the Charter on the functions and powers of the Security Council."

53. It was said in favour of this proposal that it was necessary, from a methodological and practical point of view, to indicate in the draft that it was not comprehensive in that the Security Council and States themselves may utilize other measures or methods than those specified in the draft, with a view to the prevention or removal of international disputes. The Charter provided the Security Council wide discretionary powers which should be used.

54. On the other hand, doubts were expressed concerning the inclusion of such a paragraph in the draft. It was believed that it was not in keeping with the thrust of the draft, which was focused on specific measures which should be taken at the early stages of an emerging dispute or situation, with a view to preventing an

* In the light of the views expressed concerning the word "matters" (see para. 40 above), it is understood that the question of its use wherever it occurs in the paragraphs of the revised working paper, except paragraph 20 (see para. 10, below) will be dealt with at a later stage.

escalation. The new draft proposal implied that the Security Council should use all of its powers under the Charter, even at this stage. Finally, it was thought that the proposal, which was for a totally new paragraph, should be discussed only after the completion of the consideration of the remaining paragraphs of the revised working paper.

55. It was also suggested that if such a provision were to be included in the draft it would have to be a general one, covering as well the provisions of the Charter on the functions and powers of the General Assembly and the Secretary-General. If formulated in such a general manner, it could appear in the preamble. Such a general provision should be taken up later, following the examination of the more concrete provisions of the revised working paper.

56. One representative believed that the question could be dealt with in a manner similar to that employed in the Manila Declaration and thus include a safeguard clause at the end of the draft along the following lines:

"Nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the maintenance of international peace and security."

57. The Working Group decided to suspend its consideration of the proposed new paragraph.

58. Turning to paragraph 3, some representatives believed it should not include the phrase "periodic meetings", as this could lead to the misleading impression that the paragraph was intended to repeat or paraphrase paragraph 2, Article 28 of the Charter, which utilizes the phrase "periodic meetings". It was suggested that the expression "from time to time" be used. The working group accepted that suggestion.

59. According to another view, it was necessary to improve the drafting of the paragraph so as to make it clear that the proposal related to informal meetings to review not only the general international situation, but also particular questions. Thus, the suggestion was made to redraft the paragraph as follows:

"The Security Council should consider holding informal periodic meetings and consultations to review the general international situation and particular disputes, matters and situations."

60. One representative stressed that the paragraph required revision so as to avoid the "automaticity" element currently in the draft. The envisaged meetings or consultations could most realistically take place in the context of specific cases and as the need arose. The following revised version of the paragraph was proposed:

"The Security Council could consider holding from time to time, upon the request of one of its members or of the Secretary-General, meetings or consultations to review situations which might lead to international friction or give rise to a dispute."

61. Other representatives questioned the need to revise the paragraph, other than changing "periodic" to "from time to time". The other proposed revisions, they

felt, changed the original thrust of the paragraph. This was particularly so with regard to the suggestion to make the holding of meetings or consultations contingent upon a request by a Security Council member or the Secretary-General. The point of the original proposal was to provide for such meetings being held at regular intervals. Also, it was doubted whether it was necessary or useful to add "to review ... particular disputes ...". The original thrust had been to review the international situation; particular disputes could be reviewed if appropriate.

62. The Working Group decided to suspend its consideration of paragraph 3.

63. With regard to paragraph 4, the Working Group accepted the suggestion to improve the drafting of the opening phrase by rewording it as follows: "In the course of the preparation for ...".

64. The text of paragraph 4, as provisionally accepted, reads as follows:

"In the course of the preparation for the prevention or removal of particular disputes, situations and matters, the Security Council should consider making use of the various means at its disposal, including the appointment of the Secretary-General as rapporteur for a specified question."

65. With regard to the first sentence of paragraph 5, the suggestion was made that for purposes of consistency, the word "specific" should be changed to "particular". In addition, it was mentioned that the reference to the assistance of the Secretary-General should be made more flexible so as not to convey the impression that such assistance was required in all cases. Thus it was suggested to insert the words "when needed" prior to "with the assistance of the Secretary-General".

66. Concerning the second sentence of paragraph 5, it was pointed out that the new language no longer clearly reflected the original idea that it was in the framework of informal consultations that the parties concerned should have equal opportunity to make their views known. Furthermore, various comments were made with the aim of improving its drafting, such as the avoidance of the term "issued", which was considered too technical, and the term "equal opportunity", which had different connotations in other United Nations forums. In addition, it was felt that the sentence should be drafted in a more flexible manner so as not to give the false impression that it was intended to enter into the details or complexities of the manner in which the Security Council should conduct its business. The more prudent course, it was eventually agreed, was to stress the point that "the States concerned should have the opportunity of making their views known".

67. The text of paragraph 5, as provisionally accepted, reads as follows:

"When a particular dispute, situation or matter is brought to the attention of the Security Council without a meeting being requested, the Council should consider holding consultations with a view to examining the facts of the dispute, situation or matter and keeping it under review, when needed with the assistance of the Secretary-General. The States concerned should have the opportunity of making their views known."

68. With respect to paragraph 6, the remark was made, in relation to the phrase "without prejudice to recommendations and decisions the Security Council might make at a subsequent stage", that it was difficult to imagine how the choice of a

particular method could have any influence on substantive decisions or recommendations and that if the text referred to procedural decisions the word "recommendations" was out of place. The Working Group agreed to delete the phrase in question.

69. The text of paragraph 6, as provisionally accepted, reads as follows:

"In such consultations, consideration should be given to employing such informal methods as the Security Council deems appropriate, including confidential contacts by its President."

70. As regards paragraph 7, the remark was made that its subject-matter was different from that of paragraph 6 and that the word "also" should therefore be deleted. It was furthermore suggested to insert at the end of the chapeau the words "inter alia" in order to avoid giving the impression that the courses of action described in subparagraphs (a), (b) and (c) were the only ones open to the Security Council. The opening words in subparagraph (a) were viewed as inappropriate for the early phase dealt with in the working paper; it was suggested to replace them by "reminding". The word "fulfil" was considered as infelicitous as it implied that the obligations of States under the Charter were all positive ones; it was therefore suggested to replace it by the word "respect". As regards subparagraph (b), the remark was made that since the working paper dealt with the phase prior to the emergence of a dispute, the States concerned should be encouraged to refrain not only from action which might lead to the deterioration of the dispute but also from action which might give rise to a dispute. It was suggested to enlarge the scope of subparagraph (c), in keeping with the subject-matter of the working paper, by including therein a reference to actions aimed at removing disputes or situations.

71. The text of paragraph 7, as provisionally accepted, reads as follows:

"The Security Council should consider in such consultations, inter alia:

(a) Reminding the States concerned to respect their obligations under the Charter;

(b) Making an appeal to the States concerned to refrain from any action which might give rise to a dispute or lead to the deterioration of the dispute, situation or matter;

(c) Making an appeal to the States concerned to take an action which might help to remove, or to prevent the continuation or deterioration of, the dispute, situation or matter."

72. In paragraph 8, the words "where appropriate" were viewed by some delegations as unnecessary, inasmuch as it could be left to the Security Council to determine the appropriateness of a particular course of action, and by other delegations as providing a useful tone to a document which was essentially a call for greater activism on the part of the Council.

73. As regards the methods envisaged for preventing the deterioration of disputes, some delegations suggested that it be made clear that the listing in paragraph 8 was not exhaustive by inserting therein the words "inter alia". The remark was made in this context that the paper should not in any way prejudice the principle

of free choice of means and that this concern could be met through the inclusion of a general safeguard clause.

74. Doubts were expressed with regard to the phrase "appropriate forms of United Nations presence", and to the reference to peace-keeping operations which, it was stated, was out of place in a document dealing with the embryonic phase of disputes and situations. The view was expressed that for the phase in question, methods such as negotiation or mediation were more appropriate.

75. Other delegations, while not insisting on the retention of the reference to peace-keeping operations, observed that a form of United Nations involvement which had proved highly effective deserved mention in a document of the type under consideration. It was also remarked that the presence of peace-keeping forces could have a useful deterrent effect. As to the idea of singling out some of the means enumerated in Article 33 of the Charter, this was viewed by some delegations as running counter to the principle of free choice of means.

76. Some delegations held the view that the text should provide for the consent of the States concerned. It was pointed out in this respect that the entire text dealt with a phase prior to the stages envisaged in Article 34 and in Chapter VII, i.e., a stage not covered by the Charter. At such a preliminary stage, it was observed, the consent of the States concerned should always be required.

77. Other delegations, while recognizing that the consent of the States concerned was, in most cases, a practical, and, in some cases, a legal pre-condition to the sending of a mission by the Security Council, pointed out that paragraph 8 dealt with the exploratory phase where the Council was considering the various options open to it and that the question of the prerequisites to the sending of a mission, on which there were well-known divergencies of views, would only arise in the Council after this particular method had been identified as a promising one.

78. It was remarked that, rather than requiring the consent of the States concerned, paragraph 8 might provide for consultations with them, thus facilitating practical arrangements without impairing the freedom of action of the Security Council.

79. The Working Group agreed to suspend its consideration of paragraph 8.

80. As regards paragraph 9, the remark was made that it did not specify who would undertake efforts at the regional level to prevent or remove disputes. It was agreed to clarify the text in this respect.

81. The text of paragraph 9, as provisionally accepted, reads as follows:

"The Security Council should consider encouraging and, where appropriate, endorsing efforts at the regional level by the States concerned or by regional arrangements or agencies to prevent or remove a dispute, situation or matter in the region concerned."

82. Paragraph 10 was viewed as oriented more towards the settlement of disputes under Chapter VI of the Charter than towards prevention. Attention was drawn in particular to the concluding phrase which was borrowed from Article 37, paragraph 2. In order to make it clear that the text dealt with the preventive phase, it was agreed to replace "terms of settlement" by "terms of adjustment". It

was also remarked that the words "submitted to it" were unduly restrictive inasmuch as the Security Council could take cognizance of a dispute situation or matter of its own motion.

83. The text of paragraph 10, as provisionally accepted, reads as follows:

"Taking into consideration any procedures which have already been adopted by the States directly concerned, the Security Council should consider recommending to them appropriate procedures or methods of adjustment for disputes, situations or matters brought to its attention, and such terms of adjustment as it deems appropriate."

84. Concerning paragraph 11, it was suggested that it would be more appropriate to devote separate paragraphs to the Security Council and to the General Assembly, rather than dealing with the two organs in the same paragraph. It was thus suggested that a similar paragraph dealing with the General Assembly could be examined later, in the context of other paragraphs dealing with the Assembly. The meaning of the expression "early and full" was questioned, particularly the reference to "full". It was more logical and in keeping with the thrust of the paragraph to delete that expression and simply to insert the phrase "at an early stage" before "consider". Also, it was necessary to specify that what was at issue was the Council's considering making use "of the provisions of the Charter concerning" the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question.

85. The text of paragraph 11, as provisionally accepted, reads as follows:

"The Security Council, if it is appropriate for promoting the prevention and removal of disputes, situations and matters, should, at an early stage, consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question."

86. In the course of the consideration of paragraph 12, the remark was made that it was necessary to include a reference to Article 11 of the Charter, as well as to Article 12, in view of that Article's relevance to the subject-matter under discussion. It was suggested to include a reference to Articles 10 and 14 of the Charter. It was also suggested to delete the word "its" before "Article" and the word "appropriate" before "recommendations", which were considered unnecessary and infelicitous. It was also remarked that questions relating to the form and structure of paragraphs 12, 13 and 14 may be considered by the Working Group at a later stage.

87. The text of paragraph 12, as provisionally accepted, reads as follows:

"The General Assembly should consider making use of the provisions of the Charter in order to discuss disputes, situations and matters, when appropriate, and, in accordance with Article 11 of the Charter and subject to Article 12, making recommendations."

88. As to paragraph 13, it was deemed more prudent to adjust the expression "should consider, encouraging and, where appropriate, endorsing efforts" which had been utilized in paragraph 9 with regard to the Security Council. To make it clear that the Assembly's role in this area stems from Articles of the Charter other than

those applicable to the Council and is based on its own practice, it was suggested that the expression "should consider, where appropriate, supporting efforts" be used. It was also suggested that there be incorporated in this paragraph the specification already included in paragraph 9 that the efforts to be undertaken at the regional level are by the States concerned or by regional arrangements or agencies.

89. The text of paragraph 13, as provisionally accepted, reads as follows:

"The General Assembly should consider, where appropriate, supporting efforts undertaken at the regional level by the States concerned or by regional arrangements or agencies, to prevent or remove a dispute, situation or matter in the region concerned."

90. With regard to paragraph 14, certain representatives urged its deletion because, in their view, it did not accurately reflect the division of responsibilities, set forth in the Charter, between the Security Council and the General Assembly. Moreover, as fact-finding only made sense in the context of situations of conflict or threat of conflict which were within the purview of the Security Council, the paragraph was inconsistent with the functions assigned to the Council by the Charter. Certain other representatives, however, believed more thought should be given to the question before deciding on the deletion of the paragraph. It was suggested that a fact-finding role did exist for the Assembly, particularly if the Council in a given case was unable to function.

91. The Working Group decided to suspend its consideration of paragraph 14.

92. As indicated earlier in connection with paragraph 11 dealing with the Security Council, it had been suggested that a similar provision be considered with regard to the General Assembly. The Working Group used the text it had accepted for paragraph 11 as a basis for considering a new paragraph 14 bis. It was suggested that the expression "at an early stage" which appeared in paragraph 11 was inappropriate in a provision concerning the General Assembly which only met, normally, for three months a year. It was thus not realistic to envisage the Assembly's considering making use of certain Charter provisions "at an early stage" when the Assembly might not even be in session during the period in question.

93. The text of paragraph 14 bis, as provisionally accepted, reads as follows:

"The General Assembly, if it is appropriate for promoting the prevention and removal of disputes, situations and matters, should consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question."

94. As regards paragraph 15, it was proposed to insert, as a necessary safeguard proviso, the expression "under the Charter", following the word "choice". It was also proposed to change "urging the States" to "urging these States" for purposes of clarity and precision.

95. The text of paragraph 15, as provisionally accepted, reads as follows:

"The Secretary-General, if approached by a State or States directly concerned with a dispute, situation or matter, should respond swiftly by

urging these States to seek a solution or adjustment by peaceful means of their own choice under the Charter and by offering his good offices or other means at his disposal, as he deems appropriate."

96. For paragraph 16, the Working Group provisionally accepted the formulation proposed in the third revised working paper which reads as follows:

"The Secretary-General should consider approaching the States directly concerned in a dispute, situation or matter, in an effort to prevent it from becoming a threat to the maintenance of international peace and security."

97. As regards paragraph 17, the Working Group agreed to include therein the words "where appropriate" to emphasize that fact-finding should be resorted to with caution and discretion. The Working Group furthermore noted that the sending of fact-finding missions required preparatory arrangements and agreed to include in the paragraph a sentence to cover this idea. The text of paragraph 17 as provisionally accepted, reads as follows:

"The Secretary-General should, where appropriate, consider making full use of fact-finding capabilities, including, with the consent of the host State, the sending of a representative or fact-finding missions to areas where a dispute or a situation exists or to which a matter relates. When necessary, the Secretary-General should also consider making the appropriate arrangements."

98. For paragraph 18, the Working Group provisionally accepted the formulation proposed in the third revised working paper, which reads as follows:

"The Secretary-General should encourage, where appropriate, efforts undertaken at the regional level to prevent or remove a dispute, situation or matter in the region concerned."

99. Regarding paragraph 19, following a discussion of the complexities of the subject-matter dealt with therein and in the light of the feeling that it was not absolutely necessary to retain the provision, the Working Group provisionally agreed to delete the paragraph.

100. Paragraphs 20 and 21 were considered jointly in view of the close relationship between the contents of the two paragraphs. In order to avoid confusion or overlapping, it was felt desirable to merge the paragraphs into a single paragraph, appropriately drafted to take into account various concerns expressed with regard to the original two paragraphs.

101. The text of the new paragraph 20, as provisionally accepted, reads as follows:

"The Secretary-General should be encouraged to consider using, at as early a stage as he deems appropriate, the right which is accorded to him under Article 99 of the Charter to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

102. The delegation of China made a proposal (A/AC.182/L.54) for adding to the working paper the following paragraphs:

"Further declares that nothing in the present Declaration:

"(a) Shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter relating to the maintenance of international peace and security, including the peaceful settlement of disputes;

"(b) Could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or foreign military intervention, aggression and occupation;

"(c) Shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the States Members to submit such matters to settlement under the Charter;

"(d) Could in any way prejudice the right of all States to resort to peaceful means of their own choice for the prevention and removal of disputes and situations which may lead to international friction or give rise to a dispute."

103. The proposal met with a favourable response. Already during the consideration of the operative part of the third revised working paper, a number of representatives had referred to it in order to dispel some doubts and facilitate agreement. The proposal was viewed as a useful addition but was not considered in detail for lack of time.

104. At its 18th meeting, the Working Group started its consideration of the working paper submitted by Czechoslovakia, the German Democratic Republic and Poland (A/AC.182/L.48).

105. A spokesman for the co-sponsors, in his introductory remarks, expressed the hope that the discussion would bring out points of convergence which could be incorporated in the working paper on which the Committee was working in parallel.

106. The view was expressed that the working paper contained in document A/AC.182/L.48 was in full conformity with the mandate of the Special Committee, which was requested to concentrate its efforts on the question of the maintenance of international peace and security in order to strengthen the role of the United Nations, in particular of the Security Council, and that as recognized in the explanatory observations and in part I of the document under consideration, it was necessary to examine the question of the maintenance of international peace and security in all its aspects. It was recalled that the programme of the complete liquidation of all weapons of mass destruction by the end of the century, as proposed by the Union of Soviet Socialist Republics on 15 January 1986, had been translated throughout the year into practical deeds. The remark was made that the strengthening of the United Nations should become an integral part of the process of establishing a comprehensive system of international security and that the

contribution of the United Nations towards the consolidation of world peace should be increased. It was furthermore recalled that, in its message addressed to the Secretary-General on 11 January 1986 by the General Secretary of the Central Committee of the Communist Party of the Soviet Union, the Soviet Union had advocated a more effective role for the United Nations, wider utilization of the means of peaceful settlement of disputes provided for in the Charter, fuller use of the capabilities of the Security Council and of the General Assembly and resort to the mediatory efforts of the Secretary-General. It was added that consideration of the question of the maintenance of international peace and security should be comprehensive and directed towards the formulation of specific recommendations for the purpose of increasing the effectiveness of the United Nations.

107. According to another view, the working paper started from a premise which, although not incorrect, was not likely to lead to any improvement in the existing situation and as it was obvious that if all States observed in good faith their Charter obligations, many problems would disappear, one should not infer that nothing could be done to improve things until States changed their attitudes. Doubts were expressed concerning the utility of reiterating obligations enunciated in many instruments and of bringing up in far too general terms issues of an extremely specialized and often highly controversial character which were being dealt with in other forums. It was also observed that it would prove extremely difficult to achieve consensus on an ambitious document that reflected a legal philosophy that was not necessarily shared by all the States Members of the United Nations.

108. The view was expressed that the document usefully invited the Committee to reflect on the present international situation characterized by the arms race, by tensions deriving from the policy of force, by interference in the internal affairs of States and by economic crises and underdevelopment. In such a situation, it was observed, the United Nations should play a more active role in strengthening détente, curbing the arms race and creating a climate of security and co-operation, and should ensure the participation of all States in the solution of international problems in accordance with the principle of universality of the United Nations.

109. The view was also expressed that, as it appeared from the preamble of document A/AC.182/L.38/Rev.3, document A/AC.182/L.48 had already achieved its main purpose which was to highlight the role of States.

110. Section I of the working paper was viewed by some delegations as being in the nature of an introduction and by others as containing language that would be more appropriate to a preamble than to an operative part. It was also recalled that an attempt along the same lines had been made, on the occasion of the fortieth anniversary of the United Nations, to assess the achievements of the Organization, describe concrete problems and reiterate Charter principles, and that this had been unsuccessful. Paragraph 2 was considered imprecise and paragraph 3 was criticized as being purely descriptive and silent with regard to the root-causes of the phenomena described therein. Reference was made in this connection to paragraphs 20, 24 and 25 of the Political Declaration contained in the final documents of the Eighth Conference of Heads of States or Government of Non-Aligned Countries, held at Harare in September 1986 (see A/41/697, annex). Paragraph 4 was viewed by some delegations as oriented more towards the political and military aspects than towards the economic, social and other aspects of the conduct of States. It was also stated that it omitted a number of important documents, such as the Declaration on the Inadmissibility of Intervention and Interference in the

Internal Affairs of States, General Assembly resolutions 290 (IV) and 377 (V), the International Covenants on human rights and documents of an economic character, and furthermore ignored the role of States at the bilateral and regional levels. As to the enunciation of principles of international law contained in paragraph 5, it was viewed by some delegations as unlikely to have any effect on the attitude of States and as being furthermore incomplete and sometimes at variance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Other delegations, however, held the view that the enunciation of principles was necessary in that context. It was also stated that subparagraph (f) of paragraph 5 could be a separate paragraph.

111. A number of representatives referred to section II of the working paper. Those in favour of the section stressed that it provided a useful general framework, a synthesis of ideas, for defining the role of States in the maintenance of international peace and security. Its aim was to highlight the principal role and responsibilities of States in maintaining peace which, if States played their role and fulfilled their responsibilities, could lead to an improved international situation. It was also seen as the foundation upon which the more specific measures suggested in section III of the paper were built. Some representatives felt the question of the role of States deserved consideration, but felt that section II did not address the central question of why the collective security system was not as effective as hoped; the section was too theoretical and did not address the underlying causes of the lack of an effective collective security system. Doubts were expressed by other representatives concerning the usefulness of the section: they questioned the need to repeat Charter provisions or accepted rules of international law and felt that its contents were more suitable to a preamble; also, many of its paragraphs were too long, complicated and difficult to understand.

112. Concerning paragraph 1, certain representatives questioned the use of the term "fundamental" to describe the responsibility of States for the maintenance of international peace and security, particularly in the light of Article 24 of the Charter and the collective security system. On the other hand, it was maintained that "fundamental" was correct in its broad sense, as States while serving as Security Council members were in fact fulfilling that fundamental responsibility. While some questioned the need for paragraphs 2, 3 and 4 as they merely repeated Charter provisions, others felt them to be useful and logical as starting-points for a more detailed examination of the measures that can be taken to improve the conduct of States. The view was expressed that clarifications were needed with regard to paragraph 2 concerning the role of non-member States and the meaning of "endeavours", as well as with regard to paragraph 3 concerning the words "define ... relations" and the preoccupation with State sovereignty. Paragraph 4 was questioned because of its orientation towards military aspects and the use of the word "exclusive". According to one view, paragraph 5 was considered to be a relevant safeguard provision while, according to another view, it raised serious questions on the position to be taken regarding self-defence. Some representatives voiced serious doubts concerning paragraph 6, which introduced the question of disarmament, because that question, besides raising controversial issues, was currently under discussion in the appropriate forums. There was no need to repeat the discussions held in such forums which, unlike the Special Committee, possessed the required technical knowledge and expertise. It was also stressed that concentrating on such issues as disarmament and the non-use of force ignored equally important non-military aspects of State conduct. On the other hand, in

support of the paragraph it was said that the disarmament issue could not be ignored. It was vital to formulate a general, not technical, provision concerning the efforts which States had to take for disarmament, and thus for peace. Also, it was noted that history had shown that the military aspects of international relations were decisive in the maintenance of international peace and security.

113. Turning to section III, some representatives found some elements included therein to be very controversial, complicated and difficult to accept, particularly in paragraphs 1 and 2 relating to disarmament and the non-use of force. As was the case with paragraph 6 of the preceding section, such issues were best reserved to the appropriate bodies currently studying them, in particular the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations; they could not be discussed productively in the Special Committee. Also, the military aspect of the role of States had been given too much pre-eminence in the section. Clarifications were requested concerning certain terms in the section. In support of the section as a whole and of paragraphs 1 and 2 in particular, it was stressed that section III offered ideas as to how States could act in a positive manner and collectively in promoting international peace and security. The paper should be seen in the wider context of a changing and dynamic world community; Charter provisions needed to be viewed in the light of changing times and developed to meet the challenges of the future. Paragraphs 1 and 2 were particularly important in mobilizing States to make joint efforts for disarmament and upholding the principle of non-use of force in international relations. Special expertise was not necessary for the Special Committee to take a stand in this major issue which affected human survival itself; other proposals on the question could be discussed.

114. As to paragraph 3, some representatives noted that it was linked to various elements of the working paper contained in document A/AC.182/L.38/Rev.3, which had been examined in greater detail in that paper than in that paragraph. Also, it was remarked that, while its subject-matter was collective security, the contents concerned only the peaceful settlement of disputes; other aspects of collective security should also be addressed. The view was held that the paragraph could be developed further in the light of discussions held on working paper L.38/Rev.3. Questions were raised as to how the contents of paragraph 4 were linked to measures to be taken under Chapter VII of the Charter. Some representatives noted that paragraphs 5 to 8 dealt with issues not heretofore considered in any depth by the Special Committee and that it might be useful to explore those issues at the appropriate time. It was observed that they dealt with non-military aspects and a balance was needed between these provisions and previous paragraphs. Also, it was urged that paragraph 7 deal with the positive aspect of human rights. Doubts were expressed by other representatives, who felt that the issues raised in paragraphs 5 to 8 could be dealt with by the Special Committee only in a superficial and unproductive manner. Also, the question was raised as to whether a clear link could be established between the prevention of conflict and the general and theoretical formulae used in some of those paragraphs.

115. The view was expressed that the provisions of the 1978 Declaration on the Preparation of Societies for Life in Peace were relevant to the efforts of the United Nations and Member States in their responsibilities for the maintenance of international peace and security.

116. Part IV was viewed by some representatives as a logical and necessary complement to sections II and III, since it provided institutional guarantees for

the implementation of the principles and steps dealt with in those sections. The view was expressed that, while emphasis was rightly placed in paragraphs 1, 2 and 3 on the role of the Security Council as the central element on which the entire collective security hinged, the paper did not belittle the functions and powers of the General Assembly and recognized the important role of the Secretary-General in assisting the Security Council in the discharge of its functions.

117. The relationship between part IV and the third revised working paper (A/AC.182/L.38/Rev.3) were generally recognized and the hope was expressed that points of convergence between the two documents could be identified. The remark was, however, made that the third revised working paper had a much more concrete and practical orientation. Disagreement was furthermore expressed with the second sentence of paragraph 2, the second sentence of paragraph 3 and the second sentence of paragraph 5. It was also noted that part IV did not contain any mention of the International Court of Justice. One delegation however maintained that document A/AC.182/L.48 was in keeping with the mandate of the Special Committee and, because of its nature and the subjects dealt with, had its own importance.

Notes

1/ For the membership list of the Committee at its 1987 session, see A/AC.182/INF.12 and Add.1.

2/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 7.

3/ Ibid., Forty-first Session, Supplement No. 49 (A/41/49).