

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

**GENERAL ASSEMBLY**

OFFICIAL RECORDS: FORTY-FOURTH SESSION

SUPPLEMENT No. 33 (A/44/33)



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New York, 1989

#### 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.

[5 May 1989]

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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 43/170 of 9 December 1988 and met at United Nations Headquarters from 27 March to 14 April 1989. 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. On behalf of the Secretary-General, the Director of the General Legal Division of the Office of Legal Affairs of the Secretariat and Deputy to the Under-Secretary-General, opened the session of the Special Committee and made a statement.
4. Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, represented the Secretary-General.
5. Mr. Vladimir S. Kotliar, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Mr. Andronico O. Adede, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs) acted as Deputy Secretary of the Special Committee and of its Working Group. Mr. Manuel Rama-Montaldo, Senior Legal Officer, Mr. Igor G. Fominov, Legal Officer, and Me. Christiane Bourloyannis, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Special Committee and its Working Group.
6. At its 120th and 129th meetings, on 27 March and 11 April 1989, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981 2/ and taking into account the results of the pre-session consultations among its member States conducted by the Legal Counsel, elected the Bureau of the Special Committee as follows:  
  
    Chairman: Mr. James Victor Gbeho (Ghana)  
  
    Vice-Chairmen: Mr. Klaus Erich Scharioth (Federal Republic of Germany)  
                    Mr. Ioan N. Voicu (Romania)  
                    Mr. T. L. Gill (India)
7. The Bureau of the Special Committee? also served as the Bureau of the Working Group.

8. At the same meeting, the Special Committee adopted the following agenda (A/AC.182/L.59):

1. Opening of the session.
2. Election of officers,
3. Adoption of the agenda,
4. Organisation of work,
5. Consideration of the questions mentioned in General Assembly resolution 43/170 of 9 December 1966, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

9. In accordance with paragraph 6 of General Assembly resolution 43/170, the Special Committee, having received requests for observer status from the permanent missions to the United Nations of Angola, Austria, Bulgaria, Burundi, the Byelorussian Soviet Socialist Republic, Canada, Cameroon, Cape Verde, Chile, Cuba, Gabon, Hungary, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Mongolia, Morocco, the Netherlands, Oman, Peru, Portugal, Senegal, the Syrian Arab Republic, the United Republic of Tanzania, the Ukrainian Soviet Socialist Republic and Viet Nam, took note of those requests and accepted the participation of observers from those Member States.

10. Also at its 120th meeting, the Special Committee agreed on the following organization of work: one or two meetings would be devoted to a general debate in the plenary on all items concerning its mandat as described in paragraphs 3 and 4 of General Assembly resolution 43/170, and one meeting would be devoted to examining the progress report of the Secretary-General on the elaboration of the draft handbook on the peaceful settlement of disputes between States. The Special Committee decided that the Working Group would devote up to 13 meetings to the question of maintenance of international peace and security, 4 or 5 meetings to the question of the rationalization of procedures of the United Nations and 4 or 5 meetings to the question of the peaceful settlement of disputes between States (resort to a commission of good offices, mediation or conciliation within the United Nations). It was understood that this distribution of meetings would be applied with the necessary degree of flexibility, taking account of the progress achieved in the consideration of the items.

11. As to the question of the maintenance of international peace and security, the Special Committee had before it document A/AC.182/L.60, entitled "Fact-finding by the United Nations to assist in the maintenance of international peace and security", submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain; and document A/AC.182/L.62, entitled "Fact-finding activities by the United Nations in the context of the maintenance of international peace and security", submitted by Czechoslovakia and the German Democratic Republic. On the question of the rationalization of the Procedures of the United Nations, the Special Committee had before it documents A/AC.182/L.43/Rev.3 and Rev.4, submitted by France and the United Kingdom of Great Britain and Northern Ireland and document A/AC.182/1989/CRP.1, submitted by the Union of Soviet Socialist Republics. With respect to the question of the peaceful settlement of disputes between States, the

**Special Committee had before it the text of a working paper (A/AC.182/L.52/Rev.2), which was also set forth in paragraph 46 of the report of the work of its 1966 session. 3/ The Special Committee also had before it the progress report of the Secretary-General on the elaboration of a draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.61).**

## II. GENERAL DEBATE

### Statement of the Chairman

12. According to the decision taken at its 120th meeting on the organization of its work (see para. 10), the Special Committee devoted **one meeting** on 27 March 1984 to a general debate.

13. One of the representatives taking part in the **general** debate **stressed** the conceptual approach **of his Government** based on **the** principle of **new** political thinking, as well as practical **ideas** and proposals directed **towards** the enhancement of the role of the United Nations as set out in **the** address to the General Assembly on 7 December 1988 of Mr. **Mikhail S. Gorbachev** **4/** and his article "Realities and **the** Guarantees **of** a Secure World" **of** 17 September 1987. He recalled Mr. Gorbachev's appeal to **States** to review their attitude to the United **Nations**, "this unique instrument without which world politics would be inconceivable today". In his view, the Special Committee, which could play a very substantive role in the **development of** politico-legal basis **of** strengthening world order, could possibly consider **the following** questions: **provisional** measures that the Security Council might take in accordance with Article 40 of the Charter **for** the purpose **of** settling crisis situations and regional conflicts) the application **of** sanctions with regard to a State that had **committed** a breach **of** peace or had not carried out a Security Council decision; ways to expand the co-operation **of** the United Nations with regional **organizations** in search of political settlements of crisis situations) and ways to increase the effectiveness **of** the mechanism **of** fact-finding and the investigation of international disputes and conflicts. Other proposals that could be considered by the **Special Committee** included holding periodic meetings of the Security Council at the **ministerial** level prior to or **in** the course of General Assembly **sessions**; **dispatching** special Security Council missions to areas of existing or **potential** conflicts; and promoting the mechanism **of** official and unofficial Security Council consultations **with** the participation of the Secretary-General of the United Nations and, as necessary, with the participation of parties concerned. Proposals directed at enhancing the role of the Secretary-General with regard to the question **of** the maintenance **of** international peace and security **were** viewed **as** equally useful. **As** pointed out by the representative, the Special Committee had the opportunity to examine a number of ways **of** enhancing the overall role of the United Nations in the area of the peaceful settlement of disputes, and **to encouraging** the activation of all political mechanisms of peaceful settlement as stipulated in the Charter.

14. Another representative observed that the Declaration on the Prevention **and** Removal of Disputes and Situations Which **May** Threaten International Peace and Security and on the Role of the United Nations in this Field (**hereinafter** referred to as the 1988 Declaration), adopted by the General Assembly **on** 5 December 1988 in its resolution **43/51**, illustrated a broad range of possibilities for conflict resolution. The representative further pointed out that the 1989 session **of** the Committee was taking place against a background of an **improvement** in the international situation and that the recent encouraging developments in international relations had given rise to a growing awareness that peace and security during the nuclear and space age could only be maintained by non-military measures. The representative called for intensified co-operation among States, irrespective of their social or political system or military affiliations towards strengthening security. **For** the United Nations, he noted, that represented a



special challenge, which, **in order to** be met, required above all the further strengthening **of** the peace-keeping potential **of** the **Organization**. In that respect and **in** accordance with the mandate of the Special Committee, the representative **noted** that ways end means to improve the role **of** the **United Nations** in the fact-finding process had to be considered. **Accordingly**, he welcomed working paper **A/AC.182/L.60**. The representative also expressed the view that the consideration of the proposal relating to a commission of good offices, mediation or conciliation within **the United Nations** and the proposal on the **rationalization** of United Nations procedures should both be completed and that appropriate conclusion thereon should be submitted **to the General Assembly** at its **forty-fourth session**.

15. According to **another representative**, the Special Committee had **achieved** valuable results in **the past**, notably through the General Assembly's **adoption** without a vote of the **1988 Declaration** and that the Committee should continue to make such **efforts**. The representative noted with appreciation document **A/AC.182/L.60** and stressed the important role that the United Nations had to **play** in the area **of fact-finding, which was a long-standing feature of international law** and essential to the resolution **of** disputes that might endanger international peace and security. It was the view of the representative that United Nations fact-finding activities could **be** successful **if** the sovereignty **of** the States **concerned was** respected and past experiences and lessons in this field of **activities of the United Nations were** kept in mind. As to the other two **items on** the mandate **of** the Special Committee, the representative underlined the need to make **progress** in their consideration.

16. **Another** representative **pointed** out that the prospects for productive work by the Special Committee **were** encouraging since the idea **put forward by** various delegations reflected a growing measure of common ground, which was the basis for progress. The representative further expressed the **view that the** Special Committee was the **appropriate body in which to examine the various proposals before it and** that the Committee's **work was best carried out** through detailed consideration **of** proposals in the working group, which his delegation **was prepared** to do in a positive, open-minded **manner**. His delegation **welcomed** document **A/AC.182/L.60**, which he noted could contribute to the work **of** the Committee. The representative further stated **that, although** the proposals **made in** the document **were** not likely to be adopted at the 1989 **session of** the Special Committee, they reflected an emphasis on preventive diplomacy which built upon previous work by the Committee and this gave the Committee a good deal of useful work **over** the next few years.

17. Another representative observed that, during the forty-third **session** of the General Assembly, a number of **speakers**, including prime ministers and heads of State, had endorsed the idea of strengthening the role of the **Organization** as a **natural** instrument of co-operation among States. Referring to document **A/AC.182/L.60**, he further remarked that the work of the United Nations could **not** occur in a vacuum and that to strengthen its role, it was **important** for it to take energetic measures. In **that** regard, the representative stressed that the Special Committee had not yet exhausted its mandate regarding the maintenance of international peace and security and **that** it should continue to **work** towards that end. His delegation found encouraging the position taken by the Ministerial Conference **of** the Movement **of** Non-Aligned Countries at Nicosia, reaffirming restraint from the threat or **use** of force and the need to abide strictly by the Charter, especially with regard to respect for the sovereignty and territorial integrity of States and respect for treaties and other **sources** of international **law**. It was the view of the representative that the evolution of international

events made it necessary for the United Nations to act with resolve so as to increase its role and the efficiency of its decisions. He called for a search for consensus solutions to render the Committee's work effective and productive. He also called for the finalisation of the proposal on the peaceful settlement of disputes between States during the session and applauded the effort made by the Secretariat in preparing the draft handbook on the peaceful settlement of disputes between States. It was the view of the representative that no measures should be adopted that could reduce the basic activities of the United Nations or impinge upon the concept of sovereign equality of States. Bearing all that in mind, the Committee's work might thus contribute to what had been called "a renaissance" of the United Nations.

18. At the end of the session, all the participants expressed their deep gratitude and appreciation to the Chairman of the Special Committee, His Excellency Ambassador James Victor Gbeho, for his excellent guidance, dedication and outstanding contribution, with the efficient help of the members of the Bureau and the Secretariat, to the successful outcome of the work.

Statement of the Chairman

19. In accordance with the decision of the Special Committee reflected in paragraph 10 above, the Working Group considered the question of the maintenance of international peace and security at its 4th to 14th meetings, between 29 March and 6 April 1989.

A. Working paper submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain

20. At its 4th meeting, the Working Group began its consideration of the working paper entitled "Fact-finding by the United Nations to assist in the maintenance of international peace and security" (A/AC.182/L.60), the emended text of which read as follows:

"1. In performing its tasks for the maintenance of international peace and security, the United Nations should have full knowledge of all relevant facts.

"2. In order to obtain such knowledge the United Nations should continue to strengthen and make full use of the information-gathering capabilities of the Secretary-General and consider, as soon as a potentially dangerous situation is identified and during all phases of its development, sending a fact-finding mission to the relevant areas.

"3. Fact-finding missions may be undertaken both to gain an impartial and detailed knowledge of the facts and at the same time to signal the concern of the United Nations as a whole.

"4. Any State should be encouraged to bring any situation which is potentially dangerous to the maintenance of international peace and security, where the facts are disputed, to the attention of a competent organ of the United Nations, which should consider effective ways to ascertain such facts.

"5. Any request for the sending of a United Nations fact-finding mission by a State concerned to its territory should be given serious and expeditious consideration.

"6. In accordance with the Charter of the United Nations, fact-finding missions may be undertaken, for the purpose of maintaining international peace and security, by the Security Council, the General Assembly and the Secretary-General.

"7. In deciding on whom to entrust with a task of conducting a fact-finding mission, the Security Council and the General Assembly should resort, as a rule, to the Secretary-General.

"8. The Secretary-General should be encouraged to undertake fact-finding missions in areas where in his opinion a dangerous situation may arise or exists, in order to collect as much relevant information as possible for his own use. He may also, where appropriate, bring such information to the attention of the Security Council.

"9. The Secretary-General should be encouraged *to prepare* and update, **for** his own use, lists **of** experts in certain technical fields so as to have them **available** at **any time** for fact-finding missions,

"10. **Once** the decision has been **made to** undertake a fact-finding mission, the **mission** should be dispatched without delay.

"11. Fact-finding missions should be given clear *terms of reference* **by the** sending United Nations organ. Upon completion **of** its *task*, each United **Nations** fact-finding mission shall render such reports **as may be** determined by the appointing United Nations **organ**.

"12. Fact-finding missions should perform their **task** *in a most* impartial way. Their members shall not seek or receive instructions **from any Government or from any other** authority external to the **Organisation**.

"13. States should co-operate with, and give full and **prompt assistance to**, United **Nations** fact-finding missions in all aspects **of their** activities,

"14. States should not refuse to admit United Nations **fact-finding** missions into their territory and are encouraged to **consider** committing themselves **by a** general unilateral declaration to admit into **their territory** fact-finding missions dispatched according to this declaration.

"15. In the **event** that **a** State refuses to admit a United Nations fact-finding mission, it should give reasons **for its** refusal and should keep the **possibility** of admitting the fact-finding mission under **active** review.

"16. Fact-finding missions should be granted all freedoms and facilities needed for fulfilling their task. In particular:

"(a) They should promptly **be** admitted in the areas to which they have **been dispatched;**

"(b) They should have freedom **of** movement **and**, in accordance with national law, full access to **such** places and **information as they consider relevant** for the performance **of** their task)

"(c) They should be entitled to perform their tasks without any pressure **or** interference)

"(d) They should have the right. to work *in* full confidentiality)

"(e) They should have the right to communicate freely with **all persons** **they** consider relevant for the **performance** of their **task**, with full guarantee that no **harmful consequences** will be incurred by those **persons;**

"(f) They should enjoy full freedom of communication without censorship **or** delay;

"(g) Their **members** should **enjoy** the privileges and immunities specified in **the** General Convention on the **Privileges and Immunities** of the United Nations.

"17. The **Secretary-General** should continue to **strengthen** and **make full use of** the **information-gathering** capabilities **of** the Secretariat to **survey** more regularly and **systematically** the world-wide state **of** international **peace** and security. Where **appropriate**, he should bring relevant information to the attention of the **Security Council**.

"18. United Nations information centres should be given wide responsibilities in collecting publicly **available** information related to international peace and security and promptly **transmitting them to the Secretary-General**.

"19. The Secretary-General should **be encouraged** to request United Nations representatives outside Headquarters to provide, on an urgent basis, early warning **of** and relevant **information** on developing situations requiring the Secretary-General's **attention**."

#### 1. Introduction of the working paper by one of the co-sponsors

21. In introducing the working paper, one of the co-sponsors corrected the document orally by **indicating that**, in paragraph 14, the word "**such**" in the last line should be replaced by the word "**this**" and that, in paragraph 16 (g), the word "**They**" should be replaced by the expression "Their **members**".

22. The co-sponsor then indicated that the paragraphs of document A/AC.182/L.60 could be divided into seven clusters as follows: paragraphs 1 to 3 constituted cluster 1 and **were** characterised as introductory paragraphs, giving the reason **d'être** of fact-finding by the United Nations. Paragraphs 4 to 6 constituted cluster 2 and were identified by the co-sponsor **as** the paragraphs clarifying who could initiate **fact-finding**. Paragraphs 7 to 10 constituted cluster 3 and were described by the **sponsor** as the paragraphs spelling out the role of the **Secretary-General** in the actual undertaking of fact-finding **missions** and expressing the need to avoid undue delays in the sending of fact-finding **missions**. Paragraphs 11 and 12 constituted cluster 4 and were identified by the co-sponsor as the paragraphs stressing the need **for** clear terms of **reference for fact-finding** missions, the requirement that fact-finding missions should perform their tasks impartially and the nature of the report to be submitted by such missions. Paragraphs 13 to 15 constituted cluster 5 and were identified **by the sponsor** as the paragraphs dealing with the question of co-operation of States with respect to fact-finding missions. Paragraph 16 **alone** constituted cluster 6, dealing with the question **of** freedoms and facilities to **be** granted to fact-finding missions. Paragraphs 17 to 19 constituted cluster 7 and were identified by the co-sponsor as the paragraphs dealing with the means of gathering information apart from fact-finding missions. The co-sponsor suggested that the Working Group **might consider** discussing the working paper cluster by cluster. The proposal **was** accepted by the Working Group.

#### 2. General comments on the working paper

23. It was generally agreed that the working paper provided the Special Committee with a good basis for work on its **mandate** concerning the question of maintenance **of** international peace and security; it was, for that reason, very well received by the Working Group.

24. In the course of the general comments on the working paper as a whole, there was the suggestion that account should be taken of the history of fact-finding as it had developed since the 1899 Hague Convention for the settlement of international disputes. According to that suggestion, it was necessary to maintain a degree of flexibility in the effort to identify the kind of impartial bodies, which may be established for fact-finding. Thus it was important to explore new ideas such as the use of United Nations information centres and United Nations representatives outside Headquarters, as envisaged in the working paper.

25. Another representative stressed the need to establish that fact-finding missions were expected to perform their functions taking into account Article 2, paragraph 1, of the Charter of the United Nations. The representative further called for the recognition of the fact that fact-finding missions had been used to achieve the settlement of a number of disputes, thus performing functions going beyond the task of gathering and elucidating the facts relating to a particular dispute. The point was also made that the wide powers of the Security Council and the General Assembly in establishing subsidiary bodies to undertake fact-finding activities were to be taken into account. In that connection, it was pointed out that, while the Secretary-General had inherent powers by virtue of his office in that respect, account should be taken of the fact that, in the absence of a specific mandate, the extent of such powers of the Secretary-General had been controversial.

26. There was also the view that the working paper's main focus was on fact-finding as an important element of the activities by the United Nations in the fulfilment of its role in the area of maintenance of international peace and security. The working paper, according to that view, was thus intended to go further than the 1988 Declaration, which concentrated on the prevention of disputes and situations, while the working paper dealt with all stages of disputes and situations, including their settlement or adjustment. According to that view, the working paper, in focusing on the fact-finding activities of the United Nations, did not attempt to touch on the legal interpretation of the Charter of the United Nations. It aimed at outlining certain policy suggestions, which were formulated in order to make it easier for the various organs of the United Nations, each in accordance with its competence, to undertake fact-finding missions or activities.

27. On the question of the nature of the final document, there was a suggestion made that the issue be settled at the outset, while another view was that substantive discussions should be conducted on the basis of the working paper before deciding on the nature of the final document. The co-sponsors agreed with the latter view.

### 3. Comments on the working paper cluster by cluster

28. In connection with the first cluster of paragraphs, namely, paragraphs 1 to 3, the widespread view was expressed that they should provide a clear definition of the function and purpose of fact-finding. The point was further made that, in undertaking the improvement of the paragraphs in that cluster, it was important to keep in mind that fact-finding was a method for establishing the facts relating to a dispute and also a method whose application could bring about the actual settlement of a particular dispute or the prevention or deterioration of a dispute and that it should always be linked to the question of maintenance of international peace and security, taking into account Articles 34 and 39 of the Charter of the

United Nations. The sending of fact-finding missions to the field when a dispute had not actually occurred might sometimes result in aggravating rather than defusing the potential problem; account should be taken of the need to consider also the fact-finding activities of the United Nations other than those constituting missions to the field. One view stressed the importance of bearing in mind that fact-finding missions touched upon sensitive interests of sovereign States and that resort to them should be in a manner that took into account the sovereign rights of States. There was also the view that it was no easy task to draw a clear distinction between the formulation of political and policy suggestions for fact-finding activities under the Charter and the actual legal interpretation of the Charter in that connection. The suggestion was also made that the three paragraphs taken as a whole were general in nature and that they could be placed in the preambular part of the final document.

29. As to the specific comments on paragraph 1, it was suggested that the word "tasks" be replaced by the word "functions" used in the Charter. With respect to specific comments on paragraph 2, the question was raised as to the meaning of the term "information-gathering capabilities of the Secretary-General" and as to how it differed from fact-finding. The question was also raised as to the meaning of the phrase "potentially dangerous situation" and as to who had the competence to determine the existence of such a situation. Clarification was also sought on the meaning of the phrase "all phases of its development". It was further noted that the paragraph should be drafted so as to avoid the interpretation that the sending of fact-finding missions was mandatory, since the various organs of the United Nations had the competence to decide whether or not to send fact-finding missions in a given situation. With respect to paragraph 3, a question was raised on how fact-finding would be expected to gain an impartial and detailed knowledge of facts. The question was also raised as to the meaning of the provision that fact-finding missions might be used "to signal the concern of the United Nations as a whole". The suggestion was made that paragraph 3 be supplemented by indicating who needed the information gathered by the appropriate United Nations bodies.

30. In answering the questions raised in connection with the paragraphs of the first cluster, the co-sponsors were in general agreement that there should be a more detailed definition of fact-finding than was provided in the paragraphs in question. While they agreed that it was sometimes difficult to make a clear distinction between legal interpretation of the Charter and policy suggestions, they stressed that the working paper primarily intended to address the situations in which a decision to send a fact-finding mission had been made by the competent organ of the United Nations and that the paper was not intended to touch upon the competence of such organs to take their decisions on the matter. On the specific questions raised with respect to paragraph 2, the co-sponsors pointed out that the language used in the paragraph was that the United Nations should "consider" sending fact-finding missions to relevant areas, thus making it clear that the paragraph was not a mandatory provision. As to the question of the distinction between fact-finding and information-gathering capability, the co-sponsors pointed out that the latter was intended to deal with the situation covered under paragraphs 17 to 19 (the seventh cluster). Information-gathering, they continued, was an activity undertaken independently of the existence of a particular situation or dispute and was therefore distinguishable from fact-finding missions envisaged in the rest of the paragraphs and which invariably related to the existence of a specific dispute or situation. The term had been taken from previous United Nations documents. It was also their view that since in most cases fact-finding activities took place where something had occurred, namely in the field, the

working paper focused on fact-finding missions solely **for** gathering **facts**, which might then be analysed elsewhere **by** the sending organ. As to the meaning **of** the phrase "potentially dangerous situation" in the same paragraph, the co-sponsors clarified that it **meant** those situation<sup>0</sup> which had not yet matured into open conflict and called attention to the relevant paragraphs **of** the 1966 Declaration. With respect to the phrase "all phases of its development", they pointed **out** that **the** phrase was meant to include in the notion of fact-finding used in the document al' **the** various stages **of** situations **and** disputes instead of **covering** only those which **were** **potentially** dangerous. Concerning the question raised with respect to the **use of** fact-finding to signal the concern of the United Nations as a whole, the co-sponsors explained that signalling the concern of the Organisation through the **sending of** a fact-finding mission was **merely a side effect of** the **use of** fact-finding missions, whose main purpose remained that **of** finding and elucidating facts. In their view, it was obvious that there existed **other means of** eignalling the **concern of** the United Nations.

31. With respect to the second cluster **of** paragraphs (**paras. 4-6**), which addressed the **question of** who **may** initiate fact-finding activities, three main <sup>pointb</sup> were raised. The view was **expressed** that the paragraphs **should** take into **account the** role that individual States concerned might play in using fact-finding **as a means of** dealing with the dispute between them without necessarily referring it to any **of** the organs **of the** United Nations. In that connection, **it** was further observed that the paragraph should address specifically the situations in which parties had failed to settle the dispute and not simply "any situation". There was also the **view** that consideration should be given to the fact that rushing to the United Nations and asking that a fact-finding mission be sent might sometimes be counter-productive, especially **where** other means of resolving the dispute, such as good offices, could have been used. There was also the suggestion that **another** paragraph be added to the cluster in the **form of a** safeguards clause to the effect that nothing in the working paper should be viewed as constituting an interpretation **of** the Charter, particularly **with** respect **of** the competence of the Organisation, and that the **fact-finding** missions should not contravene Article 2, paragraph 7, of the Charter.

32. As to specific comments on each of the paragraphs of the cluster, a suggestion was made that it was **more** logical to place paragraph 6 before paragraph 4. With respect to paragraph 4 itself, clarification was sought as to whether the paragraph referred to all States Members **of** the United Nations, **non-member** States or only to States concerned. The **question was** also raised **as** to whether fact-finding missions only related to situations where the facts **were** disputed or whether it was to be used **more generally**. A suggestion was **also made** that the phrase "any State should be encouraged" be replaced by the phrase "**any State may bring**". **It** was also observed that the formulation merely referring to "a competent organ" was ambiguous, since it was necessary to specify who exactly might initiate fact-finding. It was further pointed out. that the phrase "potentially dangerous" raised the same problem, as already **noted** in connection with paragraph 2, where a similar phraseology was used. As to paragraph 5, clarification was sought on the precise meaning of the phrase "a Stake **concerned**". A suggestion was made that the word "serious" **be** deleted. It was also observed that the paragraph **could be** drafted to **make** clear who was **to** give expeditious consideration **of** requests for fact-finding missions. Regarding paragraph 6, the view was expressed that the purpose of fact-finding missions was **not**, as stated in the paragraph, the maintenance of **international** peace and **security**, **but** rather the establishment and elucidation of **facts**. Accordingly, it. was suggested that the paragraph be



redrafted so as to state more accurately the functions of fact-finding missions. A suggestion was further **made** that it might be useful to replace the phrase "**for the purpose of**" by the phrase "**in the content of**". There was **also** the view that paragraph 6 should not give the impression that the Security Council, the General Assembly and the Secretary-General **were** all on the same footing as to their competence under the Charter in the **area of maintenance of international peace and security**. A further suggestion was that the paragraph could be improved by using more carefully worded provisions relating to the Security Council, the **General Assembly** and the Secretary-General, such as those used in paragraphs **12, 16 and 22** of the 1966 Declaration. However, the Point was made that paragraph 6 **was** accurately drafted and did not prejudice the respective **competence of those organs**, since it required them to act in conformity with the Charter.

**33.** In response to the questions raised with respect to cluster 2, the **co-sponsors** stressed that it was not their intention to repeat the provisions either **of the Charter or of paragraphs 12, 18 and 22 of the 1988 Declaration**. The purpose **of** paragraph 6 was to describe in a short and uncontroversial way the legal situation. To add further details might bring to the surface well-known differences of **opinion** as to the interpretation of the relevant articles of the Charter. They further emphasised that the focus **of** the paper was **not** on establishing a rule **as to** who had the competence to decide upon the sending of fact-finding missions, but rather to make policy suggestions **on how and by whom** such missions might be carried out once the decision had **been** made. With regard to the suggestion concerning inversion of paragraphs 4 and 6, the co-sponsors explained the logic **of** the paragraphs as follows: the cluster began with paragraph 4, because the first step to initiate the fact-finding mission was usually taken by a State. They also clarified that fact-finding missions might be used not only when facts were disputed but also **where they** were likely to be disputed. "**Any State**" in paragraph 4 referred to all States. With respect to specific comments **on** paragraph 5, the co-sponsors agreed that the **word** "serious" could be deleted as was suggested. Paragraph 5 **covered** the request of a State that a United Nations fact-finding mission be sent to its own territory. In connection with the specific comments on paragraph 6, the co-sponsors pointed out that it contained the answer as to which United Nations organs might initiate fact-finding missions. The order in which the organs were listed implied recognition **of** the fact that the Security Council had the primary responsibility in the maintenance of international peace and security. The co-sponsors also agreed that the phrase "**for the purpose of**" could be replaced by the phrase "in the context of" (**maintenance of international peace and security**), as suggested,

**34.** In connection with the third cluster of paragraphs (**paras. 7-10**), some **representatives** supported the idea **contained** in the cluster of enhancing the role of the Secretary-General in the field of fact-finding and pointed out that, in **practice**, the Secretary-General had very often been involved in fact-finding activities. Other representatives felt that the role of the Secretary-General was **excessively underscored** without giving **reasons** for doing so and that the role of the other organs of the United Nations with respect to fact-finding missions should **not** be neglected. In that connection, it was pointed out that, while in the area of maintenance of international peace and security, the provisions of the Charter were clear on the right of the Security Council and the General Assembly to send a fact-finding mission, it was debatable under which conditions the Secretary-General **could** also decide, on his own **initiative**, to send fact-finding missions in the absence of a specific mandate from the **other** two organs.

35. With respect to specific comments on paragraph 7 of the cluster, clarification was sought as to whether the task of the Secretary-General as envisaged in the paragraph was of an operational nature or whether a new role was in fact being **given** to the Secretary-General. The question was also raised **as** to whether the paragraph meant that it was the Secretary-General who might decide on the composition of the fact-finding mission itself. A suggestion was also made to replace in the paragraph the phrase "**should** resort, as a rule" by the phrase "should give preference, in general". A further suggestion was made to redraft the paragraph to read: "Once the decision to undertake a fact-finding mission has been taken, the Security Council and the General Assembly should, preferably, entrust to the Secretary-General the conduct of the fact-finding **mission**", so that it would be clear that the Secretary-General would be in charge **of** the more technical aspects of the **mission**. With regard to specific\* comments on paragraph 8, doubt was raised as to whether the Secretary-General could keep for himself the information collected **by** him and not report it to the Security Council. In this connection, it **was** observed that the phrase "**for his own use**" might be misleading. The point was also made that paragraph 8 did not contain a clear reference to Article 99 of the Charter, which gave the right to the Secretary-General to act in certain circumstances on his own initiative. The view was **expressed** that the idea that fact-finding missions might be undertaken by the Secretary-General had to **be** linked to a specific purpose, namely, **the** settlement of a dispute or assistance **in** the decision-making of another organ of the **United Nations**. Clarification was also sought as to who should encourage the **Secretary-General** to undertake fact-finding missions. The use **of** the phrase "dangerous situation" was also questioned, as in the paragraphs of other clusters. Clarification was also sought as to whether **the** lists of experts envisaged in paragraph 9 were meant to be private lists of the Secretary-General. In this connection, it was again pointed out that the phrase "**for his own use**" **was** not appropriate. A suggestion was offered that reference to legal experts also be made. As for paragraph 10, a **suggestion** was made to delete it since it was self-evident. A question with respect to that paragraph was also raised as to who made the decision to send a fact-finding mission.

36. In answering the questions raised with respect to cluster 3, the co-sponsors stressed that there was a distinction **between the** question of which organs decided upon the sending of a fact-finding mission - which was addressed in paragraph 6 - and the question of who actually **organized** and carried out the missions - which was addressed in **p-paragraph** 7. The purpose in paragraph 7 was mainly to establish a policy that, once the Security Council or **the** General Assembly as the competent organs had taken the decision of sending a fact-finding mission, they should preferably entrust the Secretary-General with the task of conducting the mission rather than assigning that task to a group of States or experts. It was their view that reaching an agreement on the **composition** of fact-finding missions made up of a group of **States was often difficult** and posed problems in establishing the procedure and decision-making rules for the mission. Thus paragraph 7 did not give any new substantive responsibilities to the Secretary-General, but merely suggested that the Security Council or the General Assembly **rely** on the Secretary-General to implement their respective decisions to send fact-finding missions. Paragraph A dealt with the competence of the Secretary-General to decide to undertake fact-finding mission; in his own right. In line with Article 99 of the Charter, **paragraph 8** encouraged the Secretary-General to use his powers and indicated that he had a margin of discretion, both with respect to undertaking fact-finding missions and to the use of the information collected in the light of his judgement as to whether such an activity would be likely to have any useful result. **The** reason for the words "for his own use" in paragraph 9 was to assure that the

Secretary-General was responsible for the lists of experts and that **there was no** intention to introduce a formal nominating procedure **for** such experts. Thus the disproportional amount of time and effort spent **on such** a procedure could **be** avoided.

37. As to the point raised concerning the role of the International **Court** of Justice with respect to fact-finding activities **of** the United Nations, the co-sponsors agreed that it **might** play a role in that respect, particularly in situations where **questions of** both facts and law arose.

38. As to the fourth cluster, namely paragraphs 11 and 12, **the view** was expressed that their content did not **seem to** express ideas that were necessary for **inclusion** in **such** a document but that they could, in fact, be merged and reflected in **some** other parts of the document without remaining as independent paragraphs.

39. With respect to paragraph 11 itself, a suggestion was made that the word "clear" in the first line be deleted. There was, **on** the one hand, the view that the giving of detailed **clear terms** of reference might not be practical and that only general directions might be given to a fact-finding mission. **But** on the other hand, there was the view that the **formulation** of detailed **terms of reference** would indeed be necessary since such **terms** of reference might be different if they related to a fact-finding mission conducted **by the** Secretary-General under his own initiative, as envisaged in paragraph 8 of the working paper **or** when such fact-finding **missions** were carried out on the basis **of** the decision **of any of the** other organs of the United Nations, as envisaged in paragraph 7 of the document. It was also pointed out that in the paragraph, the same **wording** should be used in identifying the **organ** in question, since in the first sentence, the expression "the sending organ" was used, while in the second sentence, the expression "appointing organ" **was** used. The point was also made that, reading together paragraphs 11 and 12 dealing with the impartiality of fact-finding **missions** and the report that they might produce, and **taking** into account the provision of paragraph 5 in the second cluster, it was necessary to **provide** that such **a report be** made available to all parties concerned as a means of ensuring its impartiality. A clarification was also sought regarding the meaning of the phrase "**as may** be determined" in paragraph 11. With respect to paragraph 12, the suggestion was made to delete the word "**most**" in the first line. Another suggestion **was** to delete the second sentence of paragraph 12 as a whole. Since, according to the latter suggestion, receiving States were entitled to give certain legitimate logistical instructions to fact-finding missions, there was the question as to why article 11 dealt with both the question **of terms** of reference and the report to be produced by the fact-finding missions, the latter being a separate issue according to that view. Other comments stressed **the** need for making **more** detailed provisions of the obligation of the fact-finding missions in order to **achieve** an appropriate balance between **the** scope **of** their obligations and those of receiving States, as spelled out in paragraph 16.

40. In response to the questions raised with respect to cluster 4, the co-sponsors explained that in paragraph 11, **the terms** of reference of the fact-finding **mission** and the question of the report to be produced by such missions were treated together because, in their view, the preparation of appropriate reports **was one of** the **most** important elements **of the terms of** reference. It was also the view **of** the co-sponsors that the mandate **of** a fact-finding mission should not touch on such questions as where **the** mission should go and with **whom** its **members** were to talk. Accordingly, in the view of the co-sponsors, the mandate should **focus on the**

determination of the questions to be asked by the fact-finding mission rather than on the details of the method for the carrying out of the mandate. In response to the observation that there were legitimate instructions that receiving States might give to members of fact-finding missions, the co-sponsors stated that there was a distinction between the case of instructions being given by a Government to its nationals who were members of a fact-finding mission, which was the focus of the paragraph in question, and the case of logistic instructions by the receiving State to which reference had been made. Concerning some of the drafting points, the co-sponsors agreed that a common wording should be used in reference to the organs under paragraph 11 and that the word "most" should be deleted from the first line of paragraph 12.

41. Concerning the fifth cluster, namely, paragraphs 13 to 15, it was generally agreed that the cluster dealt with an important question<sup>8</sup> the need to encourage States to co-operate with fact-finding missions. The view was expressed that, taking into account paragraph 14, the cluster should contain a clear provision ensuring the balance between the sovereign right of States to withhold or to give consent to fact-finding missions in specific circumstances. However, some delegations recalled that, within the framework of Chapter VII of the Charter of the United Nations, the Security Council had the right to send a fact-finding mission without receiving the prior consent of the States concerned. In this connection, some representatives suggested that the question of the consent of States should be dealt with by considering the implications of the decisions on the sending of fact-finding missions as may be taken by the various organs of the United Nations, in accordance with their competence under the Charter. There was also the view that the cluster could be simplified by merging the ideas contained in paragraphs 14 and 15 with the basic principle of co-operation contained in paragraph 13. Another view was that paragraph 14, dealing with the question of consent and paragraph 13, dealing with the principle of co-operation, should be inverted.

42. Some representatives found the cluster to be innovative in its attempt to encourage States to commit themselves to accepting fact-finding missions by general unilateral declarations and by requiring States to give reasons whenever they refused to admit entry to such missions. Other representatives were, however, sceptical about the legal implications of general unilateral declarations in that context and had doubts about the usefulness of requiring States to give reasons for refusing to accept fact-finding missions. On the latter issue, the suggestion was made that the provision might be redrafted so as to make it easier for a State to accept fact-finding missions, as opposed to a provision that made it difficult to refuse them.

43. As to the specific comments concerning paragraph 13, clarification was sought as to whether the reference to "States" meant any State or only the States concerned. A suggestion was also made that the phrase "in all aspects of their activities" be replaced by "in the fulfilment of their mandate". Concerning paragraph 14, the question was raised as to whether the unilateral declaration mentioned therein should be made before or after the existence of a dispute. The view was expressed that there was a difference between a unilateral declaration made under article 36, paragraph 2, of the Statute of the International Court of Justice, to which Member States were parties and the unilateral declaration to be made for the purposes envisaged under the working paper. It was further pointed out that the language of the paragraph could be improved by making the provision less imperative. With respect to paragraph 15, the point was made that it should

be recognised that **there were** situations in which it might be counter-productive to require States to give reasons **for their refusal** to admit entry to a fact-finding mission. The process **of giving reasons**, it was further observed, might exacerbate the dispute in question. The point was also made **that** the paragraph as currently drafted placed a burden on the State in requiring it to justify its action. The suggestion was made that the paragraph could be changed to **stipulate** that the **answer to the request** for admitting fact-finding missions should be given promptly by the State concerned.

44. In answering the questions raised with respect to cluster 5, the co-sponsors stressed **that** the cluster had a certain internal order. Thus, the **paragraphs** could not be merged as had been suggested. According to the co-sponsors, paragraph 13 established the general principle of co-operation, while paragraphs 14 and 15 dealt with specific **matters** relating to the general principle. The cluster was seen as a cornerstone of the working paper seeking a **higher level of co-operation of States** than currently achieved. In connection with paragraph 13, the co-sponsors clarified that **the meaning of the term "States"** referred to all States asked and agreed with the suggestion to specify that assistance should be given to fact-finding missions in the fulfilment **of** their mandate. **As** to whether or not the **element of consent** should be specifically mentioned as **such** in paragraph 14, the co-sponsors observed that the recognition of the sovereign rights **that States** in many cases had to withhold or give their **consent** to the sending to their territory of fact-finding missions, as a result of the decisions of various organs of the United Nations, was implied. They stressed that it was **not** their intention to **modify** the complicated legal situation relating to the consequences **of** the decision **of** the various organs of the United Nations to send fact-finding missions. Paragraph 14 presupposed the existence **of** such legal situations and put forward policy suggestions avoiding the details that might be seen as prejudging the question of the sovereign right of States in that context. **In response** to a question, **the** co-sponsors clarified that the general unilateral declaration should be made **totally** independent, **i.e.**, before any particular dispute. With regard to **the** question raised concerning the legal implications **of** unilateral **declarations**, the co-sponsors recognised the difficulties in attempting to equate the **declarations** envisaged under the working paper with those made pursuant to article 36, paragraph 2, **of** the Statute of the International **Court of Justice**. Paragraph 14, in **their** view, merely presented an opportunity for further consideration as to how unilateral declarations might be usefully adopted to apply in the context of fact-finding missions. **As** to paragraph 15, the co-sponsors did not consider it counter-productive to **request States** to give reasons if they refused to admit a fact-finding mission. Rather, it would serve to make it slightly **more** difficult to do so arbitrarily.

45. Concerning the sixth cluster, **paragraph 16**, it was generally **agreed** that **the** paragraph addressed the important question of encouraging States to co-operate with fact-finding missions in the performance of their task by granting such missions certain freedoms and facilities. It was pointed out that the idea **of** receiving States granting freedoms and facilities to fact-finding missions should be balanced with that of requiring the fact-finding missions to respect national laws and not to interfere in the internal affairs of the States concerned. There was also the **view** that the specific provisions **of the** paragraph should be **more** carefully examined in order to determine the extent to which they did or did not conform to the provisions of the Convention on the Privileges and Immunities of the United Nations and that it might be useful for the co-sponsors of the working paper or the Secretariat to clarify that point. Further examination of the specific provisions

of the paragraph would lead to the determination **as** to whether the paragraph could be simplified **along the lines of** its subparagraph (g).

46. Concerning specific provisions **of** the cluster, it was pointed out with respect to subparagraph (b) **that** the requirement of observance **of** national law in **connection** with freedom of movement might result in putting fact-finding missions **into** strait-jackets, which was undesirable. However, there was the view that the provision was acceptable so long as the observance of national law did **not** limit the freedom of members **of** the fact-finding mission to fulfil **their** mandate. **It was observed that the phrase** "communicate freely with all persons" in subparagraph (e) needed clarification **and** that the whole subparagraph seemed to imply a judicial process that went beyond the task **of** fact-finding. With respect to **subparagraph (f)**, it was wondered whether the paragraph did not indeed imply that censorship was in **fact** possible and whether it needed to be re-examined in that light.

47. Regarding the seventh cluster, namely paragraphs 17 to 19, **some** representatives expressed the view that, while the general principle **of** information-gathering by **the** United Nations **was** acceptable, it did not clearly relate to the focus **of the** working paper, which was dealing with fact-finding missions, and was therefore **unnecessary**. Other representatives were, however, **of** the view that the cluster contained an important concept that should be further developed, since the working paper dealt with fact-finding activities by the United Nations, **of** which information-gathering was an important element. In that connection, the point was made that it was necessary to **state** the purpose of information-gathering, **namely**, the prevention or settlement of disputes.

48. The view was also expressed that entrusting United Nations information centres and 'United Nations representatives outside Headquarters with the task of information-gathering would unnecessarily complicate the relations between those institutions and the host State. It was, **moreover**, pointed **out** that the role of the United Nations information centres did not appear to have a direct relation to the maintenance **of** international peace and security, since their primary role was to provide information to the host State. Doubts were also raised as to the relation between the type of information coming **from** United Nations information **centres**, that gathered by United Nations representatives outside Headquarters and that acquired through fact-finding missions.

49. With respect to specific comments regarding paragraph 16, clarification was sought as to the meaning of the phrase "publicly available". A suggestion was also made that the above-mentioned phrase be **replaced** by the phrase "open information published by the media". The point was also made that it might **be necessary for** a clarification to be given by the Secretariat as to competence of the United Nations information centres referred to in paragraph 18. With respect to paragraph 19, the point was made that there existed various types **of** United Nations representatives and that it should be clearly stated, in order to avoid confusion, that paragraph 19 was intended to refer to the United Nations representatives whose primary functions was to collect **information**.

50. In answering questions regarding cluster 7, the co-sponsors **explained** that the aim **of** fact-finding activities **of** the United Nations was stated in paragraph 1 of the working paper to the effect that it was necessary for the United Nations to have full knowledge **of** facts. The co-sponsors further noted **that**, while **fact-finding missions** were indeed the **main** way of **obtaining** such knowledge and were

therefore the focus of the paper, it was also important, as stated in paragraph 2 of the working paper, to provide the Secretary-General with better information-gathering capabilities to improve his early-warning capacity. As to the question raised on the meaning of the phrase "publicly available", the co-sponsors explained that it referred to newspapers and public statements, since the United Nations information centres were not to involve themselves in clandestine operations.

**B. Consideration of the working paper submitted by Czechoslovakia and the German Democratic Republic**

51. At the 9th meeting of the Working Group, on 3 April 1969, one of the co-sponsors introduced a working paper entitled "Fact-finding activities by the United Nations in the context of the maintenance of international peace and security" contained in document A/AC.182/L.62 submitted by his delegation and the delegation of the German Democratic Republic, which read as follows:

**"I**

**"1.** In order to contribute to the further strengthening of the role of the United Nations in the maintenance of international peace and security, in particular in the prevention and peaceful settlement of disputes, the fact-finding capabilities of the Organization in this field should be fully used and further developed.

**"2.** United Nations fact-finding activities should be carried out with the objective of a comprehensive exploration of all available sources of information, in accordance with the provisions of the Charter of the United Nations, by the Security Council, the General Assembly or the Secretary-General within the scope of their competences.

**"3.** Fact-finding activities may be carried out:

**"(a)** By the Security Council, or by the Secretary-General upon the request of the Security Council, in respect of matters related to Chapter VII of the Charter;

**"(b)** By the Security Council, the General Assembly or by, the Secretary-General on his own behalf or upon the request of the Security Council or the General Assembly, in respect of the matters concerning the maintenance of international peace and security other than those related to Chapter VII of the Charter.

**"4.** While considering the possibility to start the fact-finding activities, the General Assembly, as well as the Secretary-General will assure themselves that the Security Council does not intend to start on its own behalf the fact-finding activities in the same field.

**"5.** In undertaking fact-finding activities, in particular, the use of the following methods should be considered:

**"(a)** The sending of civilian, military or mixed missions to the regions or to the territories of States concerned;

"(b) The assignment **of** special envoys, such as the **Secretary-General** or his representative, the President **of** the Security Council or of the **General Assembly** or the Chairman **of** the Movement of **Non-Aligned Countries** or the chairman **of the regional** organisation in whose region the fact-finding is to take place or a representative **of** the regional group,

"(c) The appointment **of** ~~ad hoc~~ subsidiary bodies of the relevant organs carrying **out** fact-finding activities.

"6. The sending **of** a United Nations representative or fact-finding mission to the territory of any State requires the prior consent of such State. **Any** request for the *consent* of a State to receive such a representative or **fact-finding** mission within its territory should **be given** consideration without delay.\*

"7. The decision to use fact-finding capabilities, including the sending **of** a United Nations representative or fact-finding mission, should indicate the **clear mandate and** *terms* of the mission, as well as the character **of** the report to be presented to the sending organ upon completion of the mission.

"8. States shall *not* impede the full **and** independent performance of the fact-finding activities, shall **not** interfere with the work **of** the United Nations representative or fact-finding mission and should give them all necessary assistance.

"9. Members **of** the United Nations fact-finding missions, as well as all other persons taking part in the performance of the fact-finding activities, shall fulfil their task impartially and shall **not** receive **any external** instruction. They shall act in strict conformity with their mandate and shall not interfere with the internal *matters* of receiving States.

"10. States directly concerned by the report presented as **a** result of the fact-finding by the representative of the United Nations or by **the** fact-finding mission should be given an opportunity to let the appointing *organ* know about their position in respect of the conclusions **contained in** the report.

"11. Whenever fact-finding includes hearings or other similar procedures, the provisions of The *Hague* Convention for the Pacific Settlement of International Disputes **of** 1907 **concerning** inquiry should be applied ~~mutatis mutandis~~.

## "II

"12. The Security Council **should consider** the possibility to undertake fact-finding activities in order to obtain objective knowledge of the facts needed for:

"(a) The prevention of **disputes** and situations which may threaten international peace and security:

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\* See para. 67 below.



"(b) The determination, in accordance with Article 34 of the Charter, whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security!

"(c) The determination, in accordance with Article 39 of the Charter, of the existence of any threat to the peace, breach of the peace or act of aggression;

"(d) The consideration of such disputes and situations;

"(e) The making of recommendations or decisions concerning the prevention or solution of such disputes and situations;

"(f) A review of the implementation of the recommendations or decisions mentioned in subparagraph (e).

"13. The Security Council should also consider the possibility to undertake, in the areas of disputes and situations which require constant appraisal, fact-finding missions on a periodic or permanent basis in order to review:

"(a) The development of such situations]

"(b) Compliance with agreements on the solution of such disputes or situations, if so requested by the parties to such agreements.

"14. The Security Council and the General Assembly should, wherever appropriate, consider the possibility to provide in their resolutions relevant to the maintenance of international peace and security, for fact-finding as a method of monitoring compliance with the provisions of these resolutions.

"15. The General Assembly should consider the possibility to undertake fact-finding activities in order to obtain objective knowledge of the facts needed for :

"(a) The prevention of disputes and situations which may threaten international peace and security, in accordance with Article 11 and subject to Article 12 of the Charter;

"(b) The consideration of such disputes and situations, in accordance with Article 14 and subject to Article 12 of the Charter)

"(c) Making recommendations, in accordance with Articles 11 and 14 and subject to Article 12 of the Charter, concerning the above-mentioned issues;

"(d) A review of the implementation of recommendations mentioned in subparagraph (c).

"16. The Secretary-General should consider the possibility to undertake fact-finding activities in order to obtain objective knowledge of the facts needed for implementation of his functions provided for in Articles 98 and 99 of the Charter.

"17. The Secretary-General, if requested by the States parties to a dispute, should consider the sending of a representative or of a fact-finding mission to the area concerned.

"18. The Secretary-General should maintain and develop technical capabilities of the United Nations including all necessary arrangements for the event of an emergency fact-finding mission.

"19. With prejudice to their right to resort to peaceful means of settlement of disputes of their own choice, States should be encouraged to use more frequently fact-finding capabilities on a bilateral, regional as well as multilateral basis, whenever such a procedure might contribute to the prevention or removal of disputes or situations which may threaten international peace and security, and to the promotion of confidence-building.

### "III

"20. The sending of a United Nations fact-finding mission shall be without prejudice to the use by the States concerned of inquiry or other similar procedure resulting from the treaty on settlement of disputes concluded between the above-mentioned States.

"21. Nothing in the present draft shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter."

#### 1. Introduction of the working paper by one of the co-sponsors

52. In introducing the working paper, one of the co-sponsors explained that the recent positive developments in international relations offered encouraging perspectives for the further strengthening of the role of the United Nations in the field of the maintenance of international peace and security. The full use and further development of the United Nations fact-finding capabilities could significantly contribute to this effect. He indicated that a new approach to fact-finding activities, including their use in the peaceful settlement of disputes that may threaten international peace and security, but also in the prevention of the disputes or situations of such a nature and in the reviewing of the compliance with United Nations decisions or recommendations relevant to these questions, should be considered.

53. The co-sponsor further explained that the document was divided into three parts. Part I contained introductory paragraphs, which were aimed at emphasizing the role of fact-finding in strengthening the role of the United Nations in the area of maintenance of international peace and security, outlining explicitly the competence of the Security Council, the General Assembly and the Secretary-General as laid down in the Charter of the United Nations. Part I also contained general provisions concerning forms or methods of carrying out the fact-finding activities, as well as provisions on the conduct of the fact-finding mission and the receiving States. Part II of the working paper was aimed at providing the details of the Charter-based provisions, pursuant to which the Security Council, the General Assembly or the Secretary-General might decide to initiate fact-finding missions. The co-sponsor further pointed out that, while the paragraphs contained in part II

of the working paper were addressed to the organs of the United Nations, paragraph 19 contained a provision that was addressed to States. Part III of the working paper, as well as paragraph 19 (of Part II), just described, constituted the savings clauses that were to be taken into account in the understanding of the scheme of the working paper as a whole.

54. The co-sponsor then proposed that for the purposes of the discussion the paragraphs of the working paper might be divided into eight clusters. Paragraphs 1 and 2 constituted the first cluster; paragraphs 3-5 the second cluster; paragraphs 6-9 the third cluster; paragraphs 10 and 11 the fourth cluster; paragraphs 12 and 13 the fifth cluster; paragraphs 14 and 15 the sixth cluster; paragraphs 16-18 the seventh cluster; and paragraphs 19-21 the eighth cluster. He further suggested that the Working Group might wish to discuss the working paper cluster by cluster, following a general exchange of views on the working paper as a whole. The Working Group accepted this proposal.

## 2. General comments on the working paper as a whole

55. It was generally agreed that the working paper contained in document A/AC.182/L.62 presented another good basis on which the discussion could move forward in the direction of strengthening the role of the United Nations through the use of fact-finding in the context of maintenance of international peace and security, which was also the main idea behind document A/AC.182/L.60, which the Working Group had just discussed. There was a widespread view that the two working papers complemented each other and that they provided the Working Group with the opportunity of an enriched basis for discussion. Document A/AC.182/L.62 was considered as having a further merit of presenting a clear structure and of establishing in strict conformity with the Charter the link between the maintenance of international peace and security and the peaceful settlement of disputes. It was also pointed out that the document was largely based on the existing United Nations practice in the field of fact-finding.

56. Several representatives pointed out that, while the working paper provided a firmer legal basis for the efforts towards the strengthening of fact-finding activities, by reflecting in its paragraphs relevant provisions of the Charter of the United Nations, as well as relevant international instruments and taking into account the existing practice, they were of the view that the advantages or disadvantages of the inclusion of such detailed paragraphs were still to be further weighed following a cluster-by-cluster discussion.

57. There was the view that, while document A/AC.182/L.62 provided some of the answers to the questions raised during the consideration of document A/AC.182/L.60, it also raised other questions of its own. In this connection, some representatives pointed out that the scope of the working paper in document A/AC.182/L.62 went beyond fact-finding in its classical sense as a means of gathering and elucidating facts relating to a particular dispute.

58. There was also the view, however, that interesting and innovative provisions contained in the document should be considered in the efforts to enhance the role of the United Nations in the maintenance of international peace and security.

### 3. Comments on the working paper cluster by cluster

59. With respect to the first cluster, namely paragraphs 1 and 2, the general point of view was that the paragraphs represented a useful introduction and that they did not create any major problem as to their substance. There was also the view that the ideas expressed in the cluster could be better placed in the preambular paragraphs of the document.

60. With respect to specific comments on paragraph 1, some representatives questioned the emphasis on the use of fact-finding for the prevention and peaceful settlement of disputes. Others felt that such emphasis was proper and stressed that fact-finding should mainly be used in the context of prevention of disputes. The question was also raised as to whether it was necessary to require that fact-finding capabilities of the United Nations be both fully used and further developed. On this point there was the view, on the one hand, that they should indeed be both fully used and further developed, while on the other hand, there was the view that they should only be used. A question was also raised as to the meaning of the expression "in particular" and "in this field" in paragraph 1. As to specific comments on paragraph 2, the point was made that the last phrase "within the scope of their competences" was superfluous, since the paragraph already made reference to the Charter of the United Nations, which dealt with the question of competences. There was also the point that paragraph 2 was erroneous in implying that fact-finding activities should be carried out in accordance with the provisions of the Charter, since the Charter itself did not contain specific provisions on fact-finding as such. The paragraph should be reworded. It was also pointed out that the paragraph did not present a proper definition of fact-finding and that it might be redrafted so as to state that the object of fact-finding was to elucidate facts or to obtain full knowledge of relevant facts. It was therefore suggested that the phrase "with the objective of" be replaced by the phrase "on the basis of". Clarification was sought on the meaning of the phrase "all available sources of information" used in the paragraph. With respect to paragraph 2, the point was also made that the paragraphs did not make a clear distinction between fact-finding and information-gathering. There was also another view that information-gathering did not fall within the framework of fact-finding. While, on the one hand, the point was made that paragraphs 1 and 2 failed to take account of the need to distinguish between who would take the decision on the sending of a fact-finding mission and who would actually carry out such a mission, on the other hand, the view was expressed that it was only a drafting problem and that the intention of the co-sponsors was clear.

61. In the course of answering the questions raised in connection with the first cluster, the co-sponsors stressed that their intention in using the phrase "in particular" in paragraph 2 was intended to underline the main areas where fact-finding activities might be used in the context of the maintenance of international peace and security. Nevertheless, they did not want to exclude the possible use of fact-finding activities by the United Nations in situations other than the prevention or the peaceful settlement of disputes. They also pointed out that the structure of paragraph 2 was intended to emphasize that fact-finding activities should be carried out both in conformity with the Charter of the United Nations and within the competences of those relevant organs which differed. Thus, it was, in their view, proper to refer both to the Charter of the United Nations and in general to the question of competence of the organs specifically. In that context, the co-sponsors added that fact-finding by the International Court of Justice or by the specialized agencies of the United Nations and other

international organisations that might coincide with fact-finding by the United Nations in the field of international peace and security might also be explored later. As to the question raised concerning the meaning of the term "in this field", the co-sponsors explained that it referred to the field of maintenance of international peace and security.

62. With respect to the second cluster, namely paragraphs 3 to 5, it was generally agreed that the paragraphs did not present problems as to their substance. However, there was the view that some of the details they included tended to raise more problems than they solved and that perhaps more general provisions might be preferable to the attempt of repeating certain provisions already contained in the Charter of the United Nations.

63. As to specific comments on paragraph 3, there was the suggestion to delete subparagraph 3 (a) as a whole and to delete the phrase "in respect of the matters concerning the maintenance of international peace and security other than those related to Chapter VII" of subparagraph 3 (b), because in the view of certain representatives, reference to Chapter VII in paragraph 3 limited the use of fact-finding to situations of open conflict and therefore did not permit the use of fact-finding missions in the prevention of conflicts or disputes. The suggestion was also made that subparagraph 3 (a) should also be redrafted so as to read as follows: "By the Security Council, in respect of matters related to Chapter VII of the Charter, or by the Secretary-General upon the request of the Security Council acting under Chapter VII of the Charter". The point was also made that the phrase "may be carried out" in the chapeau of the paragraph should be re-examined in order to find a more general wording. As to specific comments on paragraph 4, the phrase "does not intend to start on its own behalf" created difficulties for representatives who wanted to know how, in practice, the other organs of the United Nations would find out the intention of the Security Council. There was also the view that paragraph 4 constituted a restrictive interpretation of Article 12 of the Charter of the United Nations, which referred to situations in which the Security Council was actually exercising its functions under the Charter. The view was expressed also that the whole paragraph was unnecessary and called for its deletion. With respect to comments on paragraph 5, several representatives were of the opinion that the word "methods" used in its chapeau should be replaced by the word "modalities" or "possibilities". The point was also made that the French text of the chapeau should be brought in line with the English text, by including the phrase "in particular". As to subparagraph 5 (a), while the specific mention of civilian, military or mixed commissions was found to be acceptable by some representatives, others were of the opinion that a more general provision, such as "individuals with relevant expertise" or simply "experts", would be more preferable. There was also, on the one hand, the view that the word "regions" should be deleted and, on the other, that it should be retained and be expressed in the singular. In addition, the word "territories" was also to be expressed in the singular. As to subparagraph 5 (b), several representatives felt that the use of the phrase "such as" in reference to the Secretary-General tended to diminish his role and that a more suitable wording should be found. There was also the view that the paragraph provided for the use of individuals associated with the United Nations together with those of organizations which are not within the United Nations system. In that connection, the suggestion was made to divide the subparagraph into two by dealing with the latter category of individuals separately. But there was also the view that the subparagraph should focus on the fact-finding activities of the Secretary-General only. As to subparagraph (c), the suggestion was made that the word "subsidiary" might be deleted. Clarification was

also sought as to whether the expression "ad hoc bodies" under the subparagraph would include permanent bodies envisaged under paragraphs 13 and 18 of the working paper.

64. It was explained on behalf of the co-sponsors that paragraph 3 was intended to establish specific competences of the various organs of the United Nations in the field of fact-finding, which was a sensitive matter and therefore required wording closely linked to the Charter of the United Nations. With respect to paragraph 4, the co-sponsors stressed that in order to avoid overlapping of fact-finding activities, which might be undertaken by the Security Council, the General Assembly or the Secretary-General and as a consequence of Article 24 of the Charter, which conferred on the Security Council primary responsibility for the maintenance of international peace and security, it was necessary to draw the appropriate conclusion for the question of starting fact-finding activities in this field. At the present stage, the co-sponsors limited themselves to the formulation of the principle contained in paragraph 4, leaving the question of concrete ways of putting that principle into practice for future discussions. In answering the question concerning the meaning of subparagraph 5 (c), they stressed that they had in mind subsidiary organs in the sense of Articles 22 and 29 of the Charter, which could carry out fact-finding activities (for example, inquiry) at Headquarters without using the possibility of sending fact-finding missions. The co-sponsors further took note of specific suggestions for improving the drafting of the paragraphs of the cluster.

65. With regard to the third cluster, namely, paragraphs 6 to 9, there was a widespread view that, with the exception of the question of the ways for dealing with the problem of the consent of the States to which the mission is sent, the paragraphs did not raise problems of substance. However, several points were made concerning the possibilities of their improvement. In this connection, a question was raised as to why a distinction was maintained between the sending of a United Nations representative and a fact-finding mission.

66. With respect to specific comments on paragraph 6, clarification was sought as to whether the requirement of consent therein stipulated was necessary or not, taking into account the implications of fact-finding missions initiated by the Security Council under Chapter VII of the Charter and fact-finding missions that might be initiated outside Chapter VII.

67. The co-sponsors responded that it was their understanding that paragraph 6 should be read in close connection with paragraph 21, which protected, inter alia, the powers of the Security Council. However, in order to avoid any misunderstanding, they presented orally the following revised text of paragraph 6:

"Without prejudice to the powers of the Security Council under Chapter VII of the Charter, the sending of a United Nations representative or fact-finding mission to the territory of any State requires the prior consent of that State. Any request for the consent of a State to receive such a representative or fact-finding mission within its territory should be given consideration without delay."

68. Despite the above revision of paragraph 6, several questions were still raised. The view was expressed that the reference to Chapter VII, although being a step in the right direction, raised the question of possible cases not included in that Chapter, for which consent was not required. As the existence and exact

configuration of such cases were controversial, the wisest course seemed to be that followed in document A/AC.182/L.60, namely, that of presupposing and not restating the legal rules on the subject. If, however, a different course were to be preferred, the following language should be inserted at the beginning of paragraph 6: "Without prejudice to the obligations of the Member States under article 25 of the Charter". There was the question of the implication of the term "prior" in qualifying "consent". There was still the view that specific reference to Chapter VII or to Article 25 of the Charter, as suggested by some representatives, did not cure the defect of paragraph 6. Thus a more general provision focusing on the principle of consent without linking it to specific Charter provisions would be preferable. In that connection, the point was made that account should be taken of the safeguards clauses in the last cluster. Clarification was also sought as to whether consent only meant acceptance of the fact-finding missions or included also consent with respect to individual members of the mission itself. There was also the view that the paragraph need not emphasize the question of consent as such but should instead focus upon the question of the necessary co-operation of States with fact-finding missions. According to this view, paragraph 6 should be merged with paragraph 8. A suggestion was also made that the phrase "consideration without delay" be replaced by the phrase "timely consideration". With respect to specific comments on paragraph 7, clarification was sought as to why the expression "fact-finding capabilities" was used in the paragraph and a suggestion was made that the expression be changed to "fact-finding missions". There was also the view that it was unnecessary to provide for both "mandate" and "terms" of the missions, since some representatives felt that the word "mandate" incorporated the "terms" and that such a mandate should also include the statement on the duration of fact-finding missions. The point was also made that the phrase "the character of the report" should be replaced by a formulation indicating that the report should contain a statement and elucidation of the facts. As to specific comments on paragraph 8, there was the general view that the provision should be more positively drafted. The opinion was expressed that, in dealing with the question of co-operation of States with fact-finding missions and of giving them all necessary assistance, paragraph 8 should be expanded along the lines of paragraph 16 of document A/AC.182/L.60, taking into account the comments made thereunder, in order to achieve a balance between the rights and obligations of States on the one hand, and those of fact-finding missions on the other. In that connection, a suggestion was made to incorporate in document A/AC.182/L.62 paragraphs 14 and 15 of document A/AC.182/L.60, in order to achieve such a balance. As to specific comments on paragraph 9, a suggestion was made that the phrase "as well as other persons taking part in the performance of the fact-finding activities" be deleted as it was not clear who else was included by that clause. Another view suggested the deletion of the phrase "and shall not receive any external instructions", since it was difficult to define the terms "external instructions" and the paragraph already stated the principle of impartiality. A further suggestion was made to delete the phrase "shall not interfere with the internal matters of receiving States", since paragraph 21 of the document already provided such a safeguards clause. A suggestion was also made to delete the word "strict" in the fourth line of paragraph 9.

69. In answering the questions with respect to cluster 3, the co-sponsors pointed out that the terms "fact-finding capabilities" and "representative or fact-finding missions" were taken from paragraph 22 of the 1988 Declaration. The use of the phrase "United Nations representative or fact-finding missions" in paragraph 6 was intended to indicate that consent was necessary in the situations envisaged in

subparagraphs 5 (a) and (b), while the term "fact-finding capabilities" was used in paragraph 7 to cover situations under the three subparagraphs (a), (b) and (c) of paragraph 5. Such was also the case in the use of the phrase "fact-finding missions as well as other persons" in paragraph 9. With respect to paragraph 6, it was pointed out on behalf of the co-sponsors that the suggested reference to Article 25 of the Charter might not have been the best solution and that if the solution was to be based on reference to the "obligations" of States, a more general provision would be needed. It was also the view of the co-sponsors that reference to the "character of the report" in the paragraph was intended to draw attention to the fact that the nature of such a report, i.e., confidential or not, was important for the States in the process of deciding whether or not to give consent to fact-finding missions. The term "external instructions", according to the co-sponsors, meant that fact-finding missions should not receive instructions except from the sending organ. As to the question of incorporating paragraphs 14 and 15 of document A/AC.182/L.60 into document A/AC.182/L.62, the co-sponsors of document A/AC.182/L.62 stated that, while they had no problems as to the substance of these paragraphs, they were of the view that their repetition in document A/AC.182/L.62 was not necessary because both documents had been equally accepted as a basis for discussion.

10. With respect to the fourth cluster, namely, paragraphs 10 and 11, most of the comments made were in the form of questions. As to the specific questions on paragraph 10, clarification was sought as to whether all reports, including confidential ones and particularly reports by missions sent by the Secretary-General on his own behalf, would be made available to the States in the territory of which the fact-finding was conducted. The question was also raised as to when the report of fact-finding missions should be made available to the States concerned in order for them to make their position known as to the conclusions contained therein. In that connection, the point was made that conclusions might not be contained in the report itself, since there was a possibility that conclusions could only be drawn by the sending organ at the end of the consideration of the report. The view was also expressed that consideration should be given to situations where the sending organ would not take any action on the basis of the report of the fact-finding mission and it was wondered whether it was advisable to require that the position of the States concerned be made known in such a case. With respect to specific comments on paragraph 11, the point was made that reference to the 1907 Hague Convention for the Pacific Settlement of International Disputes might not be suitable in this context, since it was the view of some representatives that the Convention was too rigid and that it did not take into account new methods of gathering facts. There was also the view that further examination should be made as to which specific provisions of the instrument might be referred to in the case of fact-finding missions of the United Nations. While some representatives had difficulties with the reference to the 1907 Convention, pointing out that not many States were parties to it, to others, that fact did not create any problem for them.

11. In answering the questions raised with respect to cluster 4, it was explained on behalf of the co-sponsors that the provisions for States to know and to comment on the content or conclusions of the report were based on the principle audiatur et altera pars. As to the question of reference to the Hague Convention, it was clarified by the co-sponsors that only the provisions relating to procedure were intended for reference and that such provisions might indeed be specifically spelled out.



12. With respect to cluster 5, namely, paragraphs 12 and 13, while **several** representatives recognised the merits of the detailed listing in the cluster, others pointed **out** that such a listing might present the problem of **leaving** out an important **factor** and that an attempt to be exhaustive might result in unnecessary overlapping and the inclusion of certain elements on which general agreement could **not** be easily reached. Accordingly, **there** was the view, on the one hand, that a **more** general provision, instead of **detailed** listing, would **be** preferable. On the other hand, there was the view that the cluster, as presented, was preferable, provided that the chapeau of paragraph 12 was redrafted to include **the expression "inter alia"**.

73. As to further specific comments on paragraph 12, **some** representatives were of the opinion that perhaps only subparagraph **(a)** and, to **some** extent, subparagraph **(b)** might be retained. They specifically called for the deletion of subparagraph **(c)**, since, in their view, the subparagraph **envisaged** the use of fact-finding in situations of open conflict under Chapter VII of the Charter. The inclusion of subparagraph **(f)** was also questioned **by some** representatives **because**, in their view, it went beyond the purpose of fact-finding in the classical **sense**, namely, the elucidation of facts. Other representatives welcomed the approach of paragraph 12 as a whole, which listed step-by-step the areas in which the Security Council might initiate fact-finding **activities**; they had no problem with subparagraph **(f)**, which they considered to be a new and suitable mechanism for enhancing the role of the United Nations in the maintenance of international peace and security. The two latter views were also expressed in connection with paragraph 13, which **some** representatives thought went beyond fact-finding in its traditional sense, although others considered the paragraph interesting and innovative. With respect to specific **comments** on paragraph 13, clarification was **sought** as to the implications of "periodic or permanent" fact-finding missions. In this connection, the view was expressed that the possibility of permanent fact-finding missions might run counter to the idea of encouraging States to settle their disputes by peaceful **means**. The point **was** also **made** that a distinction should be made between fact-finding missions and observer missions and that the role of the latter in the working paper- should be clarified. **A further** point was made that fact-finding missions should always be considered as **ad hoc** and should, therefore, be distinguished from information-gathering, which was a permanent activity.

14. In answering the questions raised under this cluster, it was pointed out on behalf of the co-sponsors that subparagraphs (a) to **(f)** of paragraph 12 were not the functions of particular fact-finding missions, but rather the specific situations in which the Security Council **would** need fact-finding missions **for** the fulfilment of its functions in **accordance** with **the** Charter. The co-sponsors further stated that the paragraph was not presented as a final draft, **but rather as** a proposal attempting to **identify some elements** on the basis of which discussion **was** to take place towards a final draft of an appropriate provision. They accepted that the chapeau of the paragraph could be redrafted to include the words **"inter alia"**. As to the question **raised** concerning the distinction between fact-finding and observer missions, the **co-sponsors** responded that United Nations practice proved that it was not always possible to **make a** clear distinction between **the** two kinds of missions and that the observer function was indeed part, of **fact-finding**. In support of **the** view, they cited a report of the Secretary-General on **methods** of fact-finding (document **A/5694**, Part III, **para. 144**). There was, **however**, another view that **the** scope of the above-mentioned **document was** larger **because** it donlt both with fact-finding and observer missions. It could therefore

not be relied upon as the basis for not drawing a distinction between fact-finding and observer missions. On the question of reference to permanent bodies in paragraph 13, the co-sponsors also called attention to paragraph 145 of document A/5694, in which it was stated that the "General Assembly has established by far the largest number of United Nations bodies, two of which, the Panel of Inquiry and Conciliation and the Peace Observation Commission, were set up on a permanent basis". The co-sponsor6 further clarified that, with respect to subparagraph 13 (b), the intention was to find some new ways and means of encouraging States to use the fact-finding capabilities of the United Nations,

75. With respect to cluster 6, namely paragraphs 14 and 15, similar comments to those made in connection with paragraph 12 concerning the advantages and disadvantages of a detailed listing were repeated. Thus, there were those who doubted the inclusion of all the specific subparagraphs of paragraph 15, suggesting that a more general provision was preferable. But there were also those who supported the approach of the paragraph as presented, pointing out that the subparagraphs reflected the areas in which the General Assembly could also initiate fact-finding activities step-by-step. The view was also expressed that, with respect to the monitoring of compliance with United Nations resolutions, it was necessary to distinguish those resolutions which were binding in character from those which were recommendatory in nature. As to specific comments made on the paragraphs of the cluster, it was pointed out with respect to paragraph 14 that it went beyond the function of fact-finding by providing for monitoring of compliance with resolutions. For that reason, there was a suggestion that the paragraph be deleted. However, there was also the view that, by including such a provision, the paragraph introduced one of the most important elements that should be developed as a means of enhancing the effectiveness of United Nations resolutions. The point was also made that paragraph 14 overlapped with paragraphs 12 and 15, thereby further casting doubts over its retention. The view was also expressed that subparagraph 15 (d) went beyond fact-finding in its traditional sense.

76. In answering the questions raised with respect to the cluster, the co-sponsors pointed out that in paragraph 14 the intention was not to say that all resolutions should be subject to the monitoring provision, but that they intended to encourage the Security Council and the General Assembly to do so "wherever appropriate". As to the question of whether monitoring was beyond the scope of fact-finding, the co-sponsors responded that it was not possible to draw a clear distinction between the two, since there were situations in which resolutions called upon States to implement their treaty obligations and where fact-finding missions might be used to establish whether the treaty obligations were being implemented and thereby also performing the function of monitoring compliance with the resolution. As to the comments made on the list contained in paragraph 15, the co-sponsors made the same observation as they had for paragraph 12, namely, that such a list was a basis for discussion rather than a final draft.

77. With respect to cluster 7, namely, paragraphs 16 to 18, there was a view that the cluster was too conservative as to the role of the Secretary-General in the field of fact-finding activities. The suggestion was therefore made that the paragraphs should be redrafted to make the role of the Secretary-General stronger and more active. In support of that view, reference was made to paragraph 22 of the 1988 Declaration and to document A/43/629, where such a role for the Secretary-General was envisaged. In that connection, the point was made that the paragraphs should allow the Secretary-General the discretion to decide on situations in which, in his judgement, the sending of fact-finding missions could

really assist **in** the **solution** of a problem **as** distinguished **from** the cases where the real **motive** of the party requesting such **missions** was to score a political point.

**70.** With respect to specific comments **on** paragraph 16, clarification was sought **as** to whether it was proper to include reference to **Article 98** of the Charter, which only referred to the rights of the **Secretary-General as the chief administrative officer**, **in** contrast to Article 99, which gave him substantive **powers in** the maintenance of **international peace and security**. There was also the view that reference to both **Article 98 and 99** was **inconsistent with the desire to strengthen the role of the Secretary-General**. As to paragraph 17, **the** question was raised **as** to whether fact-finding missions or representatives **of the Secretary-General could** be sent upon the request **of only one State or** by all States concerned. A further question **was raised as** to why the paragraph only **envisaged fact-finding missions** upon requests **of States and not** by the Secretary-General on his **own** initiative. With respect to paragraph 18, clarification was sought on the **meaning of** the expression "technical capabilities **of** the United Nations", especially on **whether** the phrase **meant** the **establishment of** new institutions, which, according to some representatives, was not **necessary**.

**79.** In answering the questions raised with respect to the paragraphs in the cluster, the co-sponsors **pointed** out that the wording **in** paragraphs 16 **and** 17 was intended to encourage the Secretary-General to **"consider"** sending fact-finding missions, thus leaving him the discretion of deciding when it was **Appropriate to do so**. As to the question raised on whether the sending **of** a representative or fact-finding mission could be initiated by the Secretary-General **upon** the request of one State only, the co-sponsors responded that, while only one State could make the request, the sending **of** such missions was **subject** to the consent **of** all **receiving** States, as provided for **in** paragraph 6 **of the working paper**. With regard to the meaning **of** the expression "technical capabilities of the United Nations" **in** paragraph 18, the co-sponsors explained that it did not **envisage** the establishment of new **institutions**; the phrase was **meant to** enable the Secretary-General to put **in** place an emergency **action** plan, such as the constitution of **a** list **of** experts, the elaboration **of** procedures for rapid action and the development **of** **effective** means of communication.

**80.** With respect to cluster 8, namely, paragraphs 17 to 21, there was a widespread view that the paragraphs **in this** cluster presented **no great** difficulties and were generally acceptable. Nevertheless, the point was made that the application **of** paragraphs 19 and 20 might result in a conflict of competence in a particular situation where States might undertake fact-finding **missions** envisaged under paragraphs 19 and 20 **and where** the United Nations had initiated fact-finding **missions as** envisaged in the working paper.

**81.** As to specific comments **on** paragraph 19, there was a suggestion to delete the introductory phrase "without prejudice to their right to resort to peaceful means of settlement of disputes **of** their own choice". The question was also raised **as** to the need to include this paragraph, **which** was addressed to States, **in a working paper** predominantly dealing with provisions addressed to the United Nations. Clarification was sought **as** to the meaning of the phrase "**promotion of** confidence-building" used in the paragraph. In this connection, a **suggestion** was made to replace that phrase by the **expression** "promotion of peaceful settlement of disputes". As to specific comments on paragraph 20, the meaning **of** the phrase "inquiry or other similar procedure" was questioned. There was the view that the

phrase seemed to imply that emphasis was placed upon allowing States the option of using other procedures instead of encouraging them to use fact-finding missions. In this connection, it was suggested that another term be used instead of "inquiry". As to specific comments on paragraph 21, there was, on the one hand, the view that reference to Article 2, paragraph 7, of the Charter in such a savings clause was most appropriate, as it permitted reference to the Article only in one place instead of it being repeated in several places of the document. On the other hand, there was the view that specific reference to Article 2, paragraph 7, of the Charter was superfluous and that it should be deleted.

82. In answering the questions raised with respect to cluster 8, the co-sponsors responded that paragraph 19 was intended to encourage States to use fact-finding capabilities between themselves more frequently and that it was considered easier for States to accept fact-finding missions undertaken pursuant to a treaty, in which the scope of such missions was known in advance. As to the reference to "confidence-building", the co-sponsors pointed out that the broader use of fact-finding activities could effectively contribute to the strengthening of confidence between States and that the relationship between fact-finding and confidence-building should be underlined. Regarding comments on paragraph 20, the co-sponsors pointed out that the paragraph should be understood as a safeguards clause focusing on the obligations of States in the field of peaceful settlement of disputes deriving from valid treaties by which they were bound. Concerning paragraph 21, the co-sponsors stated that its wording was based on a similar paragraph contained in the 1988 Declaration.

83. In his final summing up of the debate on the two documents on fact-finding, the Chairman said that it was his understanding that the co-sponsors of the two documents had taken careful note of all the comments made with respect to each document and that they were planning to work on the revision of the documents at a later stage, for the future work of the Special Committee.

#### IV. RATIONALIZATION OF EXISTING UNITED NATIONS PROCEDURES

##### Statement of the Chairman

**04.** The Working Group had before it a revised version (**A/AC.182/L.43/Rev.3**) of a working paper submitted by France and the United **Kingdom** of Great Britain and Northern Ireland at the 1987 session of the Special Committee, which read as follows I

##### "Rationalization of existing United Nations procedures

###### "INTRODUCTION

"The present paper is a revised version of the paper (**A/AC.182/L.43/Rev.2**) submitted towards the end of the 1987 session of the Special Committee. At the 1988 session of the Committee, paragraphs 1 to 6 of the paper were considered. The **revised text** below includes texts provisionally accepted at the 1988 session as well as **changes** to the 1987 draft to reflect suggestions made in 1988.

###### "PROPOSALS

"1. In order to facilitate the adoption of resolutions and decisions by the General Assembly whenever possible without a vote, informal consultations should be carried out with the widest possible participation of Member States.\*

"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] organization of work\*\*** of the **current** session in order to facilitate **and improve** the organisation and rationalisation of the work of the **next** session.

"4. The agenda of the General Assembly should be **rationalized** by grouping or merging, **to the** extent possible, related **items** and by setting an interval of two or **more** years for the discussion of certain **items**.\*\*\*

"5. The General Committee should consider, at the beginning of each session of the General Assembly, the possibility of convening certain Main Committees

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\*\* Text provisionally accepted at 1988 session.

\*\*\* Changes to the 1907 draft to reflect suggestions made in 1988 are underlined.

\*\*\*\* Alternative text proposed by the co-sponsors of the working paper during the 1988 session.

in sequential order,\*\* taking into account the foreseeable number of meetings necessary for the consideration of the questions with which they are charged at that session and the organisation of the work of the whole session, including the distribution of work among the Main Committees.

"6. In allocating agenda items to the **Main Committees of the General Assembly** and to the plenary of the **General Assembly**, taking into account the nature of the items,\*\* 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 organisation 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, past experience, the state of current work in regard to 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 the Committee on Conferences should adhere strictly to the decision in resolution **40/243 of 16 December 1965** that United Nations bodies should not meet outside their respective established headquarters except in accordance with the exceptions approved by the General 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 agenda items. **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 the resolutions or the continued examination of the question."

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"\*\*\*\* This paragraph as well as the following paragraphs of the 1967 draft were not considered at the 1966 session.

85. One of the co-sponsors introduced the document and provided the explanation of the changes made in the revised version of the working paper.

86. The Special Committee then proceeded with the paragraph by paragraph consideration of the revised working paper.

87. The idea of paragraph 1, it was stated, was to encourage the adoption of General Assembly resolutions and decisions without a vote as it was pointed out that the likelihood of their implementation would be increased. Attention in that regard was drawn to the report of the Special Committee on the work of its 1988 session which contained a description of problems raised in connection with the previous formulation of paragraph 1. It was further pointed out that a new formulation of the paragraph reflected a fundamental change, namely, the replacement of the word "consensus" by the words "without a vote". The view was expressed that paragraph 1 reflected the practice of the last few years. It was further stressed that on the whole, the time had come to finalise the efforts of the Special Committee in the area of the rationalisation of procedures and to submit its new conclusions to the General Assembly with a view to their possible annexation to the Rules of Procedure. The view was also expressed that paragraph 1 reflected a correct line of approach taken by the Special Committee. However, its version in A/AC.182/L.43/Rev.2, as was further stated, contained a more comprehensive scope of consensus, which represented one of the most effective ways of achieving a balance of interests of different States. Consensus, having been one of the ways to enhance the effectiveness of the United Nations had emerged, as it was recalled, in the practice of the Security Council and lately has been practised in almost all the bodies within as well as outside the United Nations system.

88. Paragraph 2 was characterized as a practical and useful proposal. It was remarked that a flexible approach which combined electronic voting with roll-call voting could sometimes be taken. In the course of the exchange of views, it was agreed to incorporate into paragraph 2 a reference to the necessity of showing how votes were cast when electronic voting systems were used.

89. The idea underlying paragraph 3, it was pointed out on behalf of the co-sponsors, was to use beneficially the experience accumulated at a General Assembly session for the benefit of the next session. In that context, the General Committee should be encouraged to meet more often. Reference was made to paragraphs 79 to 85 of the report of the Committee on the work of its 1988 session, which set out the discussion held with regard to paragraph 3. In the course of the exchange of views, the proposal contained in that paragraph was considered to be useful. A number of suggestions have been made: to add the words "In the light of its experience gathered at that session"; to delete the words "use its experience and expertise"; to delete the words "and improve" and "rationalization"; to add the words "performance in discharging"; to delete the words "for the attention of the next General Committee". Doubts were expressed with regard to the relationship between the outgoing General Committee and the General Committee to be established at the next session. It was also pointed out that it would not be desirable to expand the functions of the General Committee so that it would require more resources. The point was made, on the other hand, that it would be important to retain the basic concept of paragraph 3 that the General Committee would be in a position to recommend the improved methods of work. It was suggested that the words "in order to update and improve methods and style of work of the next session of the General Assembly and to enhance its contribution to the solution of

international problems" be added. It was at the same time stressed that the functions of the General Committee were purely procedural and that the improvements referred to should therefore, only be procedural.

90. It was pointed out on behalf of the co-sponsors that paragraph 4 was a new paragraph which repeated word for word the text contained in recommendation 3 (b) of the report of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations and which had been approved by the General Assembly in its resolution 41/213 of 19 December 1985. Reference was also made to paragraphs 87 to 91 of the report of the Special Committee on the work of its 1988 session. Commenting on paragraph 4, several delegations supported the proposals contained in it. It was also suggested that the use of the term "rationalize" be avoided in a document dealing with the rationalization of procedures. The proposal was made to add the following to the paragraph under consideration: "The President of the General Assembly should undertake consultations with interested delegations in this regard." Concern was at the same time expressed with regard to the thrust of the first part of the paragraph, as the concept of "grouping or merging" was perceived as being a political issue. Attention was drawn in that connection to the difficulties involved in determining whether specific items were related. The question was raised with regard to the criteria to be used and the organs to be entrusted with the determination of that question. It was further stressed that the word "consent" would be more appropriate in the context of the paragraph. It was also proposed that an exception be made for the items relating to the maintenance of international peace and security. The view was expressed that the merging of items would be simplified if items belonged to the same Committee. In the case of different Committees, a linkage could be established between paragraphs 3 and 4. It was noted that a common-sense approach could be an answer to the question of grouping the agenda items. It was recalled that the Sixth Committee itself has been grouping a number of items. The view was taken that although some sort of merging would be advisable, it would be better to adopt the formulation contained in paragraph 1 of annex VII to the rules of procedure of the General Assembly, which would satisfy certain concerns. In response, a reference was made to paragraph 91 of the report of the Special Committee on the work of its 1988 session and to the footnote accompanying the text of paragraph 2 of annex VII to the said rules of procedure.

91. In connection with paragraph 5, a reference was made to paragraphs 92 to 99 of the report of the Special Committee on the work of its 1988 session. The idea of convening certain Main Committees in sequential order was generally favoured by the participants in the exchange of views. However, certain questions were raised, in particular, with regard to determining the priorities for the convening of the Committees. In that connection, it was suggested that the words "when appropriate" be added after the words "in sequential order". The question was also raised about the competence of the General Committee in determining the sequential order of work for the Main Committees. It was pointed out that the application of the idea of convening certain Main Committees in sequential order might generate certain benefits including cost-reduction. However, some doubts were expressed as to whether the Special Committee was competent to deal with budgetary and financial matters. In response to doubts concerning the proposed phrase "including the distribution of work among the Main Committees", it was pointed out that the sponsors would be ready to delete that formulation which had been inserted as a result of the previous debate. It was suggested that the Secretariat provide a detailed reply to the question which had been raised as to whether any savings had



been realised by convening the Special Political Committee and the Fourth Committee in sequential order or **by** not holding concurrent meetings (para. 98 of the report of the Committee on the work of its 1988 session). At a subsequent stage of the discussions, the Secretary of the Working Group responded **more** fully to that question as **follows**:

**"Possible financial implications should the Special Political Committee and the Fourth Committee meet sequentially rather than simultaneously"**

"In theory, should all **the** Main Committees of the General Assembly meet simultaneously twice **each** day, **this** would amount to 70 meetings per week (5 x 2 x 7). Should two of them meet sequentially as is proposed, the total number of **meetings** per week would decrease to 60. However, because there are only 5 large meeting rooms, in reality we programme **only** a **maximum** of 5 Main Committee meetings simultaneously on any given half-day (or 50 per week). **This means that meetings of the other two Committees must be scheduled for another time, but always within the capacity limit of 5 simultaneous meetings per half-day.**

"Therefore, **even** if these two Committees were to meet sequentially **as** proposed, both the number of meetings held simultaneously **and** the overall number of meetings throughout the General Assembly session would remain the same, **and** so would the interpretation requirements.

"**In** respect of meeting records, the same number of work-days would be required **for** the preparation of meeting records regardless of when the meetings are scheduled."

92. Paragraph 6 **was** generally characterised on behalf of the co-sponsors, as supplementary to the preceding paragraph. It was viewed **as** useful. The remark was made that the wording of the paragraph should be harmonised with the explanations that had **been** given concerning the role of the General Committee. The expression "taking into account the nature of the items" has been referred to as limiting other aspects to be taken into consideration in the allocation of agenda items. It was also suggested to include in that paragraph the following **formulation** based on Article 20 of the Charter, "Attention should be given to the possibility of holding such special sessions as occasion may require." In response, it was said on behalf of the co-sponsors that, if **so** needed, the idea might be included in a separate paragraph. It was also proposed to delete the words "and of the time and resources available" from the end of the paragraph.

93. With regard to paragraph 7, a reference was made to paragraph 42 of annex V to the rules of procedure which had been approved by the General Assembly in its resolution 2837 (XXVI). It **was** pointed out that the proposal contained in paragraph 7 constituted a strictly **organizational**, non-political matter. The proposal **was** also viewed as deserving attention as it reflected the existing realities and provided for the balance of interests of all regional groups. In response, attention was drawn to the difference in essence between **paragraph 7** and paragraph 42. It was further suggested to delete paragraph 7, **as** it was contrary to the principle of equitable **geographical** distribution. Doubts were expressed with regard to the possible contribution of the idea contained in this paragraph to **the rationalization** of procedures. The suggestion was made to ensure **the**

application of the principle of rotation, possibly in an additional paragraph, The view was also expressed that the increase in the number of Vice-Chairmen *could be* addressed on a case-by-case basis.

94. After the introduction of paragraph 8 on behalf of the co-sponsors, a number of favourable *comments* were made supporting the thrust of the first part of the paragraph. Views were expressed at the same time that the first part of the paragraph could be redrafted in a more positive language which would, at the same time, reflect concerns of a budgeting and organizational *nature* and oriented towards avoidance of duplication and *repetition* of work. It was stated that the *key issue* within the context of that *paragraph* was to *increase the effectiveness* of the work of subsidiary bodies and in that connection it was suggested that a reference to article 22 of the Charter be included. It was also suggested that the first two lines of the paragraph be reformulated in the following way: When the General Assembly performs its functions in accordance with *Article 22* of the Charter, it should give careful consideration as to whether the subject in question could not be dealt with by ...". The debate on the second sentence of the paragraph indicated a wider degree of difference. The view was expressed that the second *sentence* should be deleted. In response, it was pointed out that the recommendations to be worked out within the context of paragraph 8 should be directed towards the idea precisely contained in the second sentence. It was further stated that the proliferation of subsidiary organs *went beyond* the justification of the work they produced. It was also stressed on behalf of the co-sponsors that they were committed to the second sentence of the paragraph. However, it was remarked that the abolition of an *existing* organ in order to establish a new one should not be considered as a pre-condition. Attention was further drawn to the linkage between both *sentences* of that paragraph. It was suggested at one *point* to include in the paragraph a concept of possible reorientation of the work of *existing* organs in view of the sensitivity of the whole issue. The view was expressed that the so-called proliferation of the subsidiary bodies should not be over-dramatised as different types of such organs had been carrying out very useful *tasks* while others had been discontinued after the completion of their mandates. A proposal was made to redraft the second part of the paragraph in the following way: "The General Assembly should continuously survey the work of existing subsidiary organs bearing in mind also the possibility of suspending or discontinuing their activity".

95. It was recalled, in connection with paragraph 9, that the questions relating to it had already been discussed at the 1987 session of the Special Committee. It was further stressed that no link *existed* between the length of the session and the fruitfulness of work. With regard to the question of the competence of the Committee on Conferences, the Secretariat was requested to provide the necessary clarifications. At the subsequent meeting of the Working Group, its Secretary replied to the request and read out the text of the *relevant* paragraphs of General Assembly resolution 43/222 B of 21 December 1988, entitled, "Status of the Committee on Conferences":

"The General Assembly

1. Decides to retain the *Committee on Conferences* as a permanent subsidiary organ:

**"4. Decides that the Committee on Conferences shall have the following terms of reference:**

**"(a) To advise the General Assembly on all matters pertaining to the organisation of conferences in the United National**

**"(b) To plan and co-ordinate conferences and meetings in close consultation with the Secretariat and all relevant bodies in the preparation of the draft calendar, in particular by staggering conferences and meetings throughout the year, and to avoid to the maximum extent possible the overlapping of meetings related to the same sector of activity in the same conference location)**

**"(c) In this connection, to examine proposals of the Secretary-General on the draft calendar prepared on the basis of his budgetary proposals and to recommend to the General Assembly a draft calendar of conferences and meetings designed to meet the needs of the United Nations and to ensure the optimum utilisation of conference-servicing resources. With respect to the proposed departures from the approved calendar of conferences and meetings that have administrative and financial implications, to act on behalf of the Assembly, in conformity with the budgetary process in force and with full respect for the mandates of other bodies;**

**"..."**

**The Secretary also read out the text of the understanding decided upon by the Fifth Committee in connection with paragraph 4 (c) of the above-quoted resolution:**

**"The Fifth Committee . . . decided to inform the General Assembly that action on resolution [43/222] B . . . was being taken on the understanding that nothing in paragraph 4 (c) of that . . . resolution should be construed as giving the Committee on Conferences any role in the budgetary process or authority to override decisions on programmes and on meetings and conferences duly decided upon by legislative organs of the United Nations." (A/43/963, para. 17)**

**After the exchange of views on the paragraph, it was agreed to make a number of adjustments in its text. It was also suggested to reflect in that paragraph the idea of avoiding the scheduling of the overlapping of meetings in the same location in line with subparagraph 4 (b) of General Assembly resolution 43/222 B. The view was expressed that the words "or failing that, by the Committee on Conferences, on the proposal of the Secretary-General" should be deleted. Doubts were further raised as to who would determine that the work of the bodies in question was corresponding to the criteria stipulated in paragraph 9. The question of the competence of the Special Committee to deal with budgetary issues was again raised. It was also suggested that a new sentence be added to the paragraph.**

**96. It was stated that the idea of paragraph 10 was to avoid the excessive time for settling the organisational matters. Moreover, as it was pointed out, the paragraph reflected an existing practice, including the practice in the Special Committee itself. The overall concept of the paragraph was characterized as important. The view was taken that a reference to "other interested delegations" should be incorporated in the paragraph. It was also suggested that the consideration of substantive issues in the course of pre-session informal**

consultation be provided for. The co-sponsors expressed reservations with regard to the aforementioned suggestions, pointing out that the bodies in question should be able to organize their own work and, secondly, that the suggested consideration of substantive matters also raised doubts.

97. With regard to paragraph 11, a reference was made to paragraph 32 of the report of the Special Committee on the work of its 1987 session. Attention was also drawn to the fact that the idea of paragraph 11 did not exclude a possibility of holding meetings away from United Nations Headquarters when it was essential. In the course of the exchange of views with regard to that paragraph, references were made to a variety of United Nations bodies that have been meeting away from Headquarters. It was suggested that the word "should adhere strictly" be replaced by a less categorical formulation, for example, by the words "to recommend to adhere". It was remarked that the use of the words "compelling reasons" raised certain doubts.

98. In connection with paragraph 12, a reference was made to the recommendations of the Working Group of the Whole of the Asian-African Legal Consultative Committee on the improvement of the functioning of the General Assembly (A/41/437). It was also pointed out that an excessive number of requests for observations from States or reports by the Secretary-General placed a heavy burden on States as well as on the Secretariat of the United Nations. The view was expressed in support of the present formulation of that paragraph, yet its placement in the text of the working paper should be changed and the paragraph should be inserted after paragraph 4. It was also noted that the ideas embodied in paragraph 12 deserved the Special Committee's attention. At the same time, redrafting could improve its formulation. Reduction of the number of General Assembly resolutions and decisions, which have been reaching 300 annually, was desirable, as was pointed out and equally, an expanding practice of the use of consensus should be reflected. Serious difficulties have been raised with regard to the idea of a linkage between a number of General Assembly resolutions and decisions and the enhancement of General Assembly authority. It was stressed, in that connection, that the question of the nature of the General Assembly resolution went far beyond the issue of the number of resolutions and that the fundamental factor for such enhancement would be the necessary political will and commitment by States. It was remarked that the gist of the problem was to assure an adequate consideration of issues by the General Assembly and at the same time to enhance its authority. Moreover, it was stated that the increasing complexity of international relations required an increase in the number of resolutions, which have been at the same time very modest. Concerning the question of the observations and reports, the point was made that they were essential for the work of the United Nations, that the needs of the developing countries, in particular, have been served by the Secretariat machinery. A point was also made that the issue of consensus had already been quite adequately dealt with in paragraph 1 of the working paper. Rethinking and redrafting of the paragraph had been strongly urged.

99. At the subsequent stage of the proceedings, a revised version of the working paper (A/AC.182/L.43/Rev.4) was introduced on behalf of the co-sponsors. It read as follows:

**"Rationalisation of existing United Nations procedures**

"1. In order to facilitate the adoption of resolutions and decisions by the General Assembly whenever possible without a vote, informal consultations should be carried out with the widest possible participation of Member States.

"2. When an electronic voting system is available for recording how votes were cast,\* 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, in the light of the experience it has acquired during that session, draw up its observations on the organisation of the work of the session, in order to facilitate the organization of the work of future sessions of the General Assembly.

"4. The agenda of the General Assembly should be simplified by grouping or merging, to the extent possible, related items and by setting an interval of two or more years for the discussion of certain items. The President of the General Assembly should undertake consultations with interested delegations to this end.

"5. The General Committee should consider, at the beginning of each session of the General Assembly, recommending that certain Main Committees should meet in sequential order, taking into account such matters as the number of meetings required for the consideration of the questions with which they are charged at that session and the organization of the work of the whole session (including the distribution of work among the Main Committees).

"6. In making recommendations as to how agenda items should be allocated to the Main Committees and the Plenary of the General Assembly (taking into account the nature of the items, 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 organisation of the work.

"6. When the General Assembly considers whether it needs to establish subsidiary organs, accordance with Article 22 of the Charter, it should give careful consideration as to whether the subject-matter in question could be dealt with by existing organs, including its Main Committees and their working groups. If the General Assembly decides to establish a new subsidiary organ, it should then give careful consideration to suspending or discontinuing the work of an existing organ.

"9. The dates and length of the sessions of bodies of the General Assembly that meet intersessionally should be determined as soon as possible by the General Assembly, as appropriate following advice from the Committee on Conferences, on the proposal of the Secretary-General. The Assembly should take account of the available facilities, budgetary resources, past

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\* Changes to document A/AC.182/L.43/Rev.3 underlined.

experience, the state Of current work in regard to the mandate given to the body in question and the need to avoid overlapping meetings of bodies which deal with subject-matter of a similar nature.

"10. Consultations between members of bodies of the General Assembly that meet interessionally 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. United Nations bodies should meet S i their respective headquarters unless there are compelling reasons for their meeting elsewhere<sup>8</sup>. The General Assembly should have in mind its resolution 40/243 of 18 December 1985 in this respect.

"12. Efforts should be made to reduce the number of decisions and resolutions adopted by the General Assembly in order to promote adequate consideration of the issues involved, taking into account the grouping of agenda items. As a rule, resolutions should *not* request observations from States or reports by the Secretary-General unless it is indispensable for facilitating the implementation of the resolutions or the continued examination of the question."

100. In the course of introducing the document, one of the co-sponsors pointed out that the proposals contained in the working paper represented a practical step towards enhancing the work of the United Nations.

101. The delegation of the Union of Soviet Socialist Republics, which had indicated in the course of the debate on the working paper contained in document A/AC.182/L.43/Rev.3 that it would submit amendments and additional paragraphs relating to the proposals contained in that working paper, introduced a conference room paper (A/AC.182/1989/CRP.1). It read as follows

#### "RATIONALIZATION OF EXISTING UNITED NATIONS PROCEDURES

##### "USSR: Proposals concerning document A/AC.182/L.43/Rev.3

"1. Add the following text to paragraph 1:

'States must seek to increase the effectiveness of the General Assembly in considering questions on its agenda by conducting fruitful negotiations in a constructive spirit, searching for areas of agreement based on a balance of States' interests, reaching universally acceptable agreements and drafting and adopting resolutions on the basis of consensus.'

"2. Reword paragraph 8 as follows!

'The General Assembly should establish, in conformity with Article 22 of the Charter of the United Nations, such subsidiary organs as it deems necessary for the performance of its functions. Subsidiary organs must constantly improve their procedures and methods of work and ensure a high level of effectiveness in considering questions allocated to them by the General Assembly.'

**"3. Add the following text to paragraph 9:**

**'The General Assembly should appeal to subsidiary organs to increase the effectiveness of their work and make full use of the time allotted to them to achieve genuine progress in fulfilling the mandate entrusted to them.'**

**"4. Reword the first sentence of paragraph 12 as follows:**

**'Efforts should be made to reduce the number of decisions and resolutions adopted by the General Assembly and repeated year after year without yielding any practical results, and attention should be paid to the drafting and adoption of more decisions and resolutions by the General Assembly on the basis of a consensus reflecting a balance of States' interests.'**

**"5. Delete the second sentence of paragraph 12.**

**"6. Insert a new paragraph in the document, as follows:**

**'In order to enhance the efficiency of the the work of the General Assembly, there should be more frequent recourse to the practice of holding special sessions, in accordance with Article 20 of the Charter of the United Nations, on the most pressing political problems, including disarmament questions.'**

**"7. Insert a new paragraph in the document, as follows:**

**'For the purposes of ensuring effective and fruitful work by the General Assembly and increasing its contribution to solving international problems, the following measures for monitoring compliance with the decisions adopted should be considered, where necessary: (1) reviewing the implementation of declarations and resolutions; (2) instructing the Secretary-General of the United Nations to report on the implementation of declarations and resolutions; (3) establishing an organ to monitor the implementation of declarations and resolutions or entrusting these powers to an already existing organ.'**

**102. In introducing this document, the sponsor characterised the proposals contained in it as being directed towards increasing the effectiveness Of the activities of the General Assembly and its subsidiary organs, which had already constituted an elaborate negotiating mechanism to be able to deal with all kinds of issues. It was further stressed in that context that the Special Committee could undertake the task of co-ordinating the extensive work being carried out in the area of rationalization by a whole range of the United Nations bodies as well as of expanding its activities into the field of rationalizing the existing United Nations procedures.**

**103. After the exchange of views in the Working Group, it was agreed to consider the proposals contained in documents A/AC.182/L.43/Rev.4 and A/AC.182/1989/CRP.1 together.**

**104. The view was expressed that, in order to rationalise the work of the Special Committee end of the Working Group, the sponsors of documents A/AC.182/L.43/Rev.4**

and A/AC.182/1989/CRP.1 should at first negotiate among themselves to agree on a common language.

105. The debate which followed covered paragraphs 1 to 12 of the revised working paper and paragraphs 1 to 5 of the conference room paper.

106. It was pointed out in connection with paragraphs 1 of both papers that decision by consensus, per se, was not a passive acquiescence, but an active mechanism, which could be used to conduct negotiations at all possible levels. It was also noted that the adoption of decisions and resolutions by consensus would give them a greater effect throughout the United Nations and make them more meaningful. The view was expressed that the proposal in document A/AC.182/1989/CRP.1 was a very detailed one, emphasising the aim of rationalisation. It was further suggested in connection with that paper that the word "must" be replaced by "shall", that the words "of the activity" be added after the word "effectiveness" and that the words "and decisions" be added after the word "resolutions". Doubts were raised in connection with paragraph 1 of document A/AC.182/1989/CRP.1. The introduction of the notion of consensus as a general rule was criticised. The language used in the paper, for example, references to "universally acceptable agreements", "fruitful negotiations", "constructive spirit" were questioned.

101. For paragraph 2, the Working Group then provisionally accepted the formulation contained in document A/AC.182/L.43/Rev.4.

108. After a short debate on paragraph 3, in the course of which it was pointed out, on one hand, that the role of the General Committee in drawing up its observations should be specified, and, on the other hand, that there should be a way to reflect the experience accumulated in the course of General Assembly sessions, the Working Group provisionally accepted the formulation contained in paragraph 3 of document A/AC.182/L.43/Rev.4.

109. In the course of the debate on paragraph 4, many reservations and proposals that had already been made in connection with that paragraph were reaffirmed. Objections were raised with regard to the suggested "interval of two or more years". It was proposed that the last sentence be rephrased in the following way: "The President of the General Assembly should undertake consultations with delegations directly concerned with a view to achieving the agreement to this end." It was also suggested that a reference to the Chairmen of the Main Committees be included in the last sentence. It was indicated, on behalf of the co-sponsors, that they preferred the formulation of paragraph 4 as it stood and a reference was again made to paragraph 91 of the Special Committee's report on the work of its 1978 session.

110. In connection with paragraph 5, the view was expressed, on the one hand, that after the clarification submitted by the Secretariat (see para. 8), it seemed unnecessary to retain that paragraph. It was, on the other hand, stressed that the idea of the paragraph was to streamline all the available resources and to offer the guidelines in that direction.

111. With regard to paragraph 6, it was said on behalf of the co-sponsors that they could agree to delete the words in brackets. Divergent views were expressed with regard to the reference to "resources available". While, in the view of some



delegations, the **reference** was useful, others opposed it on the grounds that the Special Committee was not competent to deal with budgetary questions.

112. In the context of paragraph 1 **references** were made to previous comments and criticisms. It was indicated on behalf of the co-sponsors that the idea of that paragraph deserved continued consideration. It was pointed out that paragraph 7 should contain an explicit reference to the equitable geographical distribution.

113. It was pointed out on behalf of the co-sponsors that paragraph 8 had been revised to address the **concerns** previously expressed. The view was expressed that paragraph 8 represented a key issue which was to prevent **the proliferation of** subsidiary bodies. On the other hand, objections were raised with **regard to the** second sentence of the paragraph. Support was expressed for the proposed paragraph 8 as contained in document **A/AC.182/1989/CRP.1**.

114. Paragraph 9 was generally **characterized as a** positive redraft. Opposing views were expressed with regard to the reference to "budgetary resources" **for** reasons already explained. It was also noted that, if the second part of paragraph 8 of document **A/AC.182/1989/CRP.1** be included, then the proposal contained in paragraph 9 of the above-mentioned paper would not be necessary. Doubts were **raised** in connection with the formulation of the second part **of the last sentence** of the paragraph.

115. With regard to paragraph 10, divergent views were expressed in connection with the participation in the pre-session consultations of **all the** interested delegations, including observers.

116. In the **context of the** consideration of paragraph 11, the view **was held that a** reference to "compelling reasons" represented an unclear notion. A point was **made** that the resolutions of the General Assembly did not require **any kind of** **reaffirmation** by subsidiary bodies, such as this Special **Committee**.

117. With regard to paragraph 12, it was suggested that its second part **be** deleted. In connection with the proposed formulation of paragraph 12 as contained in document **A/AC.182/1989/CRP.1**, it was stated that, as a whole, it should be redrafted or deleted.

118. The Working Group then called upon the co-sponsors **of both papers** and other interested delegations to conduct informal consultations under the chairmanship of the Special Committee's Chairman. **After** an extensive round of consultations, it was indicated on behalf of the co-sponsors of document **A/AC.182/L.43/Rev.4** that they would submit a revised **version** of the working paper at the next **session of** the Special Committee.

## V. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

### A. 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 Chairman

119. The Working Group considered the above-mentioned proposal at its 15th and 17th meetings, as well as during informal consultation under the chairmanship of the Special Committee's Chairman and Vice-Chairman between 6 and 10 April 1969.

120. As a result of these meetings and consultation, the Special Committee completed its 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 by Romania (A/AC.182/L.52/Rev.2).

121. There was general agreement that the discussions had contributed to a better understanding of the importance and usefulness of good offices, mediation or conciliation as means for the settlement of disputes.

122. The Special Committee was of the opinion that States could consider the proposal as useful guidance, in the light of the discussions in the Special Committee and in the General Assembly, when envisaging a resort to good offices, mediation or conciliation for the settlement of their disputes.

123. The Special Committee recommends that the General Assembly bring the following proposal to the attention of States by annexing it to a decision to be adopted at the forty-fourth session:

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

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

"1. Resort to a commission of good offices, mediation or conciliation within the United Nations may be considered by States as a procedure at their disposal for the peaceful settlement of international disputes in accordance with the provisions of the Charter of the United Nations.

"2. Such a commission may be established for each particular case, in accordance with modalities described below, through the agreement of the States parties to a dispute, or, with their agreement, on the basis of a recommendation of the Security Council, or of the General Assembly or following the contacts of the States parties to a dispute with the Secretary-General. Other modalities and conditions may also be agreed upon by the States parties to a dispute for the establishment of such a commission.

"3. When the States parties to a dispute accept to resort to a commission of good offices, mediation or conciliation as described in paragraph 2 above, the designation of members of the commission is proceeded with.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**B. 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 Chairman**

**124. The Special Committee had before it, as requested in paragraph 7 of General Assembly resolution 43/170, the Secretary-General's progress report on the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.61), which contained updated information on the preparation by the Secretariat of the draft handbook. In particular, the progress report gave information on the meeting of the Consultative Group composed of competent individuals from among the members of the permanent mission of the States Members of the United Nations, held on 3 May 1988, under the chairmanship of the Under-Secretary-General, the Legal Counsel, which reviewed a further portion of the draft handbook dealing with arbitration, prepared by the Secretariat.**

125. At its 126th meeting of the Special Committee, on 3 April 1969, the Legal Counsel introduced the progress report. In the course of the consideration of the document, one representative expressed the hope that the next report submitted by the Secretary-General would show a more substantial progress towards the completion of the task of drafting the handbook. The Committee took note of the report.

#### Notes

1/ For the list of members of the Committee at its 1989 session, see A/AC.182/INF/14.

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

3/ Ibid., Forty-third Session, Supplement No. 33 (A/43/33).

4/ Ibid., Plenary Meetings, 72nd meeting.

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